

VIRGINIA  
UNCODIFIED ACTS



# Uncodified Acts of Assembly - 1994

## Chapter 1 Income tax conformity.

An Act to repeal Chapter 640 of the Acts of Assembly of 1993, relating to conformity of Virginia income tax laws to the Internal Revenue Code.

[\[S 185\]](#)

Approved February 15, 1994

Be it enacted by the General Assembly of Virginia:

1. That Chapter 640 of the Acts of Assembly of 1993 is repealed.
2. That the provisions of this act shall be effective for all taxable years beginning on and after January 1, 1993.
3. That an emergency exists and this act is in force from its passage.

## Chapter 2 Peanut seeds.

An Act to suspend certain germination regulations for peanuts.

[\[H 219\]](#)

Approved February 15, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Board of Agriculture and Consumer Services shall suspend the enforcement of regulations establishing a minimum germination standard for peanuts used for agricultural seed (Section 18 of VR115-04-09, Rules and Regulations for the Enforcement of the Virginia Seed Law) until July 1, 1994.*
2. That an emergency exists and this act is in force from its passage.

## Chapter 61 Board of Rehabilitative Services.

An Act to repeal the fifth enactment of Chapter 755 of the Acts of Assembly of 1992, relating to the powers of the Department and Board of Rehabilitative Services.

[\[H 1130\]](#)

Approved March 9, 1994

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 755 of the Acts of Assembly of 1992 is repealed.
2. That the provisions of this act shall apply only to the provisions of Chapter 755 of the Acts of Assembly of 1992 affecting the Department and the Board of Rehabilitative Services.

## **Chapter 77 Certain town elections; postponement and rescheduling.**

An Act relating to the 1994 general elections for members of the governing body in certain towns.

[\[H 698\]](#)

Approved March 10, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Notwithstanding any other provision of law to the contrary, when a town has been redistricted as a result of annexation and the redistricting occurred prior to the regularly scheduled May 3, 1994, general election for some or all of the members of the town's governing body, the May 1994 general election shall be conducted from the newly established districts so long as the redistricting measure was adopted prior to December 15, 1993.*

*§ 2. Notwithstanding any other provision of law to the contrary, elections that would be held on May 3, 1994, for members of the governing body of any town which has been redistricted as a result of annexation, shall be delayed if the redistricting plan of such town is not pre-cleared by the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended, on or before April 8, 1994, and shall be held as provided in this act, unless otherwise provided by order of a court of competent jurisdiction.*

*§ 3. In each such town, such election shall be held on the first Tuesday (i) that is more than sixty days after the Attorney General of the United States issues a letter that he interposes no objection to the redistricting plan submitted by the town; (ii) that is not the scheduled date of a primary election; and (iii) that is not within the sixty days before or the thirty-five days after a primary or general election.*

*§ 4. Independent candidates for such rescheduled election shall qualify in the manner provided by Article 2 (§ [24.2-505](#) et seq.) of Chapter 5 of Title 24.2 of the Code of*

*Virginia and party nominees shall be nominated and certified at least thirty days before the new election date.*

§ 5. *All candidates shall file the statements required by Article 1 (§ [24.2-500](#) et seq.) of Chapter 5 of Title 24.2 of the Code of Virginia at least thirty days before the new election date.*

§ 6. *Notwithstanding any provision of law to the contrary, the term of the members of any governing body elected under the provisions of this act shall commence on the first day of the second month following the election and shall terminate on the day on which the term would have expired had the general election been held on its regularly scheduled day.*

§ 7. *The term of the members of any governing body affected by this act that would otherwise expire on July 1, 1994, shall be extended until the date that the terms of members elected under this act commence, notwithstanding any provision of law to the contrary.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall expire on January 1, 1995.

## **Chapter 110 W. Hank Norton Highway.**

An Act to designate a portion of Virginia Route 40 the "W. Hank Norton Highway."

[\[S 384\]](#)

Approved March 28, 1994

Be it enacted by the General Assembly of Virginia:

1. § 1. *That portion of Virginia Route 40 in Franklin County between the Franklin/Patrick County boundary to the western corporate limits of the town of Rocky Mount is hereby designated the "W. Hank Norton Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route.*

## **Chapter 233 Bond issue.**

An Act authorizing the issuance of Commonwealth of Virginia Transportation Program Revenue Bonds, by and with the consent of the Governor pursuant to the provisions of Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1 of the Code of Virginia and as permitted by Section 9 (d) of Article X of the Constitution of Virginia, in a principal amount not exceeding \$32,500,000 to finance the cost of the project specified in § [33.1-268](#), plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing

expenses, for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for construction of the Oak Grove Connector in the City of Chesapeake, a Transportation Improvement Program project; authorizing the Commonwealth Transportation Board to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; providing for the pledge of revenues under a payment agreement with the Treasury Board first from (i) any revenues received from any Set-aside Fund established pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly; and further providing that the interest income from such bonds shall be exempt from all taxation within the Commonwealth; and to amend and reenact §§ [33.1-269](#) and [33.1-277](#) of the Code of Virginia, relating to the State Revenue Bond Act.

[\[S 458\]](#)

Approved April 4, 1994

Whereas, Section 9 (d) of Article X of the Constitution of Virginia and §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia provide that the General Assembly may authorize the issuance of bonds secured by Transportation Trust Fund revenues under a payment agreement between the Commonwealth Transportation Board and the Treasury Board, subject to appropriations by the General Assembly and payable first from (i) any revenues received from any Set-aside Fund established pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly; and

Whereas, the project described herein will be a state highway operated and maintained by the Commonwealth Transportation Board; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Oak Grove Connector, City of Chesapeake, Commonwealth of Virginia Transportation Program Revenue Bond Act of 1994."*

*§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Program Revenue Bonds, Series .....", in an aggregate principal amount not exceeding \$32,500,000 to finance the cost of the project plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses including, without limitation, original issue discount (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the project known as the Oak Grove Connector in the City of Chesapeake, consisting of a four-lane divided highway connecting Dominion Boulevard (Route 104) and the Great Bridge Bypass (Route 168), and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "project"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.*

*The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds.*

*§ 3. The proceeds of the Bonds herein authorized shall be made available by the Commonwealth Transportation Board to pay the costs of the project and, where appropriate, may be paid to any authority, locality or commission for the purposes of paying for the costs of the project. The proceeds of the Bonds may be used with any federal, local or private funds which may be made available for said purpose.*

*§ 4. The Bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the Commonwealth Transportation Board, or by a formula or method established by resolution of the Commonwealth Transportation Board, and may be made redeemable before their maturity or maturities, at such price or prices and under such terms and conditions as may be fixed by the Commonwealth Transportation Board prior to the issuance of the Bonds. The principal of and the interest on the Bonds shall be made payable in lawful money of the United States of America. The Commonwealth Transportation Board shall determine the form of the Bonds and fix the denomination or denominations of the Bonds and the place or places of payment of principal and interest thereof, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth.*

*All Bonds issued under the provisions of this Act shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*

*The Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of and premium, if any, and interest on the Bonds.*

*The Bonds may be sold at a public or private sale for such price or prices as the Commonwealth Transportation Board may determine to be in the best interests of the Commonwealth.*

*§ 5. The Bonds shall be signed on behalf of the Commonwealth by the Commonwealth Transportation Commissioner or shall bear his facsimile signature, shall bear the official seal of the Board, and shall be attested by the Secretary of the Board. Any interest coupons shall bear a facsimile of the signature of the Commonwealth Transportation Commissioner. In the event that the Bonds shall bear the facsimile signature of the Commonwealth Transportation Commissioner, the Bonds shall be signed by such administrative assistant as the Commonwealth Transportation Commissioner shall determine or by any Registrar/Paying Agent that may be designated by the Treasury Board. In case any officer, whose signature or a facsimile of whose signature appears on any Bonds or coupons, shall cease to be such officer before the delivery of such Bonds, his signature or facsimile signature shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery.*

*§ 6. All expenses incurred under this Act shall be paid from the proceeds of the Bonds or from any available funds as the Commonwealth Transportation Board shall determine.*

*§ 7. The Commonwealth Transportation Board is hereby authorized to borrow money at such rate or rates through the execution and issuance of notes of the Commonwealth for the same, but only in the following circumstances and under the following conditions:*

*1. In anticipation of the sale of the Bonds the issuance of which shall have been authorized by the Commonwealth Transportation Board and shall have been approved by the Governor, if the Commonwealth Transportation Board shall deem it advisable to postpone the issuance of the Bonds.*

*2. For the renewal of any loan evidenced by notes herein authorized.*

*§ 8. The proceeds of the Bonds and of the bond anticipation notes herein authorized (except the proceeds of bonds the issuance of which has been anticipated by such bond anticipation notes) shall be placed by the State Treasurer in a special fund in the state treasury, or with his concurrence may be placed in accordance with [§ 33.1-283](#), and shall be disbursed only for the purpose for which such Bonds and such bond anticipation notes shall be issued; however, proceeds derived from the sale of Bonds or renewal herein authorized shall be first used in the payment of any bond anticipation notes that may have been issued in anticipation of the sale of such Bonds and any renewals of such notes.*

*§ 9. The Commonwealth Transportation Board is hereby authorized to receive any other funds that may be made available to pay the cost of the project and to make available the same to the payment of the principal of and the interest on the debt authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury to pay a part of the cost of the project or to pay the principal of and the interest on such debt.*

*§ 10. The Commonwealth Transportation Board, prior to the issuance of the Bonds, may establish a minimum reserve fund requirement for the Bonds.*

*§ 11. The Commonwealth Transportation Board, prior to the issuance of the Bonds, shall establish a sinking fund for the payment of the Bonds to the credit of which there shall be deposited such amounts as are required to pay debt service on the Bonds due and payable for such fiscal years first from (i) any revenues received from any Set-aside Fund established pursuant to [§ 58.1-816.1](#), (ii) to the extent required, revenues received pursuant to a contract with the City of Chesapeake or any alternative mechanism for*

*generation of local revenues for specific funding of the project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the city in which the project to be financed is located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.*

*§ 12. Bond proceeds and moneys in any reserve funds and sinking funds shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth, or with the State Treasurer's concurrence by a trustee in accordance with § [33.1-283](#).*

*§ 13. The interest income from, but not any profit made on the sale of the Bonds, notes and coupons, if any, issued under the provisions of this Act, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof.*

*§ 14. All bonds and notes issued under the provisions of this Act are hereby made securities in which all public officers and bodies of the Commonwealth; all counties, cities, towns and municipal subdivisions; all insurance companies and associations; all savings banks and savings institutions, including savings and loan associations; administrators; guardians; executors; trustees; and other fiduciaries in the Commonwealth may properly and legally invest funds under their control.*

2. That §§ [33.1-269](#) and [33.1-277](#) of the Code of Virginia are amended and reenacted as follows:

§ [33.1-269](#). General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;
2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;
3. Subject to the limitations and approvals of § [33.1-279.1](#), issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia

Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;

4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;

4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;

4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) *to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board*, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as

provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, ~~(iii)~~(iv) to the extent required, legally available revenues of the Transportation Trust Fund, and ~~(iv)~~(v) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision or public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board; however, the cost and

expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the project. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article; and

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of ~~Article X~~, Section 9 (c) of *Article X* of the Constitution of Virginia.

§ [33.1-277](#). Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, from bond proceeds or earnings thereon and from any other

available sources of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this article or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their

appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in § [33.1-268](#) (2) (s) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in § [33.1-268](#) (2) (t) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) *any* revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) *to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board*, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located *or* to the city or county in which the project or projects to be financed are located, ~~(iii)~~(iv) to the extent required, legally available revenues from the Transportation Trust Fund, and ~~(iv)~~ (v) such other funds which may be appropriated by the General Assembly.

3. That if any part of this Act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

## Chapter 470 Bonds for the Northern Virginia Transportation District Program.

An Act to amend and reenact §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia and § 2 of Chapter 391 of the Acts of Assembly of 1993, relating to the Northern Virginia Transportation District Program; the issuance of bonds to finance the costs of such program; the Northern Virginia Transportation District Fund; the use of such fund to pay debt service; the amendments thereto relating to increasing the principal amount of bonds authorized to be issued to \$271,000,000 and redesignating the projects qualifying for such financing and the amounts allocated to each such project.

[\[H 702\]](#)

Approved April 8, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia are amended and reenacted as follows:

§ [33.1-221.1:3](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in Northern Virginia which shall be known as the Northern Virginia Transportation District Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, Route 234 Bypass, and Metro Capital Improvements, including the Franconia-Springfield Metrorail Station , *Route 7 improvements in Loudoun County between Route 15 and Route 28, and the Route 50/Courthouse Road interchange improvements in Arlington County.*

B. Allocations to this Program from the Northern Virginia Transportation District Fund established by § [58.1-815.1](#) shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality of life in Virginia.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in § [33.1-268](#) (2) (s).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.

E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [58.1-815.1](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under §§ [58.1-802](#) B and [58.1-814](#). The Fund shall also include such other funds as may be appropriated by the General Assembly from time to time and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2 *or* 3 project or projects may be funded.

B. Allocations from this Fund may be paid (i) to any authority, locality or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program which consists of the following: the Fairfax County Parkway, Route 234 Bypass, and Metro Capital Improvements, including the Franconia-Springfield Metrorail Station, *Route 7 improvements in Loudoun County between Route 15 and Route 28, and the Route 50/Courthouse Road interchange improvements in Arlington County*, and (ii) for Category 23 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, ~~1993, \$9.5~~ 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of ~~\$9.5~~ 19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the ~~1993~~ 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by §§ [58.1-815.1](#) and [58.1-816](#).

2. That § 2 of Chapter 391 of the Acts of Assembly of 1993 is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$181,000,000~~ \$271,000,000 to finance the cost of the projects plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Northern Virginia Transportation District Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "projects"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The projects shall be classified as Category 1 and, Category 2 and Category 3 projects, each category being subject to different preconditions. Bonds to finance the cost of

Category 1 projects may be issued by the Commonwealth Transportation Board. *Bonds to finance the cost of Category 2 projects may be issued by the Commonwealth Transportation Board only if the aggregate principal amount of \$261,000,000 in bonds has been issued to finance the cost of Category 1 projects.* Category 2 3 projects shall not be financed through the issuance of bonds; however, after all Bonds authorized have been issued, ~~or if there is excess bond-issuing capacity,~~ then to the extent the Northern Virginia Transportation District Fund contains amounts in excess of the amount needed to pay annual debt service on such Bonds in a particular fiscal year, such excess amounts may be expended to pay the cost of the work identified as Category 23 projects.

The projects, and the amount of bonds authorized to be issued for each such project, are as follows and constitute the Northern Virginia Transportation District Program:

Category 1 projects	Bond amount	Metro Cap-
ital Improvements, including the	Franconia-Springfield	
Metrorail Station	\$ <del>63,000,000</del>	85,600,000
Fairfax County Parkway	\$ <del>64,000,000</del>	87,000,000
Route 234 Bypass	\$ <del>54,000,000</del>	73,400,000
Route 7 improvements between	Route 15 and Route 28 in	
Loudoun County	\$ 15,000,000	Total
	<del>\$181,000,000</del>	261,000,000

*Category 2 projects consist of the Route 50/Courthouse Road interchange improvements in Arlington County, in the amount of \$10,000,000.*

The work identified as Category 23 projects to be funded from the Northern Virginia Transportation District Fund, to the extent there are sums in excess of the amount needed to pay debt service on the Bonds in a given fiscal year, is as follows:

#### Category 23 projects

Such ~~additional~~ projects as may be concurred in by the local jurisdictions participating in the Northern Virginia Transportation District Program, as evidenced by resolutions adopted by an affirmative vote of a majority of the jurisdictions participating in the Northern Virginia Transportation District Program and subject to such guidelines and conditions as may be promulgated by the Commonwealth Transportation Board.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of

the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds. In the event the aggregate principal amount of the initial issuance is less than \$181,000,000, the Commonwealth Transportation Board shall allocate the proceeds of the Bonds to individual projects in proportion to the total amount of debt authorized under this section for such projects issuance, for the projects and amounts authorized by the 1994 amendments to Chapter 391 of the Acts of Assembly of 1993, is less than \$127,000,000, the Commonwealth Transportation Board shall cause each Category 1 project to be shared in the reduced issuance by reducing the proceeds of the Bonds for each of the Category 1 projects on a pro rata basis. For purposes of making such computation, the 1993 issuance of Bonds and the amount of bond proceeds allocated to each Category 1 project in 1993 shall be disregarded.

3. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Chapter 530 Bonds for parking facilities.**

An Act to authorize the issuance of Commonwealth of Virginia Parking Facilities Bonds, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, in an amount not to exceed \$3,589,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds with any other available funds for paying the costs of renovating and expanding a specific revenue-producing parking facility administered by the Department of General Services; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; to provide for the pledge of the net revenues of the Department of General Services Parking Facilities System and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapters 852 and 863 of the Acts of Assembly of 1990.

[\[H 202\]](#)

Approved April 9, 1994

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, of institutions and agencies administered solely by the executive branch of the Commonwealth; and

Whereas, the facility described herein will be a parking facility operated by the Virginia Department of General Services, an agency administered solely by the executive branch of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of the Department of General Services Parking Facilities System to be pledged to the payment of the principal of, and the interest on such debt issued for the capital project set forth below will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that the capital project complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Commonwealth of Virginia Parking Facilities Bond Act of 1994."*

*§ 2. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Parking Facilities Bonds, Series ....." in an aggregate principal amount not exceeding \$3,589,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses. The proceeds of such bonds, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs of renovating and expanding a revenue-producing capital project of the Commonwealth as follows:*

Agency	Project Number	Debt	Project Name
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Department of			Parking
Garage	General Services	15570	\$ 3,589,000
#22.			

*§ 3. The proceeds of the bonds and any bond anticipation notes, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes, shall be deposited in a special capital outlay fund in the state treasury and shall be disbursed by the State Treasurer for paying all or any part of the cost of the renovation and expansion of said capital project, plus issuance costs, reserve funds and other financing expenses.*

*§ 4. The bonds shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, and may be made redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. The principal of, premium, if any, and the interest on the bonds shall be payable in lawful money of the United States of America. The Treasury Board shall determine the form of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal, premium, if any, and interest, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. The bonds may bear interest at such rate or rates subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*The bonds may be in registered form or as may be required by federal law in effect on the date of issuance. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and the principal, premium, if any, and interest due thereon. Bonds issued in registered form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of, premium, if any, and interest on the bonds. The bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.*

*The Treasury Board may sell the bonds in such manner, at public or private sale, and for such price as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. The bonds may be sold at par, at a premium or at a discount.*

*Anything in this act to the contrary notwithstanding, the bonds authorized hereby may be issued at one time or in part and may be issued and sold at the same time with other bonds of the Commonwealth authorized pursuant to Section 9 (c) of Article X, of the Constitution of Virginia, either as separate issues, as a combined issue designated "Commonwealth of Virginia, Article X, Section 9 (c) Project Bonds, Series ....., " or as a combination of both.*

*The Treasury Board shall be authorized to supplement the special capital outlay fund in the state treasury created pursuant to § 3 hereof from excess moneys in any debt service, sinking or comparable fund established pursuant to previous issues of parking facilities bonds so long as such excess fund moneys are not otherwise restricted by law or by express contract with the holders of such prior bonds.*

*§ 5. The bonds shall be signed on behalf of the Commonwealth by the Governor, or shall bear his facsimile signature, and by the State Treasurer, or shall bear his facsimile signature, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds bear the facsimile signature of the State Treasurer, the bonds shall be signed by such administrative assistant as the State Treasurer shall determine, or by such registrar or paying agent as may be designated to sign such bonds by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds ceases to be such officer before the delivery of such bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond are the proper officers to sign such bond although, at the date of such bond, such persons may not have been such officers.*

*§ 6. All expenses incurred under this act shall be paid from the proceeds of the bonds, from payments made by the agency for which the capital projects were acquired, constructed, renovated, enlarged, improved or equipped, or from any other available funds as the Treasury Board shall determine, including excess moneys in any debt service, sinking or comparable fund created in connection with prior issues of parking facilities bonds to the extent not otherwise restricted by law or by contract with the holders of such prior bonds.*

*§ 7. The Treasury Board is hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds, if the Treasury Board and the Governor deem it advisable to postpone the issuance of the bonds. Proceeds of the*

*bonds shall be used to pay any such bond anticipation notes. Funds provided by the General Assembly, or from any other source, for the payment of the principal of, premium, if any, and the interest on the bonds shall be used in paying the principal of, premium, if any, and the interest on any bond anticipation notes. Such bond anticipation notes shall be dated, shall mature at such time or times not exceeding five years from their dates, and may be redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. Such bond anticipation notes shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board or the State Treasurer, when authorized by the Treasury Board, may determine. Such bond anticipation notes may bear interest subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*§ 8. Pending the application of the proceeds of the bonds and any bond anticipation notes to the purpose for which they have been authorized, all or any part of such proceeds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such proceeds, and the interest thereon and any profit realized from such investments shall be credited to such proceeds and any losses shall be deducted therefrom.*

*The General Assembly may from time to time authorize the issuance of additional bonds in accordance with the Constitution of Virginia secured by a pledge of the net revenues of the Department of General Services Parking Facilities System which is equal and ratable to the pledge of net revenues which secure these bonds.*

*§ 9. The Virginia Department of General Services is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupation and services of the capital project mentioned above or the system of which such capital project is a part and (ii) to pledge such rates, fees and charges remaining after payment of (a) the expenses of operating the project or system, as the case may be, and (b) the expenses related to all other activities funded by the parking fee or other rates, fees and charges, if applicable, to the payment of the principal of, premium, if any, and interest on the portion of the bonds issued for such capital project. The Virginia Department of General Services is further authorized to create debt service and sinking funds for the*

*payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 10. The net revenues of the Department of General Services Parking Facilities System and the full faith, credit and taxing power of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on the bonds and the bond anticipation notes herein authorized. In the event the net revenues pledged hereby are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and the interest on the bonds or bond anticipation notes herein authorized, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 11. The interest income on the bonds and bond anticipation notes issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof.*

*§ 12. All bonds and notes issued under the provisions of this act are hereby made securities in which all public officers and bodies of the Commonwealth, all counties, cities, towns, and political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including all savings and loan associations, trust companies, beneficial and benevolent associations, administrators, guardians, executors, trustees, and other fiduciaries in the Commonwealth may properly and legally invest funds under their control.*

*§ 13. The bonds issued under the provisions of this act may be refunded by refunding bonds authorized and issued in accordance with the provisions of Chapters 265 and 408 of the 1992 Acts of Assembly.*

2. That Chapters 852 and 863 of the Acts of Assembly of 1990 are repealed, provided that such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 589 Haymarket Transportation Program.**

An Act to authorize the issuance of Commonwealth of Virginia Transportation Revenue Bonds, by and with the consent of the Governor pursuant to the provisions of Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1 of the Code of Virginia and as permitted by

Section 9 (d) of Article X of the Constitution of Virginia, in a principal amount not exceeding \$49,143,000, plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (including, without limitation, any original issue discount), for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for construction of an adequate, modern, safe, and efficient transportation system in that part of the Commonwealth that comprises the Haymarket Transportation Program; authorizing the Commonwealth Transportation Board to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; providing for the pledge under a payment agreement with the Treasury Board of Transportation Trust Fund revenues, including funds which may be otherwise appropriated by the General Assembly; further providing that the interest income from such bonds shall be exempt from all taxation within the Commonwealth; to amend and reenact §§ [33.1-268](#), [33.1-269](#) and [33.1-277](#) of the Code of Virginia; and to amend the Code of Virginia by adding sections numbered [33.1-221.1:4](#) and [58.1-815.2](#), relating to creation of the Haymarket Transportation Program and amending the State Revenue Bond Act to include the Program.

[\[H 1294\]](#)

Approved April 9, 1994

Whereas, Section 9 (d) of Article X of the Constitution of Virginia and §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia provide that the General Assembly may authorize the issuance of bonds secured by Transportation Trust Fund revenues under a payment agreement between the Commonwealth Transportation Board and the Treasury Board, subject to appropriations by the General Assembly and payable first from (i) revenues received from the Haymarket Transportation Program Fund; (ii) to the extent required, legally available revenues of the Transportation Trust Fund; and (iii) such other funds which may be appropriated by the General Assembly; and

Whereas, the projects described herein will be state highways operated and maintained by the Commonwealth Transportation Board as described in § [33.1-12](#); now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Haymarket Transportation Program, Commonwealth of Virginia Revenue Bond Act of 1994."*

§ 2. *The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia, at one time or from time to time in one or more series, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Revenue Bonds, Series .....", in an aggregate principal amount not exceeding \$49,143,000, plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (including, without limitation, original issue discount) (the "Bonds"). The proceeds of such Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Haymarket Transportation Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, design, rights-of-way acquisition, construction and related improvements (the "projects"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.*

*The following projects constitute the Haymarket Transportation Program and consist generally of the following: (i) improvements to the planned interchange on Interstate 66 at State Route 234 Bypass and to the existing interchange at U.S. Route 15; (ii) construction of a new Antioch Road interchange and a new public access connector road from the new Antioch Road interchange in an eastward direction to U.S. Route 15; and (iii) construction of a new interchange on Interstate 66 west of the existing interchange with U.S. Route 15 with a connection to the new Antioch Road interchange.*

*The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds.*

§ 3. *The proceeds of the Bonds herein authorized shall be made available by the Commonwealth Transportation Board to pay the costs of the projects and, where appropriate, may be paid to any authority, locality or commission for the purpose of paying for the costs of the projects. The proceeds of the Bonds may be used with any federal, local or private funds which may be made available for such purpose.*

§ 4. *The Bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the Commonwealth Transportation Board, or by a formula or*

*method established by resolution of the Commonwealth Transportation Board, and may be made redeemable before their maturity or maturities, at such price or prices and under such terms and conditions as may be fixed by the Commonwealth Transportation Board prior to the issuance of the Bonds. The principal of and the interest on the Bonds shall be made payable in lawful money of the United States of America. The Commonwealth Transportation Board shall determine the form of the Bonds and fix the denomination or denominations of the Bonds and the place or places of payment of principal and interest thereof, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth.*

*All Bonds issued under the provisions of this Act shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*

*The Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of and premium, if any, and interest on the Bonds.*

*The Bonds may be sold at a public or private sale for such price or prices as the Commonwealth Transportation Board may determine to be in the best interests of the Commonwealth.*

*Anything in this Act to the contrary notwithstanding, the Bonds authorized hereby may be issued at one time or in part from time to time and may be issued and sold at the same time with other bonds of the Commonwealth Transportation Board as permitted by Section 9 (d) of Article X of the Constitution of Virginia, either as separate issues, as a combined issue designated "Commonwealth of Virginia Transportation Revenue Bonds, Series ....., " as a separate series of such combined issue, or as a combination of both.*

*§ 5. The Bonds shall be signed on behalf of the Commonwealth by the Commonwealth Transportation Commissioner or shall bear his facsimile signature, shall bear the official seal of the Board, and shall be attested by the Secretary or Assistant Secretary of the Board. Any interest coupons shall bear a facsimile of the signature of the Commonwealth Transportation Commissioner. In the event that the Bonds shall bear the facsimile signature of the Commonwealth Transportation Commissioner, the Bonds shall be signed by such administrative assistant as the Commonwealth Transportation Commissioner shall determine or by any Registrar/Paying Agent that may be designated by the Treasury Board. In case any officer, whose signature or a facsimile of whose signature appears on any Bonds or coupons, shall cease to be such officer before the*

*delivery of such Bonds, his signature or facsimile signature shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery.*

*§ 6. All expenses incurred under this Act shall be paid from the proceeds of the Bonds or from any other available funds as the Commonwealth Transportation Board shall determine.*

*§ 7. Subject to the conditions set forth hereinafter in § 15, the Commonwealth Transportation Board is hereby authorized to borrow money at such rate or rates through the execution and issuance of notes of the Commonwealth for the same, but only in the following circumstances and under the following conditions:*

*a. In anticipation of the sale of the Bonds, the issuance of which shall have been authorized by the Commonwealth Transportation Board and shall have been approved by the Governor, if the Commonwealth Transportation Board shall deem it advisable to postpone the issuance of the Bonds.*

*b. For the renewal of any loan evidenced by notes herein authorized.*

*§ 8. The proceeds of the Bonds and of the bond anticipation notes herein authorized (except the proceeds of bonds, the issuance of which has been anticipated by such bond anticipation notes) shall be placed by the State Treasurer in a special fund in the state treasury, or with his concurrence may be placed in accordance with [§ 33.1-283](#), and shall be disbursed only for the purpose for which such Bonds and such bond anticipation notes shall be issued; however, proceeds derived from the sale of Bonds or renewal herein authorized shall be first used in the payment of any bond anticipation notes that may have been issued in anticipation of the sale of such Bonds and any renewals of such notes.*

*§ 9. The Commonwealth Transportation Board is hereby authorized to receive any other funds that may be made available to pay the cost of the projects and to make available the same to the payment of the principal of and the interest on the debt authorized hereby and to enter into the appropriate agreements to allow for these funds to be paid into the state treasury to pay a part of the cost of the projects or to pay the principal of and the interest on such debt.*

*§ 10. The Commonwealth Transportation Board, prior to the issuance of the Bonds, may establish a minimum reserve fund requirement for the Bonds.*

*§ 11. The Commonwealth Transportation Board, prior to the issuance of the Bonds, shall establish a sinking fund for the payment of the Bonds to the credit of which there shall be*

*deposited such amounts as are required to pay debt service on the Bonds due and payable for such fiscal years first from (i) revenues received from the Haymarket Transportation Program Fund, (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly.*

*§ 12. Bond proceeds and moneys in any reserve funds and sinking funds shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth, or with the State Treasurer's concurrence by a trustee in accordance with § [33.1-283](#).*

*§ 13. The interest income from, but not any profit made on the sale of, the Bonds, notes and coupons, if any, issued under the provisions of this Act, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof.*

*§ 14. All Bonds and notes issued under the provisions of this Act are hereby made securities in which all of the following may properly and legally invest funds under their control: all public officers and bodies of the Commonwealth; all counties, cities, towns and municipal subdivisions; all insurance companies and associations; all savings banks and savings institutions, including savings and loan associations; administrators; guardians; executors; trustees; and other fiduciaries in the Commonwealth.*

*§ 15. a. The authority granted hereunder to the Commonwealth Transportation Board is expressly conditioned upon the approval by the Board of Supervisors of the County of Prince William of a rezoning of an area of at least 2000 acres, inclusive of a theme park, for a project which includes a proffer of a capital investment of at least \$400,000,000 in Virginia, as certified to the Commonwealth Transportation Board by the clerk of the Board of Supervisors of the County of Prince William or other appropriate county official.*

*b. The authority granted hereunder to the Commonwealth Transportation Board to issue Bonds to finance such projects is expressly conditioned upon the Governor's execution of a written agreement with the corporate parent (with a net worth in excess of \$1 billion) of the owner or operator to build a theme park that is part of a project described in subsection a of this section and such agreement shall contain the following provisions:*

*(1) In the first ninety days of the fifth full calendar year following the issuance of any Bonds hereunder but in no event later than the year 2002, and thereafter within ninety days after the close of each calendar year during which any such Bonds have been*

*outstanding, such owner or operator, or corporate parent, if any, or any successor thereto or assignee thereof shall pay to the Haymarket Transportation Program Fund, subject only to events of force majeure as defined in such written agreement, an amount equal to the excess, if any, of (i) the lesser of (A) \$3,800,000 or (B) the principal of and interest on such Bonds paid during the immediately prior calendar year, over (ii) the revenue from the state sales and use tax imposed on or collected by such persons described in subdivision b (3) of this section pursuant to § [58.1-603](#) or § [58.1-604](#) of the Code of Virginia, or any successors thereto, and generated by such theme park, as certified by the Tax Commissioner, for the calendar year immediately prior to the date on which such computation is required to be made. Any payment made to the Commonwealth under this subdivision b (1) shall be referred to as a "Guarantee Payment";*

*(2) Such corporate parent shall be obligated to make any Guarantee Payment as described in subdivision b (1) of this section if and when any payment provided for under subdivision b (1) to the Commonwealth is not paid when due or if such theme park ceases to be operated by the initial operator thereof or any successor thereto or assignee thereof at any time while such Bonds remain outstanding, and in the event the corporate parent's net worth falls below \$1 billion, it shall provide a surety bond or equivalent credit instrument acceptable to the Commonwealth Transportation Board and approved by the Treasury Board in an amount sufficient to assure payment of any Guarantee Payment as described in subdivision b (1) at any time while such Bonds remain outstanding;*

*(3) For purposes of subdivision b (1) of this section, the sales and use tax revenue to be certified by the Tax Commissioner shall include only the sales tax collected on the theme park site, as identified in the site plan approved by the County in which such theme park is situated, by the owner or operator or by vendors independent from the owner or operator and authorized by the owner or operator to sell at retail on such theme park site;*

*(4) For a five-year period commencing on January 1 of the first full year following the year in which the theme park opens, but in no event later than January 1, 2002, the theme park owner or operator or its corporate parent, if any, shall receive a credit against any Guarantee Payment due hereunder in an amount of two times the amount specified under subdivision b (1) (i) (A). In no event, however, shall this credit amount be refundable;*

*(5) To the extent the theme park owner or operator or its corporate parent, if any, makes any Guarantee Payment to the Commonwealth and subsequent cumulative state sales and use tax revenues specified under subdivision b (1) (i) paid to the Commonwealth in any of the three calendar years following a calendar year in which a Guarantee Payment was made exceed the cumulative amount determined under subdivision b (1) (i) for the year with respect to which such computation was made, subject to appropriations by the General Assembly, an amount equal to such Guarantee Payments, if any, shall be paid to such owner or operator, or its corporate parent, if any, without interest. The passage of three calendar years after a calendar year in which a Guarantee Payment was made shall bar any reimbursement to the theme park owner or operator;*

*(6) Such written agreement between the corporate parent, its successors and assigns, and the Commonwealth shall also contain the following elements:*

*(i) The availability of land to the Commonwealth, at a cost not to exceed \$1.00 per annum, for a visitors' center to be constructed and operated by the Commonwealth near the main gate to the theme park. Access to the public who does not wish to enter the theme park shall be guaranteed to be free of charge;*

*(ii) Dedicated workforce training funds, subject to their appropriation, equal to \$600,000 annually shall be made available for the following fiscal years: 1997-1998, 1998-1999, and 1999-2000. Participation in statewide training programs shall be provided for thereafter on the same basis provided to other participants;*

*(iii) A dedicated cooperative advertising program equal to \$13,000,000, subject to its appropriation, shall be established for the 1996-1998 biennium, subject to an equivalent matching expenditure requirement by such owner, operator or corporate parent, to be administered by the Virginia Department of Economic Development, Division of Tourism. Participation in a cooperative advertising program shall be provided for thereafter on the same basis provided to other participants;*

*(7) Prior to its execution, the terms of the written agreement shall be presented to the Speaker of the House of Delegates, the President Pro Tempore of the Senate, the Chairmen of the House Finance Committee, the House Appropriations Committee, and the Senate Finance Committee; and*

*(8) The Auditor of Public Accounts shall be a signatory to the written agreement.*

*Notwithstanding the provisions of § [58.1-3](#) of the Code of Virginia, (i) the Tax Commissioner shall report, by April 1, 2001, and by April 1 of each fourth year thereafter*

*while any Bonds to finance Haymarket Transportation Program projects remain outstanding, to the Governor, the Chairmen of the House Finance Committee, House Appropriations Committee and the Senate Finance Committee, and the Auditor of Public Accounts the total amount since the last such report, if any, paid to the Haymarket Transportation Program Fund or reimbursed as described in subdivision b (1) of this section and (ii) the persons described in subdivision b (3) of this section shall report, under procedures prescribed by the Tax Commissioner, all taxes paid or collected that are so attributable to the theme park site.*

*§ 16. The Commonwealth Transportation Board and Prince William County shall agree with respect to the timely provision of related signage, signals, and lighting at a cost not to exceed a total expenditure of \$10,414,000 from: (i) allocations from Prince William County's secondary road funds; (ii) an agreement between Prince William County and the Commonwealth Transportation Board wherein Prince William County agrees to pay or reimburse such expenditures; (iii) to the extent legally available, any excess bond proceeds; or (iv) the Northern Virginia Construction District's primary road funds.*

2. That §§ [33.1-268](#), [33.1-269](#) and [33.1-277](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [33.1-221.1:4](#) and [58.1-815.2](#) as follows:

*§ [33.1-221.1:4](#). Haymarket Transportation Program.*

*A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of the Commonwealth be addressed by a transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network for the public in the Northern Virginia Transportation District which shall be known as the Haymarket Transportation Program (the Program), including, without limitation, environmental and engineering studies, design, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs and that the transportation improvements to be funded by such Program will provide important public benefits to the Commonwealth.*

*B. Allocations to this Program shall be made annually by the Commonwealth Transportation Board from the Haymarket Transportation Program Fund for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment, opportunities, mobility and quality of life in Virginia.*

*C. Allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in Virginia may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in subsection F of this section.*

*D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.*

*E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Haymarket Transportation Program Fund, (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly to the payment of bonds or other obligations, including interest thereon, in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.*

*F. The Program consists of certain improvements in Northern Virginia, including, but not limited to, the following: (i) improvements to the planned interchange on Interstate 66 at State Route 234 Bypass and to the existing interchange at U.S. Route 15; (ii) construction of a new Antioch Road interchange and a new public access connector road from the new Antioch Road interchange in an eastward direction to U.S. Route 15; and (iii) construction of a new interchange on Interstate 66 west of the existing interchange with U.S. Route 15 with a connection to the new Antioch Road interchange.*

§ [33.1-268](#). Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lan-

caster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Dulles Access Road outer roadways, extending from a point on Route 7 in Loudoun County in an easterly direction to a point east of Route 123 on the Dulles Access Road in Fairfax County. These roadways are to be two or three lanes in each direction constructed adjacent to, and parallel to or extending west from, the Dulles Access Road.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § [33.1-279.1](#), any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, the financing for which is to

be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and third, to the extent required from other legally available revenues of the Trust Fund and from any other available source of funds.

(r) U.S. 58 Corridor Development Program projects as defined in §§ [33.1-221.1:2](#) and [58.1-815](#).

(s) The Northern Virginia Transportation District Program as defined in § [33.1-221.1:3](#).

(t) *The Haymarket Transportation Program as defined in § [33.1-221.1:4](#).*

(u) Any program for highways or mass transit or transportation facilities, endorsed by the local jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

(3) The word "undertaking" means all of the projects authorized to be acquired or constructed under this article.

(4) The word "improvements" means such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "cost of project" as applied to a project to be acquired by purchase or by condemnation, includes the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "cost of project" as applied to a project to be constructed, embraces the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of acquiring by

purchase or condemnation any ferry which is deemed by the Board to be competitive with any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or associations having any title or interest in any property rights, easements or franchises authorized to be acquired by this article.

(8) [Repealed.]

(9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by the Board pursuant to this article, including, without limitation, legally available Trust Fund revenues.

(10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

§ [33.1-269](#). General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;
2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;
3. Subject to the limitations and approvals of § [33.1-279.1](#), issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds

appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;

4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;

4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;

4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

*4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Haymarket Transportation Program Fund, (ii) to the extent required, legally available revenues of*

*the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly;*

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision or public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board; however, the cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained and paid by the Board as a part of the cost of the project. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and

upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article; and

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution of Virginia.

§ [33.1-277](#). Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, from bond proceeds or earnings thereon and from any other available sources of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this article or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth

of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in § [33.1-268](#) (2) (s) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction

district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

*E. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for projects as provided in § [33.1-268](#) (2) (t) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such Bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Haymarket Transportation Program Fund, (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly.*

*F. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in § [33.1-268](#) (2) (†) (u) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues from the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.*

*§ [58.1-815.2](#). Haymarket Transportation Program Fund.*

*A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Haymarket Transportation Program Fund, consisting of such funds as may be appropriated by the General Assembly from time to time and designated for this Fund and payments, if any, made to this Fund as provided by the Haymarket Transportation Program, Commonwealth of Virginia Revenue Bond Act of 1994. The amounts in the Haymarket Transportation Program Fund shall be used for the construction of state highways including the payment of principal and interest on any Commonwealth of Virginia Transportation Revenue Bonds issued to pay the cost of the projects which comprise the Haymarket Transportation Program as defined in § [33.1-221.1:4](#).*

*B. Allocations from this Fund shall be made annually by the Commonwealth Transportation Board for the purposes of the Haymarket Transportation Program as specified in § [33.1-221.1:4](#).*

3. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Chapter 618 Standards of Quality.**

An Act to amend and reenact §§ [22.1-253.13:1](#) and [22.1-253.13:4](#) of the Code of Virginia and to repeal the second enactment of Chapter 661 of the 1993 Acts of Assembly, relating to the Standards of Quality for the several school divisions.

[\[S 460\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ [22.1-253.13:1](#) and [22.1-253.13:4](#) of the Code of Virginia are amended and reenacted as follows:

§ [22.1-253.13:1](#). Standard 1. Basic skills, selected programs, and instructional personnel.

A. The General Assembly and the Board of Education believe that the fundamental goal of the public schools of this Commonwealth must be to enable each student to develop the skills that are necessary for success in school and preparation for life, and find that the quality of education is dependent upon the provision of the appropriate working environment, benefits, and salaries necessary to ensure the availability of high quality instructional personnel and adequate commitment of other resources.

B. The Board of Education shall establish educational objectives to implement the development of the skills that are necessary for success in school and for preparation for life in the years beyond. The current educational objectives, known as the Standards of Learning, shall not be construed to be regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise these educational objectives. In order to provide appropriate opportunity for input from the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing new educational objectives. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to revise these educational objectives in the Virginia Register

of Regulations. Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any revisions of these educational objectives.

The Board shall seek to ensure that any revised educational objectives are consistent with the world's highest educational standards. However, no revisions shall be implemented prior to July 1, 1994. These objectives shall include, but not be limited to, basic skills of communication, computation and critical reasoning including problem solving and decision making, and the development of personal qualities such as self-esteem, sociability, self-management, integrity, and honesty. School boards shall implement these objectives or objectives specifically designed for their school divisions that are equivalent to or exceed the Board's requirements. Students shall be expected to achieve the educational objectives utilized by the school division at appropriate age or grade levels. With such funds as are available for this purpose, the Board of Education may prescribe assessment methods to determine the level of achievement of these objectives by all students.

C. Local school boards shall develop and implement a program of instruction for grades K through 12 which emphasizes reading, writing, speaking, mathematical concepts and computations, and scientific concepts and processes; essential skills and concepts of citizenship, including knowledge of history, economics, government, foreign languages, international cultures, health, environmental issues and geography necessary for responsible participation in American society and in the international community; fine arts and practical arts; knowledge and skills needed to qualify for further education and employment or, in the case of some handicapped children, to qualify for appropriate training; and development of the ability to apply such skills and knowledge in preparation for eventual employment and lifelong learning.

Local school boards shall also develop and implement programs of prevention, intervention, or remediation for students who are educationally at risk including, but not limited to, those whose scores are in the bottom national quartile on Virginia State Assessment Program Tests, or who do not pass the literacy test prescribed by the Board of Education. Division superintendents may require such students to take special programs of prevention, intervention, or remediation which may include attendance in public summer school sessions. Students required to attend such summer school sessions shall not be charged tuition. Based on the number of students attending and the Commonwealth's share of the per pupil costs, additional state funds shall be provided for summer remediation programs as set forth in the appropriation act.

D. Local school boards shall also implement the following:

1. Programs in grades K through 3 which emphasize developmentally appropriate learning to enhance success.
2. Programs based on prevention, intervention, or retrieval designed to increase the number of students who earn a high school diploma or general education development (GED) certificate. As provided in the appropriation act, state funding, in addition to basic aid, shall be allocated to support programs grounded in sound educational policy to reduce the number of students who drop out of school.
3. Career education programs infused into the K through 12 curricula that promote knowledge of careers and all types of employment opportunities including but not limited to, apprenticeships, the military, and career education schools, and emphasize the advantages of completing school with marketable skills. School boards may include career exploration opportunities in the middle school grades.
4. Competency-based vocational education programs, which integrate academic outcomes, career guidance and job-seeking skills for all secondary students including those identified as handicapped that reflect employment opportunities, labor market needs, applied basic skills, job-seeking skills, and career guidance. Career guidance shall include employment counseling designed to furnish information on available employment opportunities to all students, including those identified as handicapped, and placement services for students exiting school. Each school board shall develop and implement a plan to ensure compliance with the provisions of this subsection.
5. Academic and vocational preparation for students who plan to continue their education beyond secondary school or who plan to enter employment.
6. Early identification of handicapped students and enrollment of such students in appropriate instructional programs consistent with state and federal law.
7. Early identification of gifted students and enrollment of such students in appropriately differentiated instructional programs.
8. Educational alternatives for students whose needs are not met in programs prescribed elsewhere in these standards. Such students shall be counted in average daily membership (ADM) in accordance with the regulations of the Board of Education.
9. Adult education programs for individuals functioning below the high school completion level. Such programs may be conducted by the school board as the primary agency or through a collaborative arrangement between the school board and other agencies.
10. A plan to make achievements for students who are educationally at risk a divisionwide priority which shall include procedures for measuring the progress of such students.

E. Each local school board shall employ with state and local basic, special education, gifted, and vocational education funds a minimum number of licensed, full-time equivalent instructional personnel for each 1,000 students in average daily membership (ADM) as set forth in the appropriation act. Calculations of kindergarten positions shall be based on full-day kindergarten programs. Beginning with the March 31 report of average daily membership, those school divisions offering half-day kindergarten shall adjust their average daily membership for kindergarten to reflect eighty-five percent of the total kindergarten average daily memberships.

F. In addition to the positions supported by basic aid and in support of regular school year remedial programs, state funding, pursuant to the appropriation act, shall be provided to fund certain full-time equivalent instructional positions for each 1,000 students in grades K through 12 estimated to score in the bottom national quartile on Virginia State Assessment Program Tests and those who fail the literacy tests prescribed by the Board. State funding for remedial programs provided pursuant to this subsection and the appropriation act may be used to support programs for educationally at-risk students as identified by the local school boards. The Board of Education shall establish criteria for identification of educationally at-risk students, which shall not be construed to be regulations as defined in § 9-6.14:4; however, the Board of Education may, from time to time, revise these identification criteria. In order to provide appropriate opportunity for input from the general public, teachers, and local school boards, the Board of Education shall conduct public hearings prior to establishing or revising such identification criteria. Thirty days prior to conducting such hearings, the Board shall give written notice by mail of the date, time, and place of the hearings to all local school boards and any other persons requesting to be notified of the hearings and publish notice of its intention to establish or revise such identification criteria in the Virginia Register of Regulations.

Interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any such identification criteria or revisions thereto.

G. Licensed instructional personnel shall be assigned by each school board in a manner that produces divisionwide ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, that are not greater than the following ratios: (i) twenty-five to one in kindergarten with no class being larger than thirty students; if the average daily membership in any kindergarten class exceeds twenty-five pupils, a full-time teacher's aide shall be assigned to the class; (ii) twenty-four to one in grade one with no class being larger than thirty students; (iii) twenty-five to one in grades two and three with no class being larger than thirty students; (iv) twenty-five to one in grades four

through six with no class being larger than thirty-five students; and (v) twenty-four to one in English classes in grades six through twelve.

*Further, pursuant to the appropriation act, school boards may implement in kindergarten through third grade, within certain schools, lower ratios of students in average daily membership to full-time equivalent teaching positions by assigning instructional personnel in a manner that produces ratios of students in average daily membership to full-time equivalent teaching positions, excluding special education teachers, principals, assistant principals, counselors, and librarians, as follows: (i) in schools having high concentrations of at-risk students, eighteen to one; and (ii) in schools having moderate concentrations of at-risk students, twenty to one. For the purposes of this subsection, "schools having high concentrations of at-risk students" and "schools having moderate concentrations of at-risk students" shall be defined in the appropriation act.*

In addition, instructional personnel shall be assigned by each school board in a manner that produces schoolwide ratios of students in average daily memberships to full-time equivalent teaching positions of twenty-five to one in middle schools and high schools.

§ [22.1-253.13:4](#). Standard 4. Literacy Passports, diplomas and certificates.

A. The General Assembly and the Board of Education recognize the need to reduce the illiteracy rate in the Commonwealth and the need to prescribe requirements for completion of high school programs and, To this end, *the General Assembly and the Board hereby* establish the requirement for a Literacy Passport for all students prior to grade nine and criteria for diplomas and certificates.

B. Each local school board shall award Literacy Passports to all students, including students with disabilities, who achieve passing scores on the literacy tests established by the Board of Education. Reasonable accommodation to take the literacy tests shall be provided as needed for students with disabilities. In order to be classified as a ninth grader or above, students shall be required to obtain a Literacy Passport, except for those (i) students who are identified as disabled pursuant to Board regulations governing special education programs for students with disabilities in Virginia and (ii) students for whom English is not the first or native language who have been identified as having limited English proficiency and who have been enrolled in a public school in the Commonwealth for less than three years. To remain classified as a ninth grader or above, such students identified as having limited English proficiency must achieve passing scores on the first literacy tests administered after three years of enrollment in a public school in the Commonwealth.

C. Each local school board shall award diplomas to all secondary school students who earn the units of credit prescribed by the Board of Education, pass the prescribed literacy

tests and meet such other requirements as may be prescribed by the local school board and approved by the Board of Education. Provisions shall be made for students who transfer between secondary schools as outlined in the standards for accreditation. Further, reasonable accommodation to meet the requirements for diplomas shall be provided for otherwise qualified students with disabilities as needed.

D. Students identified as disabled who complete the requirements of their individualized education programs shall be awarded special diplomas by local school boards.

E. Students who have completed a prescribed course of study as defined by the local school board shall be awarded certificates by local school boards if they do not qualify for diplomas.

2. That the second enactment of Chapter 661 of the Acts of Assembly for 1993 is repealed.

## **Chapter 622 Breaks Interstate Park Commission.**

An Act to amend and reenact §§ 1 and 2 of Chapter 37 of the Acts of Assembly of 1954, as amended by Chapter 292 of the Acts of Assembly of 1964, relating to the Breaks Interstate Park Commission.

[\[S 581\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 and 2 of Chapter 37 of the Acts of Assembly of 1954, as amended by Chapter 292 of the Acts of Assembly of 1964, are amended and reenacted as follows:

§ 1. The Governor is hereby authorized and directed to execute, on behalf of the Commonwealth of Virginia, a compact with the Commonwealth of Kentucky, which compact shall be in form substantially as follows:

### **BREAKS INTERSTATE PARK COMPACT**

Pursuant to authority granted by an Act of the 83rd Congress of the United States, being Public Law 275, approved August 14, 1953, the Commonwealth of Kentucky and the Commonwealth of Virginia do hereby covenant and agree as follows:

#### **Article I.**

The Commonwealth of Kentucky and the Commonwealth of Virginia agree to create, develop and operate an interstate park to be known as the Breaks Interstate Park, which

shall be located along the Russell Fork of the Levisa Fork of the Big Sandy River and on adjacent areas in Pike County, Kentucky, and Dickenson and Buchanan Counties, Virginia. Said park shall be of such area and of such character as may be determined by the Commission created by this Compact.

#### Article II.

There is hereby created the Breaks Interstate Park Commission, which shall be a body corporate with the power and duties set forth herein and such additional powers as may be conferred upon it by subsequent action of the appropriate authorities of Kentucky and Virginia. The Commission shall consist of *the Director of the Virginia Department of Conservation and Recreation or his designee and the Commissioner of the Kentucky Department of Parks or his designee as voting, ex officio members, and* three commissioners from each of the two states, each of whom shall be a citizen of the state he shall represent. Members of the Commission shall be appointed by the Governor. Vacancies shall be filled by the Governor for the unexpired term. The term of ~~one of the first~~ commissioners appointed *by the Governor* shall be for ~~two years, the term of another for three years, and the term of the third of four years.~~ Their successors shall be appointed for terms of four years each. Each commissioner shall hold office until his successor is appointed and qualified. An officer or employee of the State, a political subdivision or the United States government may be appointed a commissioner under this act.

#### Article III.

The Commission created herein shall be a joint corporate instrumentality of both the Commonwealth of Kentucky and the Commonwealth of Virginia for the purpose of effecting the objects of this Compact, and shall be deemed to be performing governmental functions of the two states in the performance of its duties hereunder. The Commission shall have power to sue and be sued, to contract and be contracted with, to use a common seal and to make and adopt suitable by-laws, rules and regulations. The Commission shall have the authority to acquire by gift, purchase or otherwise real estate and other property, and to dispose of such real estate and other property. Each Commonwealth agrees that it will authorize the Commission to exercise the right of eminent domain to acquire property located within each Commonwealth required by the Commission to effectuate the purposes of this Compact.

#### Article IV.

The Commission shall select from among its members a chairman and a vice-chairman, and may select from among its members a secretary and treasurer or may designate other persons to fill these positions. It may appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants and employees as may be required to carry the provisions of this Compact into effect, and shall fix and determine their duties, qualifications and compensation. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place. A majority of the commissioners present shall constitute a quorum for the transaction of business. The commissioners shall serve without compensation, but shall be paid their expenses incurred in and incident to the performance of their duties. They shall take the oath of office required of officers and their respective states.

#### Article V.

Each Commonwealth agrees that the officers and departments of each will be authorized to do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the Compact in every particular. The Commission shall be entitled to the services of any State officer or agency in the same manner as any other department or agency of this State. The Commission shall keep accurate records, showing in full its receipts and disbursements, and said records shall be open at any reasonable time to the inspection of such representatives of the two Commonwealths as may be duly constituted for that purpose. The Commission shall submit annually and at other times as required such reports as may be required by the laws of each Commonwealth or by the Governor thereof.

#### Article VI.

The cost of acquiring land and other property required in the development and operation of the Breaks Interstate Park and constructing, maintaining and operating improvements and facilities therein and equipping same may be defrayed by funds received from appropriations, gifts, the use of money received as fees or charges for the use of said park and facilities, or by the issuance of revenue bonds, or by a combination of such sources of funds. The Commission may charge for admission to said park, or make other charges deemed appropriate by it and shall have the use of funds so received for park purposes. The Commission is authorized to issue revenue bonds, which shall not be obligations of either state, pursuant to procedures which shall be in substantial compliance with the provisions of laws of either or both states governing the issuance of revenue bonds by governmental agencies.

Article VII.

All money, securities and other property, real and personal, received by way of gift or otherwise or revenue received from its operations may be retained by the Commission and used for the development, maintenance and operation of the park or for other park purposes.

The Commission shall not pledge the credit of either Commonwealth except by and with the authority of the General Assembly thereof.

Article VIII.

This Compact may be amended from time to time by the concurrent action of the two Commonwealth parties hereto.

§ 2. All governmental agencies of the Commonwealth of Virginia are authorized to cooperate with the Breaks Interstate Park Commission ~~created by the Compact approved by this act~~, it being the policy of this Commonwealth to perform and carry out the Compact and to accomplish the purposes thereof. The Department of Conservation and ~~Development~~ *Recreation* is authorized to transfer funds available to it to the Breaks Interstate Park Commission with the same effect as if it were expending funds on State parks. The Breaks Interstate Park Commission is authorized to exercise the right of eminent domain on behalf of the Commonwealth of Virginia in acquiring land or other property required in the establishment or enlargement of a Breaks Interstate Park.

2. That until such time as the Commonwealth of Kentucky approves the Compact as amended by the first enactment clause hereof, the Compact adopted pursuant to Chapter 37 of the Acts of Assembly of 1954, as amended by Chapter 292 of the Acts of Assembly of 1964, shall prevail.

## **Chapter 653 Virginia Personnel Act.**

An Act to amend and reenact § 2.1-114.5:1 as it currently is effective and as it may become effective, and § 2.1-116 as it currently is effective and as it may become effective, of the Code of Virginia and to repeal the second enactment of Chapter 937 of the 1990 Acts of Assembly, relating to the grievance procedure and exemptions from the Virginia Personnel Act.

[\[H 776\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-114.5:1 as it currently is effective and as it may become effective, and § 2.1-116 as it currently is effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 2.1-114.5:1. Grievance procedure.

The Department of Employee Relations Counselors shall establish a grievance procedure as part of the state's *Commonwealth's* program of employee-management relations. It shall be the policy of the Commonwealth to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper management levels. However, to the extent such concerns cannot be resolved, the grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. The grievance procedure shall include:

A. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision B (iii) below; (iii) acts of retaliation as the result of utilization of the grievance procedure or of participation in the grievance of another state employee; (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex; and (v) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly.

B. Management responsibilities. Management reserves the exclusive right to manage the affairs and operations of state government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classifications or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v)

the methods, means and personnel by which such work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the agency; and (viii) the relief of employees from duties of the agency in emergencies. In any grievance brought under the exception to (vi) of this subsection, the action shall be upheld upon a showing by the agency that: (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

C. Coverage of personnel. 1. All classified state employees, excluding probationary employees, are eligible to file grievances as provided in this chapter with the following exceptions:

- a. Appointees of elected groups or individuals;
- b. Agency heads or chief executive officers of government operations and institutions of higher education appointed by boards and commissions;
- c. Law-enforcement officers as defined in Chapter 10.1 (§ 2.1-116.1 et seq.) of this title whose grievance is subject to the provisions of Chapter 10.1 of this title and who have elected to proceed pursuant to Chapter 10.1 of this title in the resolution of their grievance or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance; and
- d. Employees in positions designated in subdivision 16 of § 2.1-116.

2. Employees of the entities listed below shall be subject to the following provisions:

- a. Employees of local social service departments and local social service boards, *including local superintendents and directors of the local boards and departments*, shall be included within the coverage of a grievance procedure. These employees may be accepted in a local governing body's grievance procedure if agreed to by the local governing body and the department or board but shall be excluded from the locality's personnel system, or they shall be covered by the state grievance procedure. The Director of the Department of Employee Relations Counselors may allow modifications to the management steps of the state grievance procedure for local social service departments and local social service boards.

b. Employees of community services boards shall be included within the coverage of a grievance procedure. These employees may be accepted in the grievance procedure of the local governing body that established the community services board or in the grievance procedure of any participating locality in the case of joint community services boards, if agreed to by the local governing body and the community services board, or they shall be covered by the state grievance procedure. The Director of the Department of Employee Relations Counselors may allow modifications to the management steps of the state grievance procedure for community services boards.

c. Constitutional officers' employees shall not be required to be covered by a grievance procedure; however, these employees may be accepted in a local governing body's grievance procedure if agreed to by both the constitutional officer and the local governing body but shall be excluded from the locality's personnel system unless their inclusion in the local personnel system is agreed to by both the constitutional officer and the locality.

d. Redevelopment and housing authorities created pursuant to § [36-4](#) and regional housing authorities created pursuant to § [36-40](#) shall promulgate and administer a grievance procedure which is consistent with the provisions of the state grievance procedure, including the definition of a grievance. Employees of authorities created pursuant to § [36-4](#) may be accepted in a local governing body's grievance procedure if agreed to by both the authority and the locality. Employees of authorities created pursuant to § [36-40](#) may be accepted in the grievance procedure of a local governing body that contributes financially to the operation of the authority if agreed to by both the authority and the locality. The state grievance procedure shall apply if a housing authority does not promulgate an approved grievance procedure or if its employees are not accepted in a local governing body's grievance procedure; the housing authority shall provide its employees copies of the state grievance procedure upon request.

e. A housing authority that promulgates its own grievance procedure shall submit the procedure to the Director of the Department of Employee Relations Counselors for approval. The Director may allow modifications to the management steps of the procedure. The grievance procedure shall provide for a panel hearing. A housing authority shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at its option. When a housing authority elects to use an administrative hearing officer as the third panel member in employee termination cases, the administrative hearing officer shall be appointed

by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. The housing authority shall bear the per diem expenses and other costs of the administrative hearing officer. Panel decisions shall be final and binding.

f. Employees of local social service departments and local social service boards, community services boards, housing authorities and local governing bodies who are covered by the state grievance procedure shall have issues of grievability, including questions of access to the procedure, determined by the Director of the Department of Employee Relations Counselors; those employees who have been accepted into a local governing body's grievance procedure shall have such determinations made pursuant to the locality's procedure. For a housing authority that promulgates its own grievance procedure, the commissioners of the housing authority or their designee shall determine issues of qualification for a panel hearing, subject to judicial review pursuant to subsection E of this section.

g. Notwithstanding those exempt from this chapter, every legislative and judicial agency shall promulgate and administer a grievance procedure.

D. Grievance procedure steps. The Department of Employee Relations Counselors shall develop a grievance procedure in compliance with the foregoing which shall include not more than four steps for airing complaints at successively higher levels of management and a final step providing for a panel hearing.

1. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

2. Management steps shall provide for a review with higher levels of management following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the agency or the Department of Employee Relations Counselors. Personal face-to-face meetings are required at these steps.

3. With the exception of the final management step, the only persons who may be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel.

4. Qualifying grievances shall advance to the final step as described below:

a. Employees of the Department of Mental Health, Mental Retardation and Substance Abuse Services who are terminated on the grounds of patient abuse, and employees of the Department of Corrections who work in institutions or have client or inmate contact, and employees of the Department of Youth and Family Services who work in learning centers or have client or resident contact and who are terminated on the grounds of client or inmate abuse, or a criminal conviction, or are terminated as a result of being placed on probation under the provisions of § [18.2-251](#), may appeal their termination through the grievance procedure only through the management steps. If resolution is not forthcoming by the conclusion of the last management step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits in lieu of a panel hearing. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § [54.1-3904](#). A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or written policy. The decision of the court shall be final and binding.

b. For employees who are not grieving termination or retaliation under subdivision A (v) of this section, the final step shall provide for a hearing before an impartial panel, consisting of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

c. For employees grieving termination or retaliation under subdivision A (v) of this section, the third panel member shall not be selected in the manner described above, but shall be appointed by the Director of the Department of Employee Relations Counselors. The appointment shall be made from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis, as established by the Director of the Department of Employee Relations Counselors. In cases of termination of employees of local social service departments and local social service boards, community services boards, redevelopment and housing authorities and regional housing authorities who are covered by the state grievance procedure, the third panel member shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. The employing agency of the grievant shall bear the per diem expenses and other costs of the administrative hearing officer. Local governments that have their own grievance procedure shall not be required to have an administrative hearing officer in employee termination cases, but may do so at their option.

d. In all cases the third panel member shall be chairperson of the panel. The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy. In grievances filed by classified state employees, the question of whether the relief granted by a panel is consistent with written policy shall be determined by the Director of the Department of Personnel and Training. In the case of other employees covered by the state grievance procedure or employees covered by local government grievance procedures, the question of whether the relief granted by a panel is consistent with written policy shall be determined by the chief administrative officer of the governmental agency which promulgated the policy or his designee unless such person has a direct involvement with the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel without being in violation of the provisions of [§ 54.1-3904](#).

5. The grievance procedure shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure. Such limits shall be equivalent to the time which is allowed the response in each comparable situation.

6. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the agency head or chief administrative officer. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party. For employees covered by the state grievance procedure, compliance determinations shall be made by the Director of the Department of Employee Relations Counselors. The commissioners of the housing authority shall make compliance determinations for employees of housing authorities that have their own procedures. Compliance determinations made by the commissioners of the housing authority shall be subject to judicial review.

E. Determining issues qualifying for a panel hearing. Decisions regarding whether a matter qualifies for a panel hearing shall be made by the agency head or chief administrative officer at the request of the agency or grievant within five work days of the request. A copy of the ruling shall be sent to the grievant. Decisions of the agency head or chief administrative officer may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the agency head or chief administrative officer shall be instituted by filing a notice of appeal with the agency head or chief administrative officer within five work days from the date of receipt of the decision and giving a copy thereof to all other parties. Within five work days thereafter, the agency head or chief administrative officer shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the agency head or chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the agency head or chief administrative officer to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the agency head or chief administrative officer to transmit the record on or before a certain date. Within thirty days of receipt of such records by

the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the agency head or chief administrative officer and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decisions of the agency head or chief administrative officer or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

F. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the panel decision.

§ 2.1-114.5:1. (Delayed effective date) Grievance procedure.

The Department of Employee Relations Counselors shall establish a grievance procedure as part of the Commonwealth's program of employee-management relations. It shall be the policy of the Commonwealth to encourage resolution of employee problems and complaints wherein employees can freely discuss their concerns with immediate supervisors and upper management levels. However, to the extent such concerns cannot be resolved, the grievance procedure shall afford an immediate and fair method for the resolution of disputes which may arise between an agency and its employees. The grievance procedure shall include:

A. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision B (iii) below; (iii) acts of retaliation as the result of utilization of the grievance procedure or of participation in the grievance of another state employee; (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex; and (v) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly.

B. Management responsibilities. Management reserves the exclusive right to manage the affairs and operations of state government. Accordingly, the following complaints are

nongrievable: (i) establishment and revision of wages or salaries, position classifications or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which such work activities are to be carried on; (vi) except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance, termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the agency; and (viii) the relief of employees from duties of the agency in emergencies. In any grievance brought under the exception to (vi) of this subsection, the action shall be upheld upon a showing by the agency that: (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

C. Coverage of personnel. 1. All classified state employees, excluding probationary employees, are eligible to file grievances as provided in this chapter with the following exceptions:

a. Appointees of elected groups or individuals;

b. Agency heads or chief executive officers of government operations and institutions of higher education appointed by boards and commissions;

c. Law-enforcement officers as defined in Chapter 10.1 (§ 2.1-116.1 et seq.) of this title whose grievance is subject to the provisions of Chapter 10.1 of this title and who have elected to proceed pursuant to Chapter 10.1 of this title in the resolution of their grievance or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance; and

d. ~~Managerial employees who are engaged in agency-wide policy determinations, or directors of major state facilities or geographic units as defined by regulation, except that such managerial employees below the agency head level may file grievances regarding disciplinary actions limited to dismissals.~~ *Employees in positions designated in subdivision 16 of § 2.1-116.*

2. Employees of the entities listed below shall be subject to the following provisions:

a. Employees of local social service departments and local social service boards, including local superintendents and directors of the local boards and departments, shall be included within the coverage of a grievance procedure. These employees may be accepted in a local governing body's grievance procedure if agreed to by the local governing body and the department or board but shall be excluded from the locality's personnel system, or they shall be covered by the state grievance procedure. The Director of the Department of Employee Relations Counselors may allow modifications to the management steps of the state grievance procedure for local social service departments and local social service boards.

b. Employees of community services boards shall be included within the coverage of a grievance procedure. These employees may be accepted in the grievance procedure of the local governing body that established the community services board or in the grievance procedure of any participating locality in the case of joint community services boards, if agreed to by the local governing body and the community services board, or they shall be covered by the state grievance procedure. The Director of the Department of Employee Relations Counselors may allow modifications to the management steps of the state grievance procedure for community services boards.

c. Constitutional officers' employees shall not be required to be covered by a grievance procedure; however, these employees may be accepted in a local governing body's grievance procedure if agreed to by both the constitutional officer and the local governing body but shall be excluded from the locality's personnel system unless their inclusion in the local personnel system is agreed to by both the constitutional officer and the locality.

d. Redevelopment and housing authorities created pursuant to § [36-4](#) and regional housing authorities created pursuant to § [36-40](#) shall promulgate and administer a grievance procedure which is consistent with the provisions of the state grievance procedure, including the definition of a grievance. Employees of authorities created pursuant to § [36-4](#) may be accepted in a local governing body's grievance procedure if agreed to by both the authority and the locality. Employees of authorities created pursuant to § [36-40](#) may be accepted in the grievance procedure of a local governing body that contributes financially to the operation of the authority if agreed to by both the authority and the locality. The state grievance procedure shall apply if a housing authority does not promulgate an approved grievance procedure or if its employees are not accepted in a local

governing body's grievance procedure; the housing authority shall provide its employees copies of the state grievance procedure upon request.

e. A housing authority that promulgates its own grievance procedure shall submit the procedure to the Director of the Department of Employee Relations Counselors for approval. The Director may allow modifications to the management steps of the procedure. The grievance procedure shall provide for a panel hearing. A housing authority shall not be required to have an administrative hearing officer in employee termination cases, as provided in the state grievance procedure, but may do so at its option. When a housing authority elects to use an administrative hearing officer as the third panel member in employee termination cases, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. The housing authority shall bear the per diem expenses and other costs of the administrative hearing officer. Panel decisions shall be final and binding.

f. Employees of local social service departments and local social service boards, community services boards, housing authorities and local governing bodies who are covered by the state grievance procedure shall have issues of grievability, including questions of access to the procedure, determined by the Director of the Department of Employee Relations Counselors; those employees who have been accepted into a local governing body's grievance procedure shall have such determinations made pursuant to the locality's procedure. For a housing authority that promulgates its own grievance procedure, the commissioners of the housing authority or their designee shall determine issues of qualification for a panel hearing, subject to judicial review pursuant to subsection E of this section.

g. Notwithstanding those exempt from this chapter, every legislative and judicial agency shall promulgate and administer a grievance procedure.

D. Grievance procedure steps. The Department of Employee Relations Counselors shall develop a grievance procedure in compliance with the foregoing which shall include not more than four steps for airing complaints at successively higher levels of management and a final step providing for a panel hearing.

1. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

2. Management steps shall provide for a review with higher levels of management following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the agency or the Department of Employee Relations Counselors. Personal face-to-face meetings are required at these steps.

3. With the exception of the final management step, the only persons who may be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel.

4. Qualifying grievances shall advance to the final step as described below:

a. Employees of the Department of Mental Health, Mental Retardation and Substance Abuse Services who are terminated on the grounds of patient abuse, and employees of the Department of Corrections who work in institutions or have client or inmate contact, and employees of the Department of Youth and Family Services who work in learning centers or have client or resident contact and who are terminated on the grounds of client or inmate abuse, or a criminal conviction, or are terminated as a result of being placed on probation under the provisions of § [18.2-251](#), may appeal their termination through the grievance procedure only through the management steps. If resolution is not forthcoming by the conclusion of the last management step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits in lieu of a panel hearing. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § [54.1-3904](#). A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or written policy. The decision of the court shall be final and binding.

b. For employees who are not grieving termination or retaliation under subdivision A (v) of this section, the final step shall provide for a hearing before an impartial panel, consisting of one member appointed by the grievant, one member appointed by the agency

head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

c. For employees grieving termination or retaliation under subdivision A (v) of this section, the third panel member shall not be selected in the manner described above, but shall be appointed by the Director of the Department of Employee Relations Counselors. The appointment shall be made from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis, as established by the Director of the Department of Employee Relations Counselors. In cases of termination of employees of local social service departments and local social service boards, community services boards, redevelopment and housing authorities and regional housing authorities who are covered by the state grievance procedure, the third panel member shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1 and shall be made from the appropriate geographical region on a rotating basis. The employing agency of the grievant shall bear the per diem expenses and other costs of the administrative hearing officer. Local governments that have their own grievance procedure shall not be required to have an administrative hearing officer in employee termination cases, but may do so at their option.

d. In all cases the third panel member shall be chairperson of the panel. The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy. In grievances filed by classified state employees, the question of whether the relief granted by a panel is consistent with written policy shall be determined by the Director of the Department of Personnel and Training. In the case of other employees covered by the state grievance procedure or employees covered by local government

grievance procedures, the question of whether the relief granted by a panel is consistent with written policy shall be determined by the chief administrative officer of the governmental agency which promulgated the policy or his designee unless such person has a direct involvement with the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel without being in violation of the provisions of [§ 54.1-3904](#).

5. The grievance procedure shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure. Such limits shall be equivalent to the time which is allowed the response in each comparable situation.

6. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the agency head or chief administrative officer. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party. For employees covered by the state grievance procedure, compliance determinations shall be made by the Director of the Department of Employee Relations Counselors. The commissioners of the housing authority shall make compliance determinations for employees of housing authorities that have their own procedures. Compliance determinations made by the commissioners of the housing authority shall be subject to judicial review.

E. Determining issues qualifying for a panel hearing. Decisions regarding whether a matter qualifies for a panel hearing shall be made by the agency head or chief administrative officer at the request of the agency or grievant within five work days of the request. A copy of the ruling shall be sent to the grievant. Decisions of the agency head or chief administrative officer may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the

agency head or chief administrative officer shall be instituted by filing a notice of appeal with the agency head or chief administrative officer within five work days from the date of receipt of the decision and giving a copy thereof to all other parties. Within five work days thereafter, the agency head or chief administrative officer shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the agency head or chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the agency head or chief administrative officer to transmit the record within the time allowed shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the agency head or chief administrative officer to transmit the record on or before a certain date. Within thirty days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the agency head or chief administrative officer and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decisions of the agency head or chief administrative officer or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

F. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the panel decision.

§ 2.1-116. Certain officers and employees exempt from chapter.

A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents, and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
12. County, city, town and district officers, deputies, assistants and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and the Virginia State Library and Archives, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
16. The following officers and employees of executive branch agencies: those who report directly to the agency head; ~~additionally, those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher. However, in agencies with fewer than fifty employees, only the immediate advisor or advisors or deputy or deputies of the agency head shall be exempt.~~ In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies applicable to classified positions. ~~Notwithstanding the above, all~~

~~superintendents and wardens in the Department of Corrections shall be exempt from this chapter. Additionally, all persons responsible for the internal audit and personnel and employee relations functions for each agency shall be included in this chapter.~~ Each Governor's Secretary shall have a final authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;

17. The sales and marketing employees of the State Lottery Department;

18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs; and

19. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of § 2.1-114.5:1.

B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.

§ 2.1-116. (Delayed effective date) Certain officers and employees exempt from chapter.

A. The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;

2. Officers and employees of the Supreme Court and the Court of Appeals;

3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;

4. Officers elected by popular vote or by the General Assembly or either house thereof;

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents, and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
12. County, city, town and district officers, deputies, assistants and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and the Virginia State Library and Archives, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
16. *The following officers and employees of executive branch agencies: those who report directly to the agency head. In implementing this exemption, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation. Recruitment and selection of individuals covered by this exemption shall be handled in a manner consistent with policies applicable to classified positions. Each Governor's Secretary shall have final authority in determining on an ongoing basis the officers and employees exempted by this subdivision and pursuant to its provisions. Such officers or employees shall thereafter serve at the pleasure and will of their appointing authority. The Department of Personnel and Training shall advise and assist each*

*Governor's Secretary in making these determinations and shall be responsible for maintaining an ongoing and up-to-date list of the affected positions;*

17. The sales and marketing employees of the State Lottery Department; and

~~17.~~ 18. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs-; and

19. *Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of § 2.1-114.5:1.*

*B. The dismissal of any employee referred to in subdivision A 16 of this section pursuant to this chapter shall not affect the retirement benefits, and annual and sick leave benefits accrued to such employee at the time of his dismissal, nor shall any such employee be subject to any diminution of any other employee benefits by virtue of the provisions of this chapter.*

2. That the second enactment of Chapter 937 of the 1990 Acts of Assembly is repealed.

## **Chapter 824 Higher Educational Institutions Bond Act of 1994.**

An Act to authorize the issuance of bonds subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia in an amount not to exceed \$166,460,300, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds with any other available funds for paying the costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapters 507 and 515 of the Acts of Assembly of 1993.

[\[S 80\]](#)

Approved April 20, 1994

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects set forth below to be pledged to the payment of the principal of, and the interest on, that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 1994."*

*§ 2. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$166,460,300, plus amounts needed to fund issuance costs, reserve funds and other financing expenses. The proceeds of such bonds, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Number</i>	<i>Debt</i>	<i>Project Name</i>
<i>University of Grounds Virginia Parking Facility</i>	<i>14638</i>	<i>\$</i>	<i>Central 182,600</i>
	<i>University of</i>		

Uncodified Acts of Assembly - 1994

	Newcomb Hall	Virginia	15400
11,997,000	Expansion	University of	Virginia
15472	6,000,000	Student Housing	University
of		Student Housing-	
Virginia		Clinch Valley	
		15473	2,000,000
Virginia Polytechnic			College
Repairs	Institute	14303	1,078,900
Dorm/Dining System	Virginia Polytechnic		
	Parking Auxiliary	Institute	14815
7,484,300	Projects	Virginia Polytechnic	Insti-
tute	15524	15,075,000	Residence Hall
Virginia Polytechnic	Institute		15525
5,000,000	Dining Hall	Virginia Commonwealth	
	VCU/MCV Visitor's	University	
15160	2,838,300	Parking Deck	Virginia Com-
monwealth		Academic Parking	
University	15523	11,587,000	Deck, Phase
II	George Mason	University	14536
17,500,000	Residence Hall V	George Mason	
University	14657	684,000	Parking Struc-
ture	George Mason	University	14653
17,680,900	Residence Hall VI	George Mason	
	Telecommunications	University	
	15037	3,825,000	System
			George Mason
			University Center
University	14647	4,169,500	and Library
George Mason			Arling-
ton-Metro,	University	15345	2,000,000
Phase I (Parking)	George Mason	University	
15533	3,400,000	Housing Renovations	George
Mason			Prince William
University			Site Devel-
opment		14814	2,200,000

Uncodified Acts of Assembly - 1994

(Parking)	College of William			
Graduate	and Mary	14417		409,100
Dormitory	College of William			
Dormitory	and Mary	14416		224,500
Renovation	College of William		and Mary	
14735	1,020,400		University Center	College of
William				Dormitory Reno-
and Mary	15541	3,915,000		vation, Phase
II	College of William			
Underground	and Mary	14736		3,574,000
Utility System	College of William			
	College		and Mary	
	Bookstore		15542	
2,881,000	Expansion	James Madison		
	Dining Facility	University		15361
	2,393,100	Renovations	James Madison	
		Primary Elec-	University	
14614	891,800	trical Upgrade	James Madison	
University	15485	6,221,000	Student	
Services	James Madison			
Phase II Parking	University	15620		
3,214,000	Structure	James Madison	University	
15619	11,771,000	Residence Hall	Longwood Col-	
lege	15502	8,150,000	New Dining Hall	Vir-
ginia State	University	15337	2,621,000	
Langston Hall	Christopher Newport			
	Dormitory/	University	14725	
2,771,900	Dining Project	Virginia Community		
		Tidewater	College System	
		Community College		
		500 Space Parking		
		Lot, Portsmouth		
	14446	1,700,000	Campus	TOTAL
		\$166,460,300		

*§ 3. The proceeds of the bonds and any bond anticipation notes, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes, shall be deposited in a special capital outlay fund in the state treasury and shall be disbursed by the State Treasurer for paying all or any part of the cost of the acquisition, construction, renovation, enlargement, improvement and equipping of said capital projects in the amounts provided above, plus issuance costs, reserve funds and other financing expenses.*

*§ 4. The bonds shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, and may be made redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. The principal of, premium, if any, and the interest on the bonds shall be payable in lawful money of the United States of America. The Treasury Board shall determine the form of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal, premium, if any, and interest, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. The bonds may bear interest at such rate or rates subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*The bonds may be in registered form or as may be required by federal law in effect on the date of issuance. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and the principal, premium, if any, and interest due thereon. Bonds issued in registered form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of, premium, if any, and interest on the bonds. The bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.*

*The Treasury Board may sell the bonds in such manner, at public or private sale, and for such price as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. The bonds may be sold at par, at a premium or at a discount.*

*Anything in this act to the contrary notwithstanding, the bonds authorized hereby may be issued at one time or in part may be issued and sold at the same time with other bonds of the Commonwealth authorized pursuant to Section 9 (c) of Article X of the Constitution*

*of Virginia, either as separate issues, as a combined issue designated "Commonwealth of Virginia, Article X, Section 9 (c) Project Bonds, Series ....., " or as a combination of both.*

*The Treasury Board shall be authorized to supplement the special capital outlay fund in the state treasury created pursuant to § 3 hereof from excess moneys in any debt service, sinking or comparable fund established pursuant to previous issues of higher educational institutions bonds so long as such excess fund moneys are not otherwise restricted by law or by express contract with the holders of such prior bonds.*

*§ 5. The bonds shall be signed on behalf of the Commonwealth by the Governor, or shall bear his facsimile signature, and by the State Treasurer, or shall bear his facsimile signature, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds bear the facsimile signature of the State Treasurer, the bonds shall be signed by such administrative assistant as the State Treasurer shall determine, or by such registrar or paying agent as may be designated to sign such bonds by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds ceases to be such officer before the delivery of such bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond are the proper officers to sign such bond although, at the date of such bond, such persons may not have been such officers.*

*§ 6. All expenses incurred under this act shall be paid from the proceeds of the bonds, from payments made by the institutions for which the capital projects were acquired, constructed, renovated, enlarged, improved or equipped, or from any other available funds as the Treasury Board shall determine, including excess moneys in any debt service, sinking or comparable fund created in connection with prior issues of higher educational institutions bonds to the extent not otherwise restricted by law or by contract with the holders of such prior bonds.*

*§ 7. The Treasury Board is hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds, if the Treasury Board and the Governor deem it advisable to postpone the issuance of the bonds. Proceeds of the bonds shall be used to pay any such bond anticipation notes. Funds provided by the General Assembly, or from any other source, for the payment of the principal of, premium, if any, and the interest on the bonds shall be used in paying the principal of,*

*premium, if any, and the interest on any bond anticipation notes. Such bond anticipation notes shall be dated, shall mature at such time or times not exceeding five years from their dates, and may be redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. Such bond anticipation notes shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board or the State Treasurer, when authorized by the Treasury Board, may determine. Such bond anticipation notes may bear interest subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*§ 8. Pending the application of the proceeds of the bonds and any bond anticipation notes to the purpose for which they have been authorized, all or any part of such proceeds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such proceeds, and the interest thereon and any profit realized from such investments shall be credited to such proceeds and any losses shall be deducted therefrom.*

*§ 9. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect a building fee or other comprehensive student fee and other rates, fees and charges for or in connection with the use, occupation and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge such rates, fees and charges remaining after payment of (a) the expenses of operating the project or system, as the case may be and (b) the expenses related to all other activities funded by the building fee or other comprehensive student fee, if applicable, to the payment of the principal of, premium, if any, and interest on the portion of the bonds issued for such capital project. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 10. The net revenues of the capital projects set forth above and the full faith, credit and taxing power of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on the bonds and the bond anticipation notes herein authorized. In the event the net revenues pledged hereby are insufficient in any fiscal*

*year for the timely payment of the principal of, premium, if any, and the interest on the bonds or bond anticipation notes herein authorized, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 11. The interest income on the bonds and bond anticipation notes issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof.*

*§ 12. The bonds issued under the provisions of this act may be refunded by refunding bonds authorized and issued in accordance with the provisions of Chapters 265 and 408 of the 1992 Acts of Assembly.*

2. That Chapters 507 and 515 of the Acts of Assembly of 1993 are repealed, provided that such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 208 Taxation of remainder interests.**

An Act to amend and reenact the second enactment of Chapter 838 of the Acts of Assembly of 1978, relating to inheritance taxes on remainder interests.

[\[H 700\]](#)

Approved April 2, 1994

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 838 of the Acts of Assembly of 1978 is amended and reenacted as follows:

2. That the provisions of Chapter 5 of Title 58, consisting of sections numbered 58-152 through 58-217.14, *as were in effect on December 31, 1979*, shall not be applicable to estates of decedents dying on or after January ~~one, nineteen hundred eighty 1, 1980~~; provided, however, that inheritance taxes due with respect to estates of decedents dying before January ~~one, nineteen hundred eighty 1, 1980~~, shall be assessed by the Department of Taxation pursuant to Chapter 5 of Title 58 which shall continue in force until all such taxes have been fully collected, *but no inheritance taxes shall be imposed on any remainder interest included in the taxable estate and subject to the tax imposed by Chapter 9 of Title 58.1, consisting of sections numbered [58.1-900](#) through [58.1-938](#).*

2. That the provisions of this act are declaratory of existing law.

## **Chapter 235 County of Augusta and others; operation of steam excursion train.**

An Act to authorize the County of Augusta in concert with others to undertake certain transportation projects.

[\[S 514\]](#)

Approved April 4, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The governing body of Augusta County may by contract, agreement, ordinance or otherwise, either alone or in concert with any other political subdivision of the Commonwealth, governmental agency or instrumentality, provide for the operation of a steam excursion train. Such governing body may hire staff, and do any other thing otherwise necessary to carry out the powers herein specified. Additionally, such governing body may, without limitation, provide for the acquisition of insurance coverage and pooling of liability with such other agencies, instrumentalities or political subdivisions as shall be necessary or convenient, so long as these actions do not adversely affect the financial stability of the cooperating parties' insurance plans.*

## **Chapter 257 Termination of certain nonconforming uses in the City of Martinsville.**

An Act to amend and reenact Chapter 707 of the Acts of Assembly of 1993, relating to certain nonconforming uses.

[\[H 299\]](#)

Approved April 4, 1994

Be it enacted by the General Assembly of Virginia:

1. That Chapter 707 of the Acts of Assembly of 1993 is amended and reenacted as follows:

§ 1. Notwithstanding the provisions of § 15.1-492, the governing body of the City of Martinsville may, by amending its zoning ordinance, provide that an existing nonconforming use may be terminated after a reasonable period of time where such nonconforming use involves the transportation or temporary storage of any hazardous

waste, as defined in § [10.1-1400](#), ~~which such~~ *if the governing body determines poses a clear and present threat to the health and safety of surrounding residential homeowners living immediately finds that the transportation or temporary storage of any hazardous waste involved in the nonconforming use poses a clear and present threat to the health and safety of persons living or working adjacent to such nonconforming use.*

2. That this act shall expire on July 1, 1998.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 392 Friend of the Bay Award.**

An Act to establish the "Friend of the Bay Award" program.

[\[H 747\]](#)

Approved April 6, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Secretary of Natural Resources shall establish the "Friend of the Bay Award" program. The program shall annually recognize those individuals, businesses, organizations and other entities which have made significant efforts to preserve and enhance the Chesapeake Bay and its tributaries. The program shall make such awards on a noncompetitive basis, using criteria to be developed by the Secretary of Natural Resources, in consultation with those agencies within the Secretariat, the Virginia delegation to the Chesapeake Bay Commission and the Citizens Advisory Committee to the Chesapeake Executive Council.*

## **Chapter 695 Validity of final subdivision plats and site plans.**

An Act to repeal the second enactment of Chapter 843 of the Acts of Assembly of 1992, relating to subdivision plats and site plans.

[\[S 567\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 843 of the Acts of Assembly of 1992 is repealed.

## Chapter 908 Scenic highways.

An Act to designate a portion of Virginia Route 645 as a scenic highway and Virginia byway.

[\[H 664\]](#)

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Virginia Route 645 between Virginia Route 620 (Braddock Road) and Virginia Route 123 (Ox Road) including the Town of Clifton shall be considered a scenic highway and Virginia byway.*

## Chapter 298 Municipal elections.

An Act to postpone and reschedule certain municipal elections.

[\[H 1269\]](#)

Approved April 4, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The provisions of this act shall be applicable, notwithstanding any other provision of law to the contrary, to any town (i) which has annexed territory subsequent to its preceding election for mayor and council, (ii) which has regularly scheduled elections for mayor and council on May 3, 1994, (iii) which has submitted the annexation plan to the Attorney General of the United States pursuant to § 5 of the federal Voting Rights Act of 1965, as amended, and (iv) which has not received a letter on or before April 8, 1994, from the Attorney General that she interposes no objection to the annexation plan and the conduct of elections for mayor and council pursuant to such plan.*

*§ 2. In each such town, the election for mayor and council shall be held on the first Tuesday (i) that is more than sixty days after the Attorney General of the United States issues a letter that she interposes no objection to the annexation plan and conduct of such elections pursuant to the plan; (ii) that is not the scheduled date of a June primary election; and (iii) that is not within the sixty days before or the thirty-five days after either a June primary election or a November general election.*

*§ 3. Independent candidates for such rescheduled election shall qualify in the manner provided by Article 2 (§ [24.2-505](#) et seq.) of Chapter 5 of Title 24.2 of the Code of*

*Virginia and party nominees shall be nominated and certified at least thirty days before the new election date.*

*§ 4. All candidates shall file the statements required by Article 1 (§ [24.2-500](#) et seq.) of Chapter 5 of Title 24.2 of the Code of Virginia at least thirty days before the new election date.*

*§ 5. The term of the mayor and council members elected under the provisions of this act shall commence on the first day of the second month following the election and shall terminate on the day on which the terms would have expired had the general election been held on its regularly scheduled day.*

*§ 6. The term of the mayor and council members of any town affected by this act that would otherwise have expired July 1, 1994, shall be extended until the date that the terms of the mayor and council members elected under this act commence.*

*2. § 1. Notwithstanding any other provision of law to the contrary, elections for members of the school board of any city with a population greater than 108,000 and less than 120,000 or greater than 140,000 and less than 160,000 that would be held on May 3, 1994, shall be delayed if an election plan for such city school board is not pre-cleared by the Attorney General of the United States pursuant to § 5 of the federal Voting Rights Act of 1965, as amended, on or before April 8, 1994, and shall be held as provided in this act.*

*§ 2. In each city, such election shall be held on the later of: (a) the date of the November 1994 general election; or (b) the first Tuesday (i) that is more than ninety days after the Attorney General of the United States issues a letter stating that she interposes no objection to an election plan approved and submitted by the city, (ii) that is not the scheduled date of a primary election, and (iii) that is not within the sixty days before or the thirty-five days after either a primary or a general election (other than the general election dates themselves).*

*§ 3. Candidates for such rescheduled elections shall qualify in the manner provided by Article 2 (§ [24.2-505](#) et seq.) of Chapter 5 of Title 24.2 of the Code of Virginia.*

*§ 4. All candidates shall file the statements required by Article 1 (§ [24.2-500](#) et seq.) of Chapter 5 of Title 24.2 of the Code of Virginia for any such rescheduled election at least thirty days before the new election date.*

*§ 5. Notwithstanding any provision of law or charter to the contrary, the term of the members of any school board elected under the provisions of this act shall commence on the*

*first day of the second month following the election and shall terminate on the day on which the terms would have expired had the election been held on its regularly scheduled day.*

*§ 6. Any appointed members of school boards affected by this act whose terms expire or who otherwise vacate their offices before they are replaced by elected members shall be replaced by interim appointment made by the city council, and persons so appointed shall hold office until replaced by elected school board members.*

3. That an emergency exists and this act is in force from its passage.

4. That the provisions of this act shall expire on January 31, 1996.

## **Chapter 302 Local tax amnesty.**

An Act to authorize the City of Richmond tax amnesty program.

[\[H 1342\]](#)

Approved April 4, 1994

1. *§ 1. City of Richmond tax amnesty program authorized.*

*A. The City of Richmond is hereby authorized to establish a tax amnesty program during its 1994-95 fiscal year. The program shall be administered by the director of finance, and any person, individual, corporation, estate, trust, or partnership required to file a personal property or machinery and tools tax return or to pay any local personal property tax, machinery and tools tax or real property tax shall be eligible to participate, subject to the requirements set forth below and guidelines established by the director of finance. The director of finance may require participants in the program to complete an amnesty application and such other forms as he may prescribe, and to furnish any additional information he deems necessary to make a determination regarding the validity of such amnesty application.*

*B. The tax amnesty program shall have the following features:*

*All civil penalties assessed or assessable, as provided for in Title 58.1, which are the result of nonpayment, underpayment, nonreporting or underreporting of personal property, machinery and tools or real property tax liabilities, shall be waived upon receipt of the payment of the amount of those taxes and interest owed with the following exceptions:*

*a. No person, individual, corporation, estate, trust, or partnership currently, or at the inception of this program, under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.*

*b. No person, individual, corporation, estate, trust, or partnership shall be eligible to participate in the program with respect to any assessment outstanding for which the date of assessment is on or after January 1, 1993 or with respect to any liability arising from the failure to file a return for which the due date of the return is on or after January 1, 1993.*

*C. For purposes of computing the outstanding balance due to the nonpayment, underpayment, nonreporting or underreporting of any personal property, machinery and tools, or real property tax liability which has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § [58.1-3916](#) shall be applicable.*

## **Chapter 343 Louisa County referendum on deer hunting with rifles.**

An Act to provide for a referendum in Louisa County on the issue of hunting deer with rifles.

[\[H 710\]](#)

Approved April 5, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. A special election may be held in Louisa County on the question of whether the hunting of deer with rifles should be allowed in the county upon the filing with the circuit court of the county of either (i) a petition signed by ten percent of the registered voters of the county in accordance with § [24.2-684.1](#) of the Code of Virginia or (ii) a petition adopted by resolution of the governing body of the county. Upon the filing of the petition, the circuit court shall, by order of record, require the regular election officials of the county to open the polls and take the sense of the qualified voters on the question.*

*The special election shall be held and conducted and the results thereof certified in accordance with § [24.2-684](#) of the Code of Virginia, provided that the special election shall be on the day of the next general election held at least sixty days after the date the court enters its order. The clerk of the circuit court of the county shall publish notice of the special election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to such election. The ballots for use at the election shall be printed to state the question as follows:*

*"Shall the hunting of deer with rifles be allowed in Louisa County?"*

Yes

No

*Upon receipt of the certified results of the special election, the circuit court shall enter an order proclaiming the results of the election, and a duly certified copy of the order shall be transmitted to the governing body of the county. The results of the special election shall be binding, and the governing body shall proceed, in accordance with the preference of a majority of the voters voting in the election, by ordinance either to allow or prohibit deer hunting with rifles in the county. Nothing contained herein shall be deemed to allow enactment of any ordinance containing provisions contrary to the provisions of Title 29.1 of the Code of Virginia or any regulation promulgated by the Virginia Department of Game and Inland Fisheries.*

*Once a special election has been held, no such special election on the same question shall be held within four years.*

## **Chapter 438 Property conveyance.**

An Act authorizing the Department of Conservation and Recreation to convey certain property in Belle Isle State Park in Lancaster County and to accept certain property in exchange.

### [\[S 416\]](#)

Approved April 8, 1994

Be it enacted by the General Assembly of Virginia:

1. § 1. *That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Edward G. Gruis and Rosemary N. Gruis, husband and wife, their successors and assigns, upon such terms as the Department deems proper, with the approval of the Governor and the Attorney General, a parcel of real property located in Belle Isle State Park in Lancaster County.*

*In consideration for such conveyance, the Department is hereby authorized to accept, on behalf of the Commonwealth, conveyances in exchange from Edward G. Gruis and Rosemary N. Gruis, husband and wife, of real property adjacent to Belle Isle State Park, for the purpose of obtaining public ingress to and egress from Belle Isle State Park.*

*The exchange of real property shall be on an acre for acre basis. As additional consideration for the exchange, Edward G. Gruis and Rosemary N. Gruis shall receive the right, exercisable during the term of their lives, to farm 40 acres, more or less, of land located in Belle Isle State Park adjacent to property they currently own, which right (i) shall*

*be subject to the payment to the Department of an annual agreed fee and (ii) shall sooner terminate upon a determination that the acreage or a portion thereof is necessary for research or education activities at, or development of, Belle Isle State Park.*

*The deeds of conveyance shall be in a form approved by the Attorney General.*

## **Chapter 716 Central computerized filings of various disclosure reports.**

An Act to provide for the development of a central, computerized filing system for disclosure of reports filed pursuant to the Campaign Finance Disclosure Act, the Conflict of Interests Acts and the laws governing lobbying.

[\[H 777\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Secretary of Administration shall have prepared a proposal to implement a central computerized system for entering, storing, retrieving, and accessing information from the statements of economic interests filed pursuant to §§ 2.1-639.15, 2.1-639.15:1, and 2.1-639.41 of the Code of Virginia; campaign finance disclosure reports filed pursuant to the Campaign Finance Disclosure Act (§ [24.2-900](#) et seq.) of the Code of Virginia; and lobbying disclosure reports filed pursuant to Chapter 2.1 (§ [30-28.01](#) et seq.) of Title 30 of the Code of Virginia. The proposal shall include a cost estimate and proposal for funding and specific recommendations for legislation to implement the proposal.*

*§ 2. The Clerk of the House of Delegates and the Clerk of the Senate, the Secretary of the Commonwealth, the Secretary of the State Board of Elections, and the Director of the Department of Information Technology shall assist the Secretary in the performance of these responsibilities.*

*§ 3. The Secretary shall submit his report and recommendations to the Governor and the General Assembly no later than September 1, 1994, so that the central computer system may be implemented in reasonable stages.*

## Chapter 628 Hotel Roanoke Conference Center Commission.

An Act to amend and reenact § 21 of Chapter 440 of the Acts of Assembly of 1991, relating to the budget of the Hotel Roanoke Conference Center Commission and its funding sources.

[\[H 191\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 21 of Chapter 440 of the Acts of Assembly of 1991 is amended and reenacted as follows:

§ 21. Fiscal year; Commission budget.

A. The fiscal year of the Commission shall begin on July 1 and end on June 30.

B. The Commission shall annually, prior to February 15 *of each year*, prepare and submit to the participating parties (i) a proposed operating budget showing its estimated revenues and expenses on an accrual basis for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion of the deficit proposed to be borne by each participating party, and (ii) a proposed capital budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000 (or such higher amount as the Commission and the participating parties may determine) and having an estimated useful life of twenty years or more and the source of funds for such expenditures, including any amount requested from the participating parties. Depreciation shall be excluded from the Commission's operating budget with respect to assets purchased by the Commission with funds appropriated to it for such purpose by a participating party and, for this determination, it shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable Commission budget to the extent such purchase price is included in the approved budget. Assets purchased by the Authority with bond proceeds shall be depreciated over the useful life of such assets purchased with bond proceeds.

C. If the governing body of a participating party shall approve the Commission's proposed operating budget, it shall provide to the Commission such participating party's portion of such deficit. If during any fiscal year the Commission shall receive revenues in excess of those estimated by the Commission in its approved budget for such year, the budgeted deficit for such fiscal year shall automatically be reduced and, except as

herein provided, the contribution of each participating party shall be proportionately reduced. Notwithstanding the foregoing, with the consent of the governing bodies of the participating party/parties, all or a portion of such contributions may be maintained so as to enable the Commission to expend such excess revenues for its proper purposes.

D. If the governing body of a participating party shall approve the Commission's proposed capital budget, it shall provide to the Commission such participating party's portion of the expenditures set forth therein. Any such contribution shall automatically be reduced by the participating party's proportionate share of any grant funds received by the Commission for the purchase of assets included in the Commission's approved capital budget in excess of the grant funds shown in such capital budget as a source of funds for such expenditure, unless prohibited by the basic provider of the grant funds.

E. The Commission may expend any and all moneys within its control without obtaining the approval of the participating parties, but, except as otherwise provided in this Act with respect to contracts and agreements between the Commission and any participating party, the Commission shall not commit any participating party in an amount in excess of that appropriated to the Commission by the governing body of such party.

F. If at any time during any fiscal year it shall appear that the cash disbursements of the Commission will exceed its cash receipts for such fiscal year, including amounts appropriated to it by the participating parties, the Commission may request supplemental appropriations from the participating parties and any other party.

G. No moneys appropriated to the University by the Commonwealth, except moneys generated by the continuing education programs offered ~~through the Hotel Roanoke Conference Center~~ by the University, shall be contributed to the Commission by the University. *The University is authorized to expend nongeneral funds from continuing education programs in support of its share of the operating costs of the Hotel Roanoke Conference Center. The University shall report to the chairmen of the House Appropriations and Senate Finance Committees by August 15 of each fiscal year all planned and actual transfers to the Hotel Roanoke Conference Center.*

2. That funds appropriated to the Virginia Polytechnic Institute and State University pursuant to this act shall not be expended for (i) debt service nor (ii) any costs relating to the redevelopment of the Hotel Roanoke.

## Chapter 678 Operation of local health departments in Fairfax County.

An Act to provide for the operation of the local health department under the urban county executive form of government.

[\[S 42\]](#)

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Option of certain counties to operate local health department under contract with the State Board of Health.*

*Notwithstanding any other provision of law to the contrary, the governing body of any county having the urban county executive form of government may enter into a contract with the State Board of Health to provide local health services in that county. The governing body may provide such health services either through a separate local department or through another organizational arrangement as authorized by § 15.1-765. The governing body shall not eliminate any service required by law or reduce the level of service below that required by law. In addition, the local governing body shall not eliminate or reduce the level of any service currently delivered in connection with the Virginia Medicaid program.*

*Any contract executed between the county and the Board shall set forth the rights and responsibilities of the local governing body for the delivery of health services and shall require that the governing body, with the concurrence of the State Health Commissioner, appoint the local health director of health service in accordance with local procedures, who shall be employed full time as an employee of the governing body and shall be responsible for directing all state mandated public health programs. All employees of the local health department operated by the governing body of the county shall be employees of the governing body.*

*The local governing body shall operate the local health department, pursuant to the terms of the contract, within local appropriations and any state funds which may be made available to it, pursuant to the appropriations act. State funds for the operation of health services and facilities shall continue to be allocated to any county which has elected to provide health services by contract pursuant to this section as if such services were provided in a county without such a contract.*

*The local governing body shall maintain and submit such financial and statistical records as may be required by the State Board of Health.*

*The county shall be the sole owner of all equipment and supplies, including all equipment and supplies used by the local health department at the time of execution of the contract, which were or are purchased for providing public health services regardless of the source of the funds for such purchases.*

*Notwithstanding any other provision of law to the contrary, any person who is transferred from state to local employment in accordance with a contract authorized by this section, and who is a member of the Virginia Retirement System at the time of the transfer, shall continue to be a member of the Virginia Retirement System during the period of local employment. Any such transferred employee shall remain a member of the Virginia Retirement System under the same terms and conditions as would apply if the transferred employee had remained a state employee, so long as the employee is employed with a local health department or returns to state employment. For purposes of any employment of the transferred employee as a state employee after local employment, the membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System.*

*For any employee who is transferred to local employment in accordance with a contract authorized by this section, that employee's membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System. The local governing body shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 of Title 51.1 of the Code of Virginia, as amended.*

*Any city that is receiving local health services from a county that contracts with the Commonwealth to provide local health services pursuant to this section may continue to receive local health services from that county. State funds for the operation of health services and facilities to any such city shall continue to be allocated as if such services were provided in a county without such a contract. Any existing contracts between any city and any county which contracts with the state pursuant to this section shall continue unless and until amended by the affected jurisdictions.*

*The power to contract conferred by this provision shall not be deemed to confer any additional authority for any county providing local health services to impose fees for local health services.*

## **Chapter 690 Conveyance of property to and from the Commonwealth.**

An Act to amend and reenact Chapter 931 of the Acts of Assembly of 1993, relating to conveyance of certain property of the Commonwealth to the City of Virginia Beach and conveyance of certain property of the City of Virginia Beach to the Commonwealth.

[\[S 449\]](#)

Approved April 10, 1994

Whereas, certain property owned by the Commonwealth, and known as Camp Pendleton, is used, in part, by the Virginia National Guard for training purposes; and

Whereas, at the time of its creation, the territory contiguous to Camp Pendleton was relatively sparsely populated; and

Whereas, since the creation of Camp Pendleton, surrounding communities have grown and developed at an unexpectedly rapid pace; and

Whereas, continuing urbanization and increasing population density in the Hampton Roads area have often confronted local communities with the need to find new areas of land which can be put to use for public purposes; and

Whereas, certain portions of the Camp Pendleton property are currently (i) leased to the City of Virginia Beach for public purposes or (ii) undeveloped and unused, and should therefore be considered surplus property; and

Whereas, it is in the best interest of the Commonwealth to dispose of surplus property for fair market value; and

Whereas, the City of Virginia Beach has been negotiating for a number of years to purchase the surplus properties of Camp Pendleton and, when compared to professional appraisals, has offered to pay the Commonwealth at least fair market value for the properties; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That Chapter 931 of the Acts of Assembly of 1993 is amended and reenacted as follows:

§ 1. The Governor shall convey in the name of the Commonwealth, in a form approved by the Attorney General, to the City of Virginia Beach, the Commonwealth's interest in the following properties located at Camp Pendleton:

Tract 1, containing 288 acres, more or less, and commonly referred to as "Red Wing Golf Course";

Tract 2, containing 132 acres, more or less, and commonly referred to as the "Forest Tract";

Tract 3, containing seventy acres, more or less, and commonly referred to as the "Fire Training/Elementary School Tract"; and

Tract 4, containing fifty-nine acres, more or less, and commonly referred to as the "Municipal Tract-Owls Creek."

~~The City of Virginia Beach shall pay to the Commonwealth the fair market amount as determined by an appraisal at terms to be agreed upon. The appraisal shall be performed by a qualified appraiser as agreed upon by the Commonwealth and the City of Virginia Beach. If an appraiser cannot be agreed upon, then each party shall select an appraiser and the two appraisers shall agree upon a third appraiser. The appraisal amount shall be the average of the three appraisals value of the property, at terms to be agreed upon, with the fair market value to be determined by the following appraisal process. The City of Virginia Beach and the Commonwealth shall each select a licensed appraiser and the two appraisers selected shall each agree upon a third licensed appraiser. Each of the three appraisers shall (i) perform separate appraisals on the four tracts described above without improvements and (ii) appraise the value of the golf course improvements located on Tract 1. Each appraisal shall reflect the municipal purpose restrictions set forth below.~~

*The fair market value of the property shall be the average of the three appraisals of the unimproved property of each of the four tracts. After the appraisal process is completed, the City of Virginia Beach and the Commonwealth of Virginia shall negotiate the inclusion or exclusion of the value, or the inclusion of any part of the value, of the golf course improvements in the purchase price.*

*If the City has agreed to serve as local sponsor for a cost-shared federal beach nourishment or hurricane project in the Sandbridge area of the City, \$2.8 million of the purchase price paid by the City shall be returned to the City for its use solely in that project. The City of Virginia Beach shall create a special service district, pursuant to § 15.1-18.2*

*of the Code of Virginia, in the Sandbridge area of the City to provide the local share of the renourishment costs of the federal beach nourishment or hurricane project.*

The City's lease of Tract 1 shall continue under the current terms until June 30, 1994, or until the conveyance of Tract 1 to the City is completed, whichever shall occur first.

§ 2. Tracts 1 and 2 shall be used only for municipal recreational purposes and shall be subject to reclamation by the Commonwealth, in whole or in part, upon demand by the Governor, in the event of a national emergency declared by the President or by Congress. The property shall be returned to the City upon the expiration of the emergency.

§ 3. Tracts 3 and 4 shall be used only for municipal purposes.

## **Chapter 773 Shenandoah Valley Regional Airport Commission.**

An Act to amend and reenact § 3 of Chapter 628 of the Acts of Assembly of 1956, as amended, relating to the Shenandoah Valley Regional Airport Commission.

[\[S 314\]](#)

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 3 of Chapter 628 of the Acts of Assembly of 1956, as amended, is amended and reenacted as follows:

§ 3. The Commission, in addition to the powers and duties delegated to it by the participating counties and cities, shall have the following powers:

To acquire under the power of eminent domain in the manner prescribed for railroad corporations by Title 25 of the Code of Virginia, or by purchase, lease or otherwise, property, real or personal, or any interest therein, including easements in structures, objects, natural growth, or use of lands which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or are otherwise hazardous to such landing or taking off of aircraft, as are necessary for the establishment, use, operation, maintenance or enlargement of an airport; provided, however, such power of eminent domain shall not extend to the taking of any radio or television towers or installation in existence on the effective date of this Act. *Leases or contracts entered into pursuant to this section may be for terms of five years or less, notwithstanding any local ordinance to the contrary.*

## **Chapter 943 Certain program for persons living with AIDS.**

An Act to authorize implementation of a certain program for persons living with AIDS.

[\[H 1187\]](#)

Approved April 20, 1994

Whereas, from the earliest days of the AIDS epidemic, the private citizens and government of the Commonwealth of Virginia have joined together to provide needed services to infected persons; and

Whereas, these efforts have resulted in recognition of Virginia as an innovator in using available resources and developing new combinations of resources to meet the ever-growing needs of persons living with AIDS; and

Whereas, Virginia is justifiably proud of the efforts of its citizens to provide care to persons living with AIDS, particularly those volunteers and untiring workers within community organizations who have made low-cost care alternatives a reality; now, therefore, Be it enacted by the General Assembly of Virginia:

1. *§ 1. Implementation of certain program for persons living with acquired immunodeficiency syndrome (AIDS).*

*Notwithstanding any provision of Article 1 of Chapter 9 of Title 63.1 of the Code of Virginia, as amended, the Department of Social Services may issue a license as an adult care residence to a facility which (i) is located in a city having a population of 200,000 to 205,000, (ii) is established exclusively to provide care for persons living with AIDS, particularly during end-stage disease, (iii) is operated by a nonprofit organization providing services to HIV-infected individuals, (iv) has obtained funding from the Department of Housing and Urban Development prior to January 1, 1994, (v) has a written agreement with one or more home health agencies for the provision of any intravenous therapy to residents of the home, (vi) has been licensed pursuant to Article 7 of Chapter 5 of Title 32.1 of the Code of Virginia, and (vii) is in compliance with all local zoning requirements. Only home health agencies licensed by the Virginia Department of Health or any successor in interest of the Department shall provide the care referenced in clause (v) above. In no case shall any officer or employee of the adult care residence have any investment interest in any home health agency with which such adult care residence has a written agreement for provision of care.*

# Uncodified Acts of Assembly - 1994 Special Session I

## Chapter 1 Workers' compensation; uninsured and underinsured motorist coverage;

An Act to repeal Chapter 238 of the 1994 Acts of Assembly, relating to workers' compensation; uninsured and underinsured motorist coverage; subrogation.

[\[S 2006\]](#)

Approved May 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That Chapter 238 of the 1994 Acts of Assembly is repealed.
2. That an emergency exists and this act is in force from its passage.

# Uncodified Acts of Assembly - 1994 Special Session II

## Chapter 3 Operating costs of correctional facilities; appropriation.

An Act to provide an appropriation to construct and furnish certain correctional facilities and to create the Virginia Public Safety Fund and the Corrections Special Reserve Fund due to increases in terms of imprisonment.

[\[H 5002\]](#)

Approved October 18, 1994

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That notwithstanding § 4-11.00 of Chapter 966 of the 1994 Acts of Assembly, the Governor shall unallot or withhold from allotment the following general fund appropriations during the 1994-96 biennium:*

*1. An amount estimated at \$12.0 million from Items 163 and 164 of Chapter 966 of the 1994 Acts of Assembly based on over-budgeted Average Daily Membership payments;*

*2. An amount estimated at \$16.6 million from the various state agencies affected by position eliminations as reported to the House Appropriations, House Finance, and Senate Finance Committees on August 22, 1994;*

*3. An amount estimated at \$5.6 million from Items 395, 396, 462, and 468 of Chapter 966 of the 1994 Acts of Assembly based on delayed promulgation of regulations for levels of care in Adult Care Residences;*

*4. An amount estimated at \$3.0 million from Items 413, 414, 427, and 428 of Chapter 966 of the 1994 Acts of Assembly based on operating cost savings from the delayed opening of bed expansions at the Central State Hospital Forensic Unit and the Northern Virginia Mental Health Institute; and*

*5. An amount estimated at \$6.2 million in fiscal year 1995-96 from Item C-1 of Chapter 966 of the 1994 Acts of Assembly for Maintenance Reserve payments to state agencies.*

*§ 2. That there is hereby created on the books of the State Comptroller a special non-reverting fund known as the Virginia Public Safety Fund.*

*§ 3. That the funds listed in § 1 plus the unappropriated general fund balance of \$6.1 million contained in Chapter 966 of the 1994 Acts of Assembly and the \$7.0 million balance in undesignated general funds available for appropriation on June 30, 1994, shall be*

*transferred to the Virginia Public Safety Fund and made available for appropriation as follows:*

*1. There is hereby appropriated \$21,378,220 in fiscal year 1994-95 for payment into the special fund required pursuant to § [30-19.1:4](#). Such sum shall be deposited in a special nonreverting fund created on the books of the State Comptroller, which shall hereinafter be referred to as the Corrections Special Reserve Fund.*

*2. The Governor may utilize amounts not to exceed (i) \$28,835,000 to construct and furnish nine correctional work centers, (ii) \$2.9 million for architectural design and related planning activities for a Sussex II maximum security correctional facility, and (iii) \$0.2 million for planning for construction of a new maximum security prison.*

*3. The Governor may utilize amounts not to exceed (i) \$1,130,175 for planning for the renovation of Mecklenburg Correctional Facility, (ii) \$950,000 for renovating, reopening, and operating housing units in fiscal year 1995 at Bon Air Juvenile Center and the Reception and Diagnostic Center, and (iii) \$1,050,000 for constructing and installing pre-engineered housing units at a juvenile center.*

*4. Notwithstanding the fifth enactment of Chapter 656 of the 1991 Acts of Assembly, as amended, and the ninth and tenth enactments of Chapter 1 of the 1993 Acts of Assembly, Special Session I, the Governor may authorize the Department of Corrections to act as an agent for the Virginia Public Building Authority and may further authorize the Department, acting as such agent, to initiate architectural design and related planning activities to provide increased inmate housing capacity for Keen Mountain Prototype Facility #2, Keen Mountain Prototype Facility #3, and a women's multi-custody prison; however, the cost of such design and planning activities shall not exceed the limit of funds currently authorized for the particular project(s) by the Virginia Public Building Authority.*

*Design and planning activities related to these projects shall be expeditiously undertaken by the Governor and the Department of Corrections. On or before December 1, 1994, the Governor and the Department of Corrections shall provide a detailed report to the House Appropriations and Senate Finance Committees on the status of the design and planning activities related to these projects and any proposals to amend the expenditure authorizations for the projects.*

*5. Notwithstanding the eleventh enactment of Chapter 1 of the 1993 Acts of Assembly, Special Session I, as amended, the Governor may authorize the Department of Youth and Family Services to act as an agent for the Virginia Public Building Authority and may further authorize the Department, acting as such agent, to initiate architectural design and related planning activities to provide increased housing capacity for the*

*maximum security youth facility at Beaumont Learning Center and wastewater treatment plant; however, the cost of such design and planning activities shall not exceed the limit of funds currently authorized for the particular project(s) by the Virginia Public Building Authority.*

*Design and planning activities related to these projects shall be expeditiously undertaken by the Governor and the Department of Youth and Family Services. On or before December 1, 1994, the Governor and the Department of Youth and Family Services shall provide a detailed report to the House Appropriations and Senate Finance Committees on the status of the design and planning activities related to these projects and any proposals to amend the expenditure authorizations for the projects.*

*§ 4. That the Governor shall notify the Chairmen of the House Appropriations and Senate Finance Committees at least ten days prior to any action to unallot funds, revert appropriations, or initiate projects under the provisions of this act.*

*§ 5. That the Virginia Public Safety Fund shall be replenished from the proceeds of the sale of such tax-exempt bonds as are authorized for the projects set forth in subdivisions 2, 3, 4, and 5 of § 3, in an amount not to exceed the limits set forth in such subdivisions. In addition, other moneys subsequently appropriated for the purposes referenced in § 3 may be used to replenish such fund.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 7 Commission, boards and institutions; Virginia Correctional Enterprises**

An Act to amend and reenact Chapter 831 of the 1994 Acts of Assembly, relating to the creation of the Virginia Correctional Enterprises Advisory Board.

[\[S 3010\]](#)

Approved October 26, 1994

Be it enacted by the General Assembly of Virginia:

1. That Chapter 831 of the 1994 Acts of Assembly is amended and reenacted as follows:

1. That §§ 2.1-1.6, 9-6.23 as it is currently effective and as it will become effective July 1, 1995, §§ 9-6.25:1 and [53.1-10](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.1-451.1, 2.1-451.2, 2.1-451.3, and 2.1-451.4 as follows:

§ 2.1-1.6. State boards.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies affiliated with a state agency within the executive branch:

Accountancy, Board for

Aging, Advisory Board on the

Agriculture and Consumer Services, Board of

Air Pollution, State Advisory Board on

Alcoholic Beverage Control Board, Virginia

Apple Board, Virginia State

Appomattox State Scenic River Advisory Board

Aquaculture Advisory Board

Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for

Art and Architectural Review Board

Athletic Board, Virginia

Auctioneers Board

Audiology and Speech-Language Pathology, Board of

Aviation Board, Virginia

Barbers, Board for

Branch Pilots, Board for

Bright Flue-Cured Tobacco Board, Virginia

Building Code Technical Review Board, State

Catoctin Creek State Scenic River Advisory Board

Cattle Industry Board, Virginia

Cave Board

Certified Seed Board, State

Chesapeake Bay Local Assistance Board

Chickahominy State Scenic River Advisory Board

Child Abuse and Neglect, Advisory Board on

Chippokes Plantation Farm Foundation, Board of Trustees

Clinch Scenic River Advisory Board

Coal Research and Development Advisory Board, Virginia

Coal Surface Mining Reclamation Fund Advisory Board

Conservation and Development of Public Beaches, Board on

Conservation and Recreation, Board of

Contractors, Board for

Corn Board, Virginia

Correctional Education, Board of

Corrections, State Board of  
Cosmetology, Board for  
Criminal Justice Services Board  
Dark-Fired Tobacco Board, Virginia  
Deaf and Hard-of-Hearing, Advisory Board for the Department for the  
Dentistry, Board of  
Education, State Board of  
Egg Board, Virginia  
Emergency Medical Services Advisory Board  
Employment Agency Advisory Board  
Farmers Market Board, Virginia  
Film Office Advisory Board  
Fire Services Board, Virginia  
Forensic Science Advisory Board  
Forestry, Board of  
Funeral Directors and Embalmers, Board of  
Game and Inland Fisheries, Board of  
Geology, Board for  
Goose Creek Scenic River Advisory Board  
Health Planning Board, Virginia  
Health Professions, Board of  
Health, State Board of  
Hearing Aid Specialists, Board for  
Hemophilia Advisory Board  
Historic Resources, Board of  
Housing and Community Development, Board of  
Industrial Development Services Advisory Board  
Insurance Advisory Board, State  
Irish Potato Board, Virginia  
Laboratory Services Advisory Board  
Marine Products Board, Virginia  
Medical Advisory Board, Department of Motor Vehicles  
Medical Board of the Virginia Retirement System  
Medicare and Medicaid, Advisory Board on  
Medicine, Board of  
Mental Health, Mental Retardation and Substance Abuse Services Board, State  
Migrant and Seasonal Farmworkers Board

Military Affairs, Board of  
Mines, Minerals and Energy, Board of Examiners in the Department of  
Minority Business Enterprise, Interdepartmental Board of the Department of  
Motor Vehicle Dealers' Advisory Board  
Networking Users Advisory Board, State  
Nottoway State Scenic River Advisory Board  
Nursing, Board of  
Nursing Home Administrators, Board of  
Occupational Therapy, Advisory Board on  
Oil and Gas Conservation Board, Virginia  
Opticians, Board for  
Optometry, Board of  
Peanut Board, Virginia  
Personnel Advisory Board  
Pesticide Control Board  
Pharmacy, Board of  
(Delayed effective date) Physical Fitness and Sports, Virginia Board on  
Physical Therapy to the Board of Medicine, Advisory Board on  
Plant Pollination Advisory Board  
Polygraph Examiners Advisory Board  
Pork Industry Board, Virginia  
Poultry Products Board, Virginia  
Private College Advisory Board  
Private Security Services Advisory Board  
Professional and Occupational Regulation, Board for  
Professional Counselors, Board of  
Professional Soil Scientists, Board for  
Psychiatric Advisory Board  
Psychology, Board of  
Public Buildings Board, Virginia  
Public Telecommunications Board, Virginia  
Radiation Advisory Board  
Real Estate Appraiser Board  
Real Estate Board  
Reciprocity Board, Department of Motor Vehicles  
Recreational Fishing Advisory Board, Virginia  
Recreation Specialists, Board of

Reforestation Board  
Rehabilitative Services, Board of  
Respiratory Therapy, Advisory Board on  
Retirement System Review Board  
Rockfish State Scenic River Advisory Board  
Safety and Health Codes Board  
Seed Potato Board  
Sewage Handling and Disposal Appeal Review Board, State Health Department  
Shenandoah State Scenic River Advisory Board  
Small Business Advisory Board  
Small Business Environmental Compliance Advisory Board  
Small Grains Board, Virginia  
Social Services, Board of  
Social Work, Board of  
Soil and Water Conservation Board, Virginia  
Soybean Board, Virginia  
State Air Pollution Control Board  
Substance Abuse Certification Board  
Surface Mining Review, Board of  
Sweet Potato Board, Virginia  
Teacher Education and Licensure, Advisory Board on  
Tourism and Travel Services Advisory Board  
Toxic Substances Advisory Board  
Transportation Board, Commonwealth  
Transportation Safety, Board of  
Treasury Board, The, Department of the Treasury  
Veterans' Affairs, Board on  
Veterinary Medicine, Board of  
Virginia Board for Asbestos Licensing  
*Virginia Correctional Enterprises Advisory Board*  
Virginia Employment Commission, State Advisory Board for the  
(Delayed effective date) Virginia Horse Industry Board  
Virginia Manufactured Housing Board  
Virginia Mine Safety Board  
Virginia Retirement System, Board of Trustees  
Virginia Waste Management Board  
Visually Handicapped, Virginia Board for the

Voluntary Formulary Board, Virginia

War Memorial Foundation, Virginia, Board of Trustees

Waste Management Facility Operators, Board for

Water Resources Research Center Statewide Advisory Board, Virginia

Waterworks and Wastewater Works Operators, Board for

Well Review Board, Virginia

Youth and Family Services, State Board of.

B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be referred to as boards:

Compensation Board

State Board of Elections

State Water Control Board

Virginia Parole Board

Virginia Veterans Care Center Board of Trustees.

*§ 2.1-451.1. Creation of Virginia Correctional Enterprises Advisory Board; purposes.*

*There is hereby created the Virginia Correctional Enterprises Advisory Board, hereinafter referred to as the Board. The purposes of the Board shall be to (i) review new products and services manufactured or produced by Virginia Correctional Enterprises; (ii) review the pricing structure of products and services manufactured or produced by Virginia Correctional Enterprises; (iii) evaluate the level and quality of products and customer services offered by Virginia Correctional Enterprises, and make recommendations on such quality and services; and (iv) advise the Director of the Department of General Services on business trends, product development, contract opportunities, and other related matters.*

*§ 2.1-451.2. Appointment of Board; term of members; chairman; compensation; meetings; quorum.*

*The Virginia Correctional Enterprises Advisory Board shall be composed of fifteen members selected as follows: (i) eight members, appointed by the Governor, two of whom shall be representatives of institutions of higher education; two of whom shall be representatives of state agencies; two of whom shall be representatives of the private business sector; one of whom shall be a representative of the Virginia Industries for the Blind; and one of whom shall be a representative of nonprofit sheltered workshops; (ii) two members of the Senate appointed by the Senate Committee on Privileges and Elections; (iii) three members of the House of Delegates appointed by the Speaker of the House of Delegates; (iv) the Director of the Department of General Services or his designee; and (v) the Director of the Department of Corrections or his designee.*

*Legislative members and the Director of the Department of General Services and the Director of the Department of Corrections shall serve on the Board until the expiration of their terms of office or until their successors shall qualify. All other members shall serve four-year terms. Vacancies shall be filled for the unexpired terms.*

*The Board shall elect its chairman and vice-chairman from among its members, except that the Director of the Department of Corrections shall not be elected or otherwise appointed to serve as chairman of the Board. Members of the Board shall receive no compensation for their services as members of the Board, but the nongovernmental members shall receive reasonable expenses.*

*The Board shall meet at least quarterly and at the call of the chairman or the Director of the Department of General Services. Eight members of the Board shall constitute a quorum.*

*§ 2.1-451.3. Cooperation with other agencies.*

*All agencies of the Commonwealth shall cooperate with the Board and, upon request, assist the Board in the performance of its duties and responsibilities.*

*§ 2.1-451.4. Staff support.*

*Such staff support as is necessary for the conduct of the Board's business shall be furnished by Virginia Correctional Enterprises.*

§ 9-6.23. (Effective until July 1, 1995) Prohibition against service by legislators on boards and commissions within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards and commissions within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § [23-231.3](#); to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Inter-agency Coordinating Council who shall be appointed as provided in § 2.1-750; to

members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; or to members of the Workforce 2000 Advocacy Council, who shall be appointed as provided in § 2.1-116.18; or to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided in § 2.1-451.2.

§ 9-6.23. (Effective July 1, 1995) Prohibition against service by legislators on boards and commissions within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards and commissions within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § [23-231.3](#); to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Inter-agency Coordinating Council who shall be appointed as provided in § 2.1-750 or; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; or to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided in § 2.1-451.2.

§ 9-6.25:1. Advisory boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

Advisory Board for the Department for the Deaf and Hard-of-Hearing

Advisory Board for the Department for the Aging

Advisory Board on Child Abuse and Neglect

Advisory Board on Medicare and Medicaid

Advisory Board on Occupational Therapy

Advisory Board on Physical Therapy to the Board of Medicine

Advisory Board on Respiratory Therapy to the Board of Medicine  
Advisory Board on Teacher Education and Licensure  
Advisory Council on Revenue Estimates  
Advisory Council on the Virginia Business-Education Partnership Program  
Appomattox State Scenic River Advisory Board  
Aquaculture Advisory Board  
Art and Architectural Review Board  
(Effective until July 1, 1994) Board for the Visually Handicapped  
Board of Directors, Virginia Truck and Ornaments Research Station  
Board of Forestry  
Board of Military Affairs  
(Effective until July 1, 1994) Board of Rehabilitative Services  
Board of Transportation Safety  
Board of Trustees of the Family and Children's Trust Fund  
Board of Visitors, Gunston Hall Plantation  
Board on Veterans' Affairs  
Catoctin Creek State Scenic River Advisory Board  
Cave Board  
Chickahominy State Scenic River Advisory Board  
Clinch Scenic River Advisory Board  
Coal Surface Mining Reclamation Fund Advisory Board  
Council on Indians  
Council on the Status of Women  
Emergency Medical Services Advisory Board  
Falls of the James Committee  
Film Office Advisory Board  
Forensic Science Advisory Board  
Goose Creek Scenic River Advisory Board  
Governor's Council on Alcohol and Drug Abuse Problems  
Governor's Mined Land Reclamation Advisory Committee  
Hemophilia Advisory Board  
Human Services Information and Referral Advisory Council  
Industrial Development Services Advisory Board  
Interagency Coordinating Council on Housing for the Disabled  
Interdepartmental Board of the State Department of Minority Business Enterprise  
Laboratory Services Advisory Board  
Local Advisory Board to the Blue Ridge Community College

Local Advisory Board to the Central Virginia Community College  
Local Advisory Board to the Dabney S. Lancaster Community College  
Local Advisory Board to the Danville Community College  
Local Advisory Board to the Eastern Shore Community College  
Local Advisory Board to the Germanna Community College  
Local Advisory Board to the J. Sargeant Reynolds Community College  
Local Advisory Board to the John Tyler Community College  
Local Advisory Board to the Lord Fairfax Community College  
Local Advisory Board to the Mountain Empire Community College  
Local Advisory Board to the New River Community College  
Local Advisory Board to the Northern Virginia Community College  
Local Advisory Board to the Patrick Henry Community College  
Local Advisory Board to the Paul D. Camp Community College  
Local Advisory Board to the Piedmont Virginia Community College  
Local Advisory Board to the Rappahannock Community College  
Local Advisory Board to the Southwest Virginia Community College  
Local Advisory Board to the Thomas Nelson Community College  
Local Advisory Board to the Tidewater Community College  
Local Advisory Board to the Virginia Highlands Community College  
Local Advisory Board to the Virginia Western Community College  
Local Advisory Board to the Wytheville Community College  
Long-Term Care Council  
Maternal and Child Health Council  
Medical Advisory Board, Department of Motor Vehicles  
Medical Board of the Virginia Retirement System  
Migrant and Seasonal Farmworkers Board  
Motor Vehicle Dealer's Advisory Board  
Nottoway State Scenic River Advisory Board  
Personnel Advisory Board  
Plant Pollination Advisory Board  
Private College Advisory Board  
Private Enterprise Commission  
Private Security Services Advisory Board  
Psychiatric Advisory Board  
Radiation Advisory Board  
Rappahannock Scenic River Advisory Board  
Recreational Fishing Advisory Board, Virginia

Reforestation Board  
Retirement System Review Board  
Rockfish State Scenic River Advisory Board  
Shenandoah State Scenic River Advisory Board  
Small Business Advisory Board  
Small Business Environmental Compliance Advisory Board  
St. Mary's Scenic River Advisory Committee  
State Advisory Board on Air Pollution  
State Advisory Board for the Virginia Employment Commission  
State Building Code Technical Review Board  
State Council on Local Debt  
State Health Benefits Advisory Council  
State Insurance Advisory Board  
State Land Evaluation Advisory Council  
State Networking Users Advisory Board  
State Public Records Advisory Council  
Staunton Scenic River Advisory Committee  
Telecommunications Relay Service Advisory Board  
Tourism and Travel Services Advisory Board  
Toxic Substances Advisory Board  
Virginia Advisory Commission on Intergovernmental Relations  
Virginia Advisory Council for Adult Education and Literacy  
Virginia Board on Physical Fitness and Sports  
Virginia Coal Research and Development Advisory Board  
Virginia Commission for the Arts  
Virginia Commission on the Bicentennial of the United States Constitution  
*Virginia Correctional Enterprises Advisory Board*  
Virginia Council on Coordinating Prevention  
Virginia Equal Employment Opportunity Council  
Virginia Interagency Coordinating Council  
Virginia Military Advisory Council  
Virginia Mine Safety Board  
Virginia Public Buildings Board  
Virginia Recycling Markets Development Council  
Virginia Transplant Council  
Virginia Water Resources Research Center, Statewide Advisory Board  
Virginia Winegrowers Advisory Board.

§ [53.1-10](#). Powers and duties of Director.

The Director shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state correctional facilities;
  2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;
  3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, and within the limits of appropriations made therefor by the General Assembly;
  4. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of this Commonwealth, consistent with applicable standards and goals of the Board; ~~and~~
  5. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with applicable standards and goals of the Board; *and*
  6. *To serve on the Virginia Correctional Enterprises Advisory Board established pursuant to § 2.1-451.2.*
- ~~2. That the provisions of this act shall not become effective unless reenacted by a Special Session of the General Assembly in 1994 or at the 1995 Session of the General Assembly.~~

# Uncodified Acts of Assembly - 1995

## Chapter 6 Publication and distribution of certain annual reports prohibited.

An Act to prohibit publication and distribution of certain annual reports.

[\[H 987\]](#)

Approved February 8, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Unless otherwise required by state or federal law or regulation, there shall be a two-year moratorium upon the general publication and distribution of annual reports of any state agency or institution of higher education receiving any funds from the state budget.*

*Nothing herein shall prohibit (i) any such agency or institution from making available, upon request, balance sheets, figures and such other information as may be requested of such agency or institution or from notifying the public that such information is available, (ii) the Governor from specifically requesting such state agency or institution to prepare an annual report that he deems necessary, or (iii) any such agency or institution from using donated private funds to fully support the publication and distribution of an annual report.*

## Chapter 14 Asbestos cases; consolidation and bifurcation.

An Act to repeal the second enactment of Chapter 615 of the Acts of Assembly of 1992, relating to consolidation and bifurcation of asbestos cases.

[\[H 1756\]](#)

Approved February 21, 1995

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 615 of the Acts of Assembly of 1992 is repealed.
2. That an emergency exists and this act shall become effective June 30, 1995.

## Chapter 47 Reauthorization of federal retirees' settlement plan.

An Act to reauthorize the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I, authorizing a settlement to resolve disputed claims for refunds of taxes paid with respect to retirement or pension benefits received from a federal retirement system for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988; and to provide for a special litigation reserve fund.

[\[H 2091\]](#)

Approved February 28, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the provisions of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I, authorizing a settlement with respect to disputed claims for refunds of taxes paid on retirement or pension benefits received from a retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988, are hereby reauthorized pursuant to subdivision E of § 1 of the second enactment of Chapter 5. All actions taken pursuant to Chapter 5 are ratified and the Tax Commissioner shall proceed with the settlement as authorized by Chapter 5 of the 1994 Acts of Assembly, Special Session I, and as reauthorized by this act as provided by subdivision E of § 1 of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I. It is the specific intent of the General Assembly that the settlement not become null and void, but that it have full force and effect in all respects.*

*§ 2. Subject to appropriation by the General Assembly, a sum equal to the amount by which the appropriation amounts authorized by subsection B of § 1 of the second enactment of Chapter 5 are reduced pursuant to the provisions of subsection E to reflect the claims of taxpayers opting out of the settlement shall be deposited in a special litigation reserve fund until a final resolution of all pending litigation in Virginia courts determined by the Tax Commissioner to involve disputed claims for refunds contemplated by § 2 of the second enactment of Chapter 5. If such litigation is resolved in favor of the Commonwealth, all assets held in the special litigation reserve fund shall be returned to the General Fund.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 73 Robert W. Smalley Bridges.**

An Act to designate the Virginia Route 7 bridges across the Shenandoah River in Clarke County the "Robert W. Smalley Memorial Bridges at *Castleman's Ferry*."

[\[S 855\]](#)

Approved March 7, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Virginia Route 7 bridges across the Shenandoah River in Clarke County are hereby designated the "Robert W. Smalley Memorial Bridges at Castleman's Ferry." The Department of Transportation shall place and maintain appropriate markers indicating the designation of these bridges. This designation shall not affect any other designation heretofore or hereafter applied to any of these bridges.*

## **Chapter 120 Certificates of completion for certain apprenticeship programs.**

An Act to require the Commissioner of Labor and Industry to issue certificates of completion to certain individuals completing apprenticeship programs.

[\[H 1954\]](#)

Approved March 8, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Commissioner of the Department of Labor and Industry shall issue certificates of completion to individuals completing apprenticeship programs within the Commonwealth that are (i) registered with the Bureau of Apprenticeship Training, United States Department of Labor, and (ii) sponsored by United States military installations within the Commonwealth closed or scheduled for closure under the federal Defense Base Closure and Realignment Act of 1990, as amended.*

## **Chapter 185 Federal retirees tax refund.**

An Act authorizing the Tax Commissioner to determine which retired federal and military taxpayers were denied participation due to missing information necessary to substantiate the validity or amount of a timely filed claim or missed the November 1, 1994,

deadline, because of circumstances beyond their control, for filing the documentation or forms necessary to participate in the *Harper v. Virginia Department of Taxation* case settlement; authorizing the Tax Commissioner to enter into settlement agreements with such taxpayers in an amount equal to the amount agreed to with the retired federal and military taxpayers who filed a completed claim by the November 1, 1994, deadline; and establishing a fund from which such incomplete or late settlement agreement amounts shall be paid.

[\[S 831\]](#)

Approved March 14, 1995

Whereas, during its Special Session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia taxpayers affected by the *Harper v. Virginia Department of Taxation* case; and

Whereas, such legislation contained a November 1, 1994, deadline for the affected taxpayers to file certain forms and other supporting documentation, where necessary, with the Department of Taxation in order to participate in the settlement; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed the deadline for filing, or mailed or otherwise sent the appropriate documentation which was not received by the Department of Taxation, thereby missing the opportunity to participate in the settlement; and

Whereas, the General Assembly wants as many of the affected taxpayers as possible to participate in the settlement; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. *The Tax Commissioner is authorized to make settlement payments to certain retired federal and military taxpayers, as originally authorized in Chapter 5 of the 1994 Acts of Assembly, Special Session I. To be eligible to receive these payments a taxpayer shall have (i) responded to the August 1, 1994, notice on or before November 1, 1994, but was denied either full or partial participation in the settlement program due to the lack of certain information necessary for the Department to compute the taxpayer's disputed refund, or (ii) missed the November 1, 1994, deadline for responses due to circumstances beyond the control of the taxpayer, or (iii) having filed a timely response by the November 1 deadline, missed the February 1, 1995, deadline for delivering a settlement agreement to the Department due to circumstances beyond the control of the taxpayer. Such taxpayers are hereby granted an additional sixty days from the date of*

*enactment to provide the Department with the necessary information to compute their disputed refunds or to provide the Department with response forms or settlement agreements and written explanations that demonstrate that the taxpayers missed the relevant deadline due to circumstances beyond their control. The burden of proof shall be on the taxpayer. Any determination of what constitutes circumstances beyond the control of a taxpayer shall be liberally construed in favor of the taxpayer. Any supporting documentation provided to the Department on forms received prior to the expiration of the additional time period shall be reviewed by the Tax Commissioner. The Tax Commissioner shall determine whether the necessary information was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline or the February 1, 1995, deadline was due to circumstances beyond the control of the taxpayer. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:*

*1. For purposes of this act:*

*"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely filed the required information with the Department, pursuant to subdivision 4a, as calculated by the Department of Taxation.*

*"Department" means the Department of Taxation.*

*"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed that resulted from the Department's acceptance and processing of the additional information the taxpayer provided, pursuant to subdivision 4 a. A disputed refund does not include any amount already included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal Retiree Settlement Act.*

*"Federal Retiree Settlement Act" means enactment 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I.*

*"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department by the ninetieth day following enactment, pursuant to subdivision 4 b.*

*"Refund of taxes" includes any claim for interest thereon.*

*"Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department under the Federal Retiree Settlement Act or under this act.*

*"Settlement program" means the settlement program established by the Federal Retiree Settlement Act.*

*"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died intestate, an affidavit provided by the Department signed by the deceased taxpayer's surviving spouse, or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the Department signed by the residuary legatees under the will shall operate to claim such refund.*

*2. The payments shall be made over a five-year period in annual installments and shall be disbursed by the Tax Commissioner or his designee to the taxpayers participating in the settlement as follows:*

*a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act.*

*b. Disbursements shall be made in up to five payments, the first of which shall be made on July 31, 1995, with each of the remaining four disbursements to be made on March 31 through 1999. The Department shall make payments to taxpayers who settle under this act in the same proportion as calculated for the payments to be made to retirees settling under the Federal Retiree Settlement Act.*

*c. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.*

*3. Payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner to administer the payments. Subject to appropriation by the General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be deposited in the special fund, trust or other legal entity on or before July 1, 1995, pending disbursement. Subject to appropriation by the General Assembly, on each succeeding July 1 through 1998, an amount sufficient to fund the annual settlement payment shall be deposited in the special fund, trust or other legal entity pending disbursement. All earnings on investment of the funds shall be held in the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final payments to taxpayers are made on March 31, 1999. For those taxpayers who met the November 1, 1994, filing deadline but missed the February 1, 1995, filing deadline, the first and second settlement payments (to be paid on July 31, 1995, and March 31, 1996) shall be made out of the July 1, 1995, appropriation to be made pursuant to the Federal Retiree Settlement Act; the remaining installments shall be made annually from the subsequent annual appropriations made pursuant to such Act.*

4. *The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:*

*a. On or before thirty days from the date of enactment, the Department shall notify by first class mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the Department pursuant to the terms of the Federal Retiree Settlement Act, but who was denied participation in the settlement program due to the lack of certain information necessary to compute the taxpayer's disputed refund, or (ii) who responded to the August 1, 1994, notice after November 1, 1994, or (iii) who delivered a settlement agreement to the Department after February 1, 1995, of the additional thirty-day period during which he may submit the information necessary to compute his disputed refund or deliver to the Department a signed settlement agreement accepting the final settlement offer and releasing the Commonwealth from any further liability. Each taxpayer so notified shall also be required to submit a written explanation that demonstrates that the taxpayer missed the deadline due to circumstances beyond his control. The additional information or settlement agreement returned to the Department shall be either post-marked on or before midnight of the sixtieth day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such information shall be received by the Department by 5:00 p.m. of the sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.*

*b. Within ninety days following enactment, the Department shall send to each taxpayer, as appropriate, a notice and a settlement agreement that sets forth the amount of the final settlement offer. Those taxpayers who agree to accept the offer shall sign such settlement agreement releasing the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. Such settlement agreement shall be returned to the Department and shall be postmarked on or before midnight of the 120th day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such settlement agreement shall be received by the Department by 5:00 p.m. of the 120th day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.*

5. *A taxpayer who delivered to the Department a timely but incomplete settlement agreement under the terms of the Federal Retiree Settlement Act or this act shall be deemed to have met the filing deadline, provided that any delay in submitting completed forms to the Department may result in a delay of the first payment required under the settlement*

*program established by the Federal Retiree Settlement Act or under this act. The taxpayer shall provide the Department a completed settlement agreement (i) on or before the thirtieth day after enactment for those taxpayers who qualify for participation in the settlement program created by the Federal Retiree Settlement Act or (ii) on or before the 150th day following enactment for those taxpayers who qualify for the settlement program created by this act.*

*6. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.*

*7. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).*

*8. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement Act, and nothing in this act shall be construed or interpreted to authorize any taxpayer to opt out of the settlement program or agree to accept the relief granted in pending litigation after the deadlines established in the Federal Retiree Settlement Act.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 191 Higher Educational Institutions Bond Act of 1995.**

An Act to authorize the issuance of bonds subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia in an amount not to exceed \$13,707,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds with any other available funds for paying the costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds and to provide for the sale of

such bonds at public or private sale; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 954\]](#)

Approved March 14, 1995

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects set forth below to be pledged to the payment of the principal of, and the interest on, that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 1995."*

*§ 2. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$13,707,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses. The proceeds of such bonds, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any*

*other available funds, for paying the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Number</i>	<i>Debt</i>	<i>Project Name</i>
<i>Virginia State Hall University</i>	<i>15621</i>	<i>\$2,373,000</i>	<i>Foster Stu-</i>
<i>dent Union Virginia State Jones University</i>	<i>15622</i>	<i>\$3,571,000</i>	
<i>Dining Hall Virginia State Dormitory University</i>	<i>15623</i>	<i>\$2,763,000</i>	
<i>Repairs College of William Dormitory and Mary</i>	<i>15745</i>	<i>\$5,000,000</i>	
<i>Repairs TOTAL</i>		<i>\$13,707,000</i>	

*§ 3. The proceeds of the bonds and any bond anticipation notes, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes, shall be deposited in a special capital outlay fund in the state treasury and shall be disbursed by the State Treasurer for paying all or any part of the cost of the acquisition, construction, renovation, enlargement, improvement and equipping of said capital projects in the amounts provided above, plus issuance costs, reserve funds and other financing expenses.*

*§ 4. The bonds shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, and may be made redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. The principal of, premium, if any, and the interest on the bonds shall be payable in lawful money of the United States of America. The Treasury Board shall determine the form of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal, premium, if any, and interest, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. The bonds may bear interest at such rate or rates subject to inclusion in*

*gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*The bonds may be in registered form or as may be required by federal law in effect on the date of issuance. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and the principal, premium, if any, and interest due thereon. Bonds issued in registered form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of, premium, if any, and interest on the bonds. The bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.*

*The Treasury Board may sell the bonds in such manner, at public or private sale, and for such price as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. The bonds may be sold at par, at a premium or at a discount.*

*Anything in this act to the contrary notwithstanding, the bonds authorized hereby may be issued at one time or in part and may be issued and sold at the same time with other bonds of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), or (c) of the Constitution of Virginia, either as separate issues, as a combined issue designated "Commonwealth of Virginia, General Obligation Bonds, Series .....", or as a combination of both.*

*The Treasury Board shall be authorized to supplement the special capital outlay fund in the state treasury created pursuant to § 3 hereof from excess moneys in any debt service, sinking or comparable fund established pursuant to previous issues of higher educational institutions bonds so long as such excess fund moneys are not otherwise restricted by law or by express contract with the holders of such prior bonds.*

*§ 5. The bonds shall be signed on behalf of the Commonwealth by the Governor, or shall bear his facsimile signature, and by the State Treasurer, or shall bear his facsimile signature, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds bear the facsimile signature of the State Treasurer, the bonds shall be signed by such administrative assistant as the State Treasurer shall determine, or by such registrar or paying agent as may be designated to sign such bonds by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds ceases to be such officer before the delivery of such bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office*

*until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond are the proper officers to sign such bond although, at the date of such bond, such persons may not have been such officers.*

*§ 6. All expenses incurred under this act shall be paid from the proceeds of the bonds, from payments made by the institutions for which the capital projects were acquired, constructed, renovated, enlarged, improved or equipped, or from any other available funds as the Treasury Board shall determine, including excess moneys in any debt service, sinking or comparable fund created in connection with prior issues of higher educational institutions bonds to the extent not otherwise restricted by law or by contract with the holders of such prior bonds.*

*§ 7. The Treasury Board is hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds. Proceeds of the bonds shall be used to pay any such bond anticipation notes. Funds provided by the General Assembly, or from any other source, for the payment of the principal of, premium, if any, and interest on the bonds shall be used in paying the principal of, premium, if any, and interest on any bond anticipation notes. Such bond anticipation notes shall be dated and shall mature at such time or times not exceeding five years from their dates, and may be redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. Such bond anticipation notes shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board or the State Treasurer, when authorized by the Treasury Board, may determine. Such bond anticipation notes may bear interest subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor.*

*§ 8. Pending the application of the proceeds of the bonds and any bond anticipation notes to the purpose for which they have been authorized, all or any part of such proceeds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such proceeds, and the interest thereon and any profit realized from such investments shall be credited to such proceeds and any losses shall be deducted therefrom.*

*§ 9. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect a building fee or other comprehensive student fee and other rates, fees and charges for or in connection with the use, occupation and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge such rates, fees and charges remaining after payment of (a) the expenses of operating the project or system, as the case may be and (b) the expenses related to all other activities funded by the building fee or other comprehensive student fee, if applicable, to the payment of the principal of, premium, if any, and interest on the portion of the bonds issued for such capital project. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 10. The net revenues of the capital projects set forth above and the full faith, credit and taxing power of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on the bonds herein authorized. In the event the net revenues pledged hereby are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds herein authorized, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 11. The interest income on the bonds and bond anticipation notes issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof.*

*§ 12. The bonds issued under the provisions of this act may be refunded by refunding bonds authorized and issued in accordance with the provisions of Chapters 265 and 408 of the 1992 Acts of Assembly.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 560 Transportation Facilities Bond Act of 1995.**

An Act to authorize the issuance of Commonwealth of Virginia Transportation Facilities Bonds, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, in an amount not to exceed \$45,170,000 plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds with any other available funds for paying all or a portion of the costs incurred or to be incurred for the widening of the Dulles Toll Road, a revenue-producing capital project

consisting of the construction of an additional two lanes from Interstate 495 in Fairfax County to Route 28 (Sully Road) in Loudoun County and certain improvements to the Wiehle Avenue interchange; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; to provide for the pledge of the net revenues of such capital project and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; and to provide that such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 1728\]](#)

Approved March 24, 1995

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvements thereof, of agencies administered solely by the executive department of the Commonwealth; and

Whereas, the facility described herein will be a toll road operated by the Virginia Department of Transportation, an agency administered solely by the executive department of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion as to the sufficiency of the anticipated net revenues of the Dulles Toll Road and any improvements thereon, to be pledged to the payment of the principal of and interest on such debt, and that such capital project complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. This act shall be known and may be cited as the "Commonwealth of Virginia Transportation Facilities Bond Act of 1995."*

*§ 2. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Transportation Facilities Bonds, Series....," in an aggregate principal amount not exceeding \$45,170,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses. The proceeds of such*

*bonds, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred for the widening of the Dulles Toll Road, consisting of the construction of an additional two lanes, which will widen the road from six lanes to eight lanes, from Interstate 495 in Fairfax County to Route 28 (Sully Road) in Loudoun County and certain improvements to the Wiehle Avenue interchange.*

*§ 3. The proceeds of the bonds and any bond anticipation notes, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes, shall be deposited in a special capital outlay fund in the state treasury and shall be disbursed by the State Treasurer for paying all or any part of the cost of the acquisition, construction and equipping of said capital project in the amount provided above, plus issuance costs, reserve funds and other financing expenses.*

*§ 4. The bonds shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding thirty years from their date or dates, and may be made redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. The principal of, premium, if any, and the interest on the bonds shall be payable in lawful money of the United States of America. The Treasury Board shall determine the form of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal, premium, if any, and interest, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. The bonds may bear interest at such rate or rates subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board by and with the consent of the Governor.*

*The bonds may be in registered form or as may be required by federal law in effect on the date of issuance. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and the principal of, premium, if any, and interest due thereon. Bonds issued in registered form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of the principal of, premium, if any, and interest on the bonds.*

*The Treasury Board may sell the bonds in such manner, at public or private sale, and for such price as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. The bonds may be sold at par or at premium or at a discount not greater than one percent of the principal amount of the bonds. If the bonds are*

*sold at a discount, the Treasury Board is authorized to increase the principal amount of the bonds by not more than one percent to provide adequate proceeds to fund the capital project expenditures described in § 2 herein.*

*The bonds and the refunding bonds authorized hereby may be issued at one time or in part from time to time and may, in the discretion of the Treasury Board, be issued and sold at the same time with other general obligation bonds of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b) and (c) of the Constitution of Virginia, either as a separate issue or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series .....", or as a combination of both.*

*The Treasury Board shall be authorized to supplement the special capital outlay fund in the state treasury created pursuant to § 3 hereof from excess moneys in any debt service, sinking or comparable fund established in connection with previous issues of transportation facilities bonds so long as such excess fund moneys are not otherwise restricted by law or by express contract with the holders of such prior bonds.*

*§ 5. The bonds shall be signed on behalf of the Commonwealth by the Governor, or shall bear his facsimile signature, and by the State Treasurer, or shall bear his facsimile signature, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds bear these facsimile signatures of the Treasurer, the bonds shall be signed by such administrative assistant as the State Treasurer shall determine, or by such registrar or paying agent as may be designated to sign such bonds by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds ceases to be such officer before the delivery of such bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond are the proper officers to sign such bond although, at the date of such bond, such persons may not have been such officers.*

*§ 6. All expenses incurred under this act shall be paid from the proceeds of the bonds, from payments made by the Virginia Department of Transportation or from any other available funds as the Treasury Board shall determine, including excess moneys in any debt service, sinking or comparable fund created in connection with prior issues of transportation facilities bonds to the extent not otherwise restricted by law or by contract with the holders of such prior bonds.*

*§ 7. The Treasury Board is hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds. Such bond anticipation notes shall be dated, shall mature at such time or times not exceeding five years from*

*their date or dates, and may be redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. Such bond anticipation notes shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or the State Treasurer, when authorized by the Treasury Board. Such bond anticipation notes shall be executed in the manner provided in § 5 hereof for the execution of bonds.*

*§ 8. Pending the application of the proceeds of the bonds and any bond anticipation notes to the purpose for which they have been authorized, all or any part of such proceeds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such proceeds, and the interest thereon and any profit realized from such investments shall be credited to such proceeds and any losses shall be deducted therefrom.*

*§ 9. The General Assembly may from time to time authorize the issuance of additional bonds, in accordance with the Constitution of Virginia, secured by a pledge of the revenues of the Dulles Toll Road equal and ratable to the pledge of revenues which secures these bonds, the Transportation Facilities Refunding Bonds, Series 1987 A, the Transportation Facilities Bonds, Series 1989 A, and the Transportation Facilities Refunding Bonds, Series 1989 B.*

*§ 10. The Commonwealth Transportation Board is hereby authorized (i) to fix, revise, charge and collect rates, fees, tolls and other charges, including special rates for High Occupancy Vehicles, for or in connection with the use of the Dulles Toll Road and any improvements thereon, and the different parts of sections thereof and (ii) to pledge such rates, fees and charges remaining after payment of the expenses of operating and maintaining the project, to the payment of the principal of, premium, if any, and interest on the bonds issued for such capital project.*

*§ 11. The net revenues of the Dulles Toll Road and the full faith, credit and taxing power of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on the bonds herein authorized. In the event the net revenues pledged hereby are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and the interest on the bonds herein authorized, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

§ 12. *The interest income on the bonds and bond anticipation notes issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof.*

§ 13. *The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds of the Commonwealth, to be designated "Commonwealth of Virginia Transportation Facilities Bonds, Series ...." to refund any or all of the bonds issued under this act. No refunding bonds shall be issued in a principal amount exceeding that necessary to amortize the principal of and premium, if any, and interest on the bonds to be refunded and pay all issuance costs and other financing expenses of the refunding bonds. Such refunding bonds may be issued whether or not the bonds to be refunded are then subject to redemption. Such refunding bonds shall be issued and sold in the manner and subject to the limitations prescribed in § 4 hereof for the issuance and sale of bonds and shall be executed in the manner provided in § 5 hereof for the execution of bonds.*

§ 14. *Notwithstanding any other provisions of this act and to the extent permitted by law, the Commonwealth Transportation Board may provide for the additional improvements to the Dulles Toll Road and Dulles Access Road corridor (extending from Interstate 495 in Fairfax County to Route 28 (Sully Road) in Loudoun County) including, but not limited to, mass transit, including rail, and capacity-enhancing treatments, such as High Occupancy Vehicle lanes, interchange improvements, commuter parking lots and other transportation management strategies, from surplus net revenues of the Dulles Toll Road prior to provision being made for the retirement of all bonds issued under the provisions of this act.*

## **Chapter 792 Enterprise Zone Act.**

An Act to amend and reenact §§ [59.1-271](#), [59.1-273](#), [59.1-274](#), [59.1-279](#), [59.1-280](#), [59.1-282](#), [59.1-283](#), and [59.1-284](#) of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 22 of Title 59.1 sections numbered [59.1-280.1](#), [59.1-280.2](#), [59.1-282.1](#), [59.1-282.2](#), [59.1-282.3](#) and [59.1-284.01](#); and to amend and reenact the second enactment of Chapter 301 of the 1992 Acts of Assembly, relating to the Enterprise Zone Act.

[\[S 761\]](#)

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ [59.1-271](#), [59.1-273](#), [59.1-274](#), [59.1-279](#), [59.1-280](#), [59.1-282](#), [59.1-283](#), and [59.1-284](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 22 of Title 59.1 sections numbered [59.1-280.1](#), [59.1-280.2](#), [59.1-282.1](#), [59.1-282.2](#), [59.1-282.3](#) and [59.1-284.01](#) as follows:

§ [59.1-271](#). Definitions.

As used in this chapter:

"Business firm" means any business entity authorized to do business in the Commonwealth of Virginia and subject to the state income tax on net corporate rate income (§ [58.1-400](#) et seq.), or a public service company subject to a franchise or license tax on gross receipts, or a bank, mutual savings bank, savings and loan association, or a partnership or sole proprietorship.

"Department" means the Department of Housing and Community Development.

~~"Secretary" means the Secretary of Commerce and Trade.~~

"Enterprise zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

*"Enterprise zone incentive grant" or "grant" means a grant provided pursuant to § [59.1-282.1](#).*

*"Local zone administrator" means the chief executive of the county, city, or town in which an enterprise zone is located, or his designee.*

*"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § [59.1-279](#).*

§ [59.1-273](#). Administration.

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish criteria for determining what areas qualify as enterprise zones. Such criteria shall be the minimum required for implementation of the purpose of this chapter;
2. To monitor the implementation and operation of this chapter;
3. To conduct a continuing evaluation program of enterprise zones;
4. To assist cities, towns and counties in obtaining the reduction of regulations within enterprise zones; ~~and~~
5. [Repealed.]
6. To administer and enforce the regulations promulgated by the Board of Housing and Community Development; ~~and~~
7. *To administer the Enterprise Zone Grant Fund established by § [59.1-282.2](#).*

§ [59.1-274](#). Enterprise zone and rural enterprise zone designation.

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be an enterprise zone. ~~The governing body of any city with a population of at least 250,000 may make written application to the Department to have more than one designated area declared to be an enterprise zone.~~ Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.

B. The Governor may approve upon the recommendation of the Director of the Department of Housing and Community Development the designation of up to ~~twenty-five~~ *fifty* areas as enterprise zones for a period of twenty years; ~~however, when twenty-five areas have been designated as enterprise zones, any city with a population of at least 102,000 but no more than 107,000, any city with a population of at least 169,000 but no more than 174,000, any city with a population of at least 200,000 but no more than 205,000, and any city with a population of at least 260,000 but no more than 265,000 shall be eligible to apply for additional enterprise zone designations. However, each such city seeking an additional enterprise zone designation shall already have at least one such designation and shall be limited to a total of three enterprise zones. Any county with a population of at least 200,000 but no more than 210,000 shall be eligible to apply for additional enterprise zone designations. Additionally, any counties having a population of more than 26,300 and less than 27,000, more than 33,000 and less than 34,700, and more than 16,300 and less than 17,000, shall be eligible to apply for additional enterprise zone designations. Any county, city, or town shall be eligible to apply for more than one enterprise zone designation; however, each county, city, and town shall be limited to a total of three enterprise zones. Counties with a population density of 150 or fewer persons per square mile at the most recent decennial census shall be limited to a total of two enterprise zones, one of which may contain two zone areas, each consisting of at least one square mile, which are non-contiguous. Such additional areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations established by this chapter, but shall serve as extensions of the existing zones. Any such area shall consist of contiguous United States census tracts or block groups or any part thereof in accordance with the most current United States Census or with the most current data from the Center for Public Service or the local planning district commission. Any such area seeking designation as an enterprise zone shall also meet at least one of the following criteria: (i) have twenty-five percent or more of the population with incomes below eighty percent of the median income of the~~

jurisdiction, (ii) have an unemployment rate 1.5 times the state average, or (iii) have a demonstrated floor area vacancy rate of industrial and/or commercial properties of twenty percent or more.

§ [59.1-279](#). Eligibility.

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if:

1. It ~~(i) begins the operation of a trade or business within an enterprise zone~~ *establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer, and* ~~(ii) during the taxable year has at least fifty percent of the gross receipts of such business firm attributable to the active conduct of such trade or business within the enterprise zone, and~~ ~~(iii) forty percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone meet the criteria set forth in subdivision B (i) or B (ii) of § [59.1-274](#) prior to employment, or either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone.~~

2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an enterprise zone, *and* ~~(ii) meets the requirements of subdivision 1 (ii) of this subsection, and~~ ~~(iii) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least ten percent over the lower of the preceding two year's years' employment with no less than forty percent of such increase being employees meeting the 7 criteria of subdivision B (i) or B (ii) of § [59.1-274](#) prior to employment who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.-~~

3. *It (i) is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments within the enterprise zone by at least ten percent over the lower of the preceding two years' employment of the business firm prior to relocation with no less than forty percent of such increase being employees who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone. Current employees of the business firm that are*

*transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.*

4. For the purposes of this section, the term "full-time employee" shall ~~mean~~ *means* (i) an individual employed by a business firm and who works the normal number of hours a week as required by the firm or (ii) two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. *For the purposes of this section, the term "jurisdiction" means the county, city or town which made the application under § [59.1-274](#) to have the enterprise zone. In the case of a joint application, jurisdiction means all parties making such application.*

B. ~~After designation as an enterprise zone~~ *a qualified business firm pursuant to this section, each qualified business firm in such an enterprise zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in this chapter § [59.1-280](#) or § [59.1-282](#). Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm ~~meets~~ *met* the definition of a "qualified business firm" and continues to meet the requirements for eligibility as a qualified business firm in effect at the time of its designation. A copy of the statement submitted by each business firm to the Department shall be forwarded to the governing body of the county, city or town in which the enterprise zone is located *zone administrator.**

C. The form referred to in subsection B of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm for the purposes of this section.

§ [59.1-280](#). State business income tax credit.

A. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credit provided herein for a qualified business firm against any tax due under Article 10 (§ [58.1-400](#) et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, other than a foreign fire or casualty insurance company, national bank, mutual savings bank, savings and loan association, partnership or sole proprietorship, in an amount equaling eighty percent of the tax due to the

Commonwealth for the first tax year and sixty percent of the tax due the Commonwealth for the second tax year through the tenth tax year. *However, if the qualified business firm makes qualified zone investments (as defined in subsection K of § [59.1-280.1](#)) in excess of \$25 million and such qualified zone investments result in the creation of at least 100 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under this subsection shall be determined by agreement between the Department and the qualified business firm, provided such percentage amounts shall not exceed the percentages provided for other qualified business firms as set forth in the preceding sentence.* Any tax credit not usable may not be applied to future tax years. *The total amount of tax credits granted to qualified business firms (other than firms that are granted a tax credit under subsection J of § [59.1-280.1](#)) under this section and to qualified zone residents under subsection B of § [59.1-280.1](#), for each fiscal year, shall not exceed five million dollars. However, tax credits granted under this section to business firms designated as qualified business firms prior to July 1, 1995, shall not be subject to inclusion in such five-million-dollar limitation.*

~~B. In addition to the provisions of subsection A of this section, the Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credit provided herein for qualified business firms against any tax due under Article 10 (§ [58.1-400](#) et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, national bank, mutual savings bank, savings and loan association, partnership or sole proprietorship, in an amount equaling: eighty percent of the unemployment tax due to the Commonwealth for the first tax year on employees employed at establishments within an enterprise zone and sixty percent of such unemployment tax due to the Commonwealth for the second tax year through the tenth tax year. However, the sum of the tax credits which any qualified business firm may claim pursuant to this section shall not exceed 100 percent of the firm's income, franchise, gross receipts or shares tax liability. Any tax credit under this subsection which is not usable may be applied to future tax years but only within the ten year period established by the provisions of this section.~~

~~C. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively. Any qualified~~

business firm having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ [58.1-302](#) through [58.1-420](#). Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. § [59.1-280.1](#). *Enterprise zone real property investment tax credit.*

A. *For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ [58.1-320](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#)), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1, as set forth in this section.*

B. *For any qualified zone resident, a credit shall be allowed pursuant to this section in an amount equaling thirty percent of the qualified zone improvements. However, in no event shall the cumulative credit allowed to a qualified zone resident pursuant to this section exceed \$125,000 in any five-year period. The total amount of tax credits granted to qualified zone residents under this subsection and to qualified business firms under § [59.1-280](#), for each fiscal year, shall not exceed five million dollars.*

C. *"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, or (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.*

D. *"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone.*

E. *"Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical,*

*or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.*

*1. Except as provided in subsection F of this section, qualified zone improvements shall not include the cost of acquiring any real property or building.*

*2. Qualified zone improvements shall not include: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the cost of any well or septic or sewer system.*

*3. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).*

*F. For purposes of this section, the cost of any newly constructed depreciable non-residential real property shall be considered to be a qualified zone improvement eligible for the credit if the total amount of such expenditures is at least \$250,000 with respect to a single facility. For purposes of this subsection, land, land improvements, paving, grading, driveways, and interest shall not be considered to be qualified zone improvements.*

*G. The Department shall certify the nature and amount of qualified zone improvements and investments eligible for credit in any taxable year. Only improvements and investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department.*

*H. The amount of credit allowed pursuant to subsection B of this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to subsection B of this section is refundable; however, a taxpayer shall not be eligible to*

receive more than \$125,000 of tax credits under subsection B of this section within a five-year period.

I. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" as used in this section means the partnership, limited liability company or S corporation. Credits granted to a partnership, limited liability company or S corporation shall be passed through to the partners, members or shareholders, respectively.

J. In the event that a qualified zone resident (i) makes qualified zone investments in excess of \$100 million and (ii) such qualified zone investments result in the creation of at least 200 permanent full-time positions, then such qualified zone resident shall be eligible for a credit in an amount of up to five percent of such qualified zone investments in lieu of the credit provided by subsection B of this section. The percentage amount of the investment tax credit granted to a qualified zone resident shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amount shall not exceed five percent. The total amount of tax credits granted to qualified zone residents under subsection J, and to qualified business firms under § [59.1-280](#) for firms granted a tax credit under subsection J of this section, for each fiscal year shall not exceed three million dollars. The percentage amounts of the business income tax credit provided in § [59.1-280](#) which may be granted to a qualified business firm that is eligible for an investment tax credit under this subsection shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amounts shall not exceed the percentages provided in § [59.1-280](#). The investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

K. "Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquir-

*ing it, determined in whole or part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).*

*L. The Tax Commissioner shall have the authority to issue regulations relating to the computation and carryover of the credit provided under this section.*

*M. In the first taxable year only, the credit provided in this section shall be prorated equally against the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such taxpayer is required to make quarterly payments.*

*§ [59.1-280.2](#). Policies and procedures for reservation and allocation of tax credits.*

*A. Qualified business firms and qualified zone residents shall be eligible to receive any tax credit provided under § [59.1-280](#) or § [59.1-280.1](#) in any year if, and to the extent, they reserve the tax credit through the Department.*

*B. In order to ensure that the limited amounts of tax credits available under §§ [59.1-280](#) and [59.1-280.1](#) in any year are not oversubscribed and are allocated in an orderly and equitable manner, the Board of Housing and Community Development shall establish policies and procedures for the reservation of tax credits by qualified business firms and qualified zone residents. Such policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for allocating available amount of tax credits among eligible applicants; (iii) for carrying forward eligibility for tax credits to subsequent periods if an applicant does not obtain a reservation of the tax credit or any portion thereof for which he is eligible in any year as the result of the oversubscription of tax credits; (iv) priorities for allocating reservations to applicants whose eligibility for reservations of tax credits was carried forward from a preceding year but who did not receive a credit to which they were otherwise eligible; and (v) for the issuance of reservations to eligible applicants who did not initially receive a reservation in any year, if the Department determines that tax credit reservations were issued to other applicants who did not use, or were determined to be wholly or partially ineligible for, a reserved tax credit.*

*C. The Department shall apply such policies and procedures in approving applications for reservations of such tax credits to qualified business firms and qualified zone residents.*

*D. Actions of the Department relating to the approval or denial of applications for reservations for tax credits under § [59.1-280](#) or § [59.1-280.1](#) shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 9-6.14:4.1.*

*§ [59.1-282](#). State sales tax exemptions.*

The Department shall certify annually to the Tax Commissioner of Taxation that any qualified business firm is exempt from the payment of taxes for all items purchased for the conduct of its business located within the enterprise zone, as required under Chapter 6

(§ [58.1-600](#) et seq.) of Title 58.1. Such exemption shall extend for a period not to exceed five years. *No business firm designated as a qualified business firm on or after July 1, 1995, shall be entitled to such exemption.*

§ [59.1-282.1](#). *Grants for creating permanent full-time positions; eligibility.*

A. *As used in this section:*

*"Base year" means (i) the calendar year immediately preceding a business firm's first year of grant eligibility or (ii) at the option of the business firm, the next preceding calendar year. With respect to each three-year period of grant eligibility, a new base year shall be determined, and for the second and each subsequent three-year period of grant eligibility, the base year shall not precede the second year of grant eligibility in the preceding three-year period.*

*"First year of grant eligibility" means the first calendar year for which a business firm was both eligible and applied for a grant pursuant to this section.*

*"Grant year" means the calendar year for which a business firm applies for a grant pursuant to this section.*

*"Number of eligible positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number.*

*"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, or (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.*

*"Threshold number" means 110 percent of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for a grant under this section. For the second and any subsequent three-year period of grant eligibility, the threshold number means 120 percent of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer.*

B. *A business firm shall be eligible to receive enterprise zone incentive grants for the three calendar years commencing with the first year of grant eligibility. Following the*

*expiration of any three-year period of grant eligibility a business firm shall be eligible for grants as provided in this section, provided that the first year of grant eligibility shall be the first calendar year during which the business firm was both eligible and applied for a grant pursuant to this section following the expiration of the preceding three-year eligibility period.*

*C. The amount of the grant for which a business firm is eligible in any grant year shall be equal to (i) \$1,000 multiplied by the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone. The number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone shall be determined for any grant year by multiplying the number of eligible positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions by the business firm from January 1 of the applicable base year through December 31 of the grant year whose permanent place of residence is within the enterprise zone, and the denominator of which shall be the number of employees hired for permanent full-time positions by the business firm during such period. The number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, determined as provided in the preceding sentence, from the number of eligible positions. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than twelve full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is twelve. In no event shall any business firm be eligible for a grant pursuant to this section in excess of \$100,000 for any grant year.*

*D. Grant applications shall be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall include evidence of the number of permanent full-time employees, their place of residence, and other relevant information as the local zone administrator and the Department may reasonably require.*

*E. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided in § [59.1-282.2](#) regarding carry-forward of unsatisfied grant request amounts.*

*F. The local zone administrator shall review and forward applications for grants to the Department by April 30 in accordance with regulations promulgated by the Board of Housing and Community Development.*

*G. Any business firm receiving an enterprise zone incentive grant under this section shall not be eligible for a major business facility job tax credit pursuant to § [58.1-439](#). § [59.1-282.2](#). Enterprise Zone Grant Fund; grant allocations.*

*A. There is hereby established a special fund in the state treasury to be known as the Enterprise Zone Grant Fund, which shall be administered by the Department. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of enterprise zone incentive grants to business firms pursuant to this chapter.*

*B. Upon receiving applications for grants from local zone administrators, the Department shall determine the amount of the grant to be allocated to each eligible business firm. The Department shall allocate moneys in the following order of priority: (i) first, to unpaid grant amounts carried forward from prior years because business firms did not receive the full amount of any grant to which they were eligible in a prior year; and (ii) then to other eligible applicants. If the moneys in the Fund are less than the amount of grants to which applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned among eligible applicants in such class pro rata, based upon the amount of the grant to which an applicant is eligible and the amount of money in the Fund available for allocation to such class.*

*C. If a business firm is allocated less than the full amount of a grant to which it is eligible in any year, the firm shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which the firm was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.*

*D. The Department shall determine the amount of the grants to be allocated to eligible applicants by June 30. The Department shall then certify to the Comptroller the amount of grant a business firm, or its assignee as provided in § [59.1-282.3](#), shall receive. Payments shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.*

*E. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) pursuant to subdivision B 4 of § 9-6.14:4.1.*

*§ [59.1-282.3](#). Assignment of enterprise zone incentive grants.*

*A business firm may assign all or any portion of any enterprise zone incentive grant to which it is eligible to the owner of any real property within an enterprise zone occupied by the business firm as tenant or to a financial institution regularly engaged in the business of lending money which has made a loan to the business firm for the purpose of expanding, constructing or rehabilitating a nonresidential building or facility for the conduct of a trade or business by the business firm within an enterprise zone, or both, as they may agree. A business firm assigning its interest in an enterprise zone incentive grant shall notify the Department. Following receipt of such notification, the Department may request the Comptroller to issue warrants in the name of the firm's assignee for grant payments that the business firm would have received.*

§ [59.1-283](#). Local incentives.

A. In making an application for designation as an enterprise zone, the applying locality or localities may propose local tax incentives, including, but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; ~~and~~ (iii) reduction of the business, professional, and occupational license tax; and (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § [58.1-3221](#). The extent and duration of such incentive proposals shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, such application may also contain proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances; and (iv) other public incentives proposed in the locality's application, which shall be binding upon the locality upon designation of the enterprise zone.

*B. A locality may establish eligibility criteria for local incentives for business firms that are the same as, or more stringent than, the criteria for eligibility for grants or other benefits provided by this chapter.*

§ [59.1-284](#). Review and termination of enterprise zone.

A. Upon designation of an area as an enterprise zone, the proposals for regulatory flexibility, tax incentives and other public incentives specified in this chapter shall be binding upon the local governing body to the extent and for the period of time specified in the application for zone designation. If the local governing body is unable or unwilling to provide the regulatory flexibility, tax incentives or other public incentives as proposed in the application for zone designation, the enterprise zone shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the state tax incentives provided by this chapter even though the zone designation has terminated. No business firm may become a qualified business firm after the date of zone termination. The governing body may amend its application with the approval of the Department,

provided the governing body proposes an incentive equal to or superior to the unamended application.

*B. The Department shall periodically review the effectiveness of state and local incentives in increasing investment and employment in each enterprise zone, and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Finance Committee, and the House Committee on Labor and Commerce. If no business firms in an enterprise zone have qualified for benefits provided pursuant to this chapter within a five-year period, the Department shall terminate that enterprise zone designation.*

§ [59.1-284.01](#). *Expiration of chapter.*

*The provisions of this chapter shall expire on July 1, 2005, unless extended by an act of the General Assembly.*

2. That the second enactment of Chapter 301 of the 1992 Acts of Assembly is amended and reenacted as follows:

2. That the provisions of this act shall apply to qualified business firms which begin operations within an enterprise zone on or after July 1, 1992, *or which are first designated as qualified business firms on or after July 1, 1995.*

3. That the Board of Housing and Community Development shall establish the policies and procedures required pursuant to subsection B of § [59.1-280.2](#) on or before July 1, 1995, which shall be the effective date of such policies and procedures. The policies and procedures, which are necessitated by an emergency situation, shall be deemed to be emergency regulations as set forth in subdivision C 5 of § 9-6.14:4.1.

## **Chapter 61 Property conveyance in Pocahontas State Park.**

An Act authorizing the Department of Conservation and Recreation to convey certain property at Pocahontas State Park in Chesterfield County, and to accept certain property in exchange.

[\[S 737\]](#)

Approved March 7, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Dale Memorial Park, its successors and assigns, upon*

*terms as the Department and the National Park Service, which originally conveyed the land to the Department, deem proper, with the approval of the National Park Service, the Governor, and the Attorney General, a parcel of real property of approximately twenty-six acres located in the Pocahontas State Park in Chesterfield County, south of Newbys Bridge Road and more particularly described as Parcel "A" on the survey prepared by Frank F. Potts, dated July 26, 1994, and revised January 10, 1995. The Department shall retain timber rights on such property.*

*In consideration for such conveyance, the Department is authorized to accept, on behalf of the Commonwealth, a conveyance from Dale Memorial Park of approximately 45.07 acres of real property between Bundle Road and Woodpecker Road in the Matoaca District of Chesterfield County, adjacent to Pocahontas State Park, and more particularly described as Parcel "B" in the survey prepared by Frank F. Potts, dated July 28, 1994, revised August 5, 1994, with other considerations as deemed necessary by the Department and the National Park Service, as required by the federal Land and Water Conservation Fund Grant requirements and by the original deed requirements when Parcel "A" was conveyed to the Department from the federal government.*

*§ 2. As additional consideration, Dale Memorial Park will convey a perpetual access easement across its entrance road to be used as a bicycle and foot trail crossing. The easement shall be ten feet wide and shall be located at a mutually agreed-upon site between 300 and 600 feet south of the Dale Memorial Park entrance gate on Newbys Bridge Road.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 64 City of Fairfax Economic Development Authority.**

An Act to amend and reenact § 11, as amended, of Chapter 643 of the Acts of Assembly of 1964, which chapter provided a development authority for certain counties and cities, relating to issuance of bonds by the authority.

[\[S 742\]](#)

Approved March 7, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 11, as amended, of Chapter 643 of the Acts of Assembly of 1964 is amended and reenacted as follows:

§ 11. The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the Authority shall be payable solely from the revenues and receipts derived from the leasing or sale by the Authority of its facilities or any part thereof and the Authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (a) from its revenues and receipts generally; (b) exclusively from the revenues and receipts of a particular "facility"; or (c) exclusively from the revenues and receipts of certain designated facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility. The Authority shall, in addition, have all the powers to issue bonds as are conferred upon industrial development authorities created pursuant to Chapter 33 of Title 15.1 of the Code of Virginia, as amended or hereafter amended, except that the *City of Fairfax Economic Development Authority and the Fairfax County Economic Development Authority* shall issue bonds for the construction, financing or refinancing of a facility or enterprise which is to be used principally for retail sales only when the facility or enterprise is located in a conservation area, redevelopment district or rehabilitation district designated by the governing body of the *city or county*.

## **Chapter 148 Virginia byways; portion of Route 72.**

An Act to designate a portion of Virginia Route 72 as a Virginia byway.

[\[H 2073\]](#)

Approved March 9, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Virginia Route 72 between Coeburn and Dungannon shall be considered a Virginia byway.*

## **Chapter 159 Completion of city council terms in City of Franklin.**

An Act to provide for the completion of certain terms of office in the City of Franklin.

[\[S 1091\]](#)

Approved March 10, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Notwithstanding the provisions of § 15.1-1054 of the Code of Virginia, members of the Franklin City Council who were elected from Wards 3, 5 and 6 in the May 1994 election shall complete their terms of office in accordance with the provisions of subsection B of § [24.2-312](#).*

## **Chapter 147 Daniel Boone Heritage Trail & Trail of Lonesome Pine.**

An Act to amend Chapter 84 of the Acts of Assembly of 1993 by adding a section numbered 2, relating to the Trail of the Lonesome Pine and the Daniel Boone Heritage Trail.

[\[H 2070\]](#)

Approved March 9, 1995

Be it enacted by the General Assembly of Virginia:

1. That Chapter 84 of the Acts of Assembly of 1993 is amended by adding a section numbered 2 as follows:

*§ 2. Notwithstanding § 1 of this act, those portions of highway that comprise the Trail of the Lonesome Pine and the Daniel Boone Heritage Trail as designated in § 1 of this act, that traverse or are adjacent to real property zoned commercial or industrial under authority of state law or traverse or are adjacent to real property defined by the Commonwealth Transportation Board to be unzoned commercial areas or unzoned industrial areas as determined from actual land use, shall not be Virginia byways. Property owners may use and develop their real property within such commercial and industrial areas for the same commercial and industrial uses as prior to the designation as parts of the trails unless the local governmental authority has changed the zoning as to such uses, or does not control land use by zoning and the land use is discontinued which created the unzoned commercial and industrial areas as defined by the Commonwealth Transportation*

*Board. Local governmental bodies shall encourage the use of such commercial and industrial areas in the manner that will help to stimulate and encourage tourism in the region and will promote the economic well-being of the region.*

## **Chapter 183 John F. 'Jack' Herrity Parkway in Fairfax County.**

An Act to designate the Fairfax County Parkway in Fairfax County the "John F. (Jack) Herrity Parkway."

[\[S 812\]](#)

Approved March 14, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Fairfax County Parkway in Fairfax County from Virginia Route 7 to U.S. Route 1 is hereby designated the "John F. (Jack) Herrity Parkway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route.*

## **Chapter 291 Reimbursement for emergency law-enforcement expenses.**

An Act to authorize any city having a population between 100,000 and 110,000 to obtain reimbursement for certain emergency law-enforcement expenses.

[\[H 1486\]](#)

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the governing body of any city having a population between 100,000 and 110,000 may provide by ordinance that any person who has negligently failed to provide adequate security or crowd control at a sporting event, restaurant, night club or other business or commercial activity that draws large crowds of people may be liable in a separate civil action for the cost associated with any emergency response by the law-enforcement agency or emergency medical services personnel of such city caused by the sponsor, owner or tenant of any sporting event, restaurant, night club or other business or commercial establishment who negligently failed to provide adequate security or crowd control. Such person shall be liable to the city in an amount not to exceed \$1,000.*

## **Chapter 387 Norfolk declaration of Pretty Lake as crab sanctuary.**

An Act to authorize the City of Norfolk to declare Pretty Lake a sanctuary for crabs and impose certain restrictions on the body of water.

[\[H 2077\]](#)

Approved March 18, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Notwithstanding any contrary provision of law, general or special, the governing body of the City of Norfolk, by ordinance, may declare the body of water known as Pretty Lake, located within the city's boundaries, a sanctuary for crabs and bar all incompatible activities therefrom, including commercial crabbing. The governing body in such ordinance may also designate navigational channels on said body of water. The channels so designated, in the discretion of the governing body, may be marked and, if marked, their use enforced by the city.*

## **Chapter 406 Accreditation standards; flexibility.**

An Act to provide for flexible implementation alternatives to the Standards of Accreditation for the several school divisions.

[\[H 2601\]](#)

Approved March 18, 1995

Whereas, Standard 3 of the Standards of Quality, § [22.1-253.13:3](#), requires compliance with the Standards of Accreditation; and

Whereas, the Standards of Accreditation, known as Standards and Regulations for Public Schools in Virginia, provide ample flexibility for the establishment of alternative and innovative programs; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Flexibility within the Standards of Accreditation for the several school divisions.*

*The Board of Education shall identify those provisions of the Standards of Accreditation providing flexible implementation alternatives to the several school divisions of the Commonwealth and shall establish consistent criteria for granting applications for such flexibility. The Board shall inform the House Committee on Appropriations and the Senate Committee on Finance of its findings by November 1, 1995.*

## **Chapter 308 Advisory referendum; Buckingham County.**

An Act to provide for an advisory referendum in Buckingham County on the question of adopting a comprehensive county-wide zoning ordinance.

[\[H 1908\]](#)

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The officials conducting the November 7, 1995, election in Buckingham County shall conduct an advisory referendum on that date in the County to poll the voters on the question of whether they favor the adoption by the Board of Supervisors of a comprehensive county-wide zoning ordinance for the County.*

*The question on the ballot shall be:*

*"Shall the Buckingham County Board of Supervisors adopt a comprehensive county-wide zoning ordinance for the County?"*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the County at least once in the period forty-five to sixty days before the election.*

*The results of the referendum shall be advisory only.*

## **Chapter 320 Land exchange in Buckingham County.**

An Act authorizing the Department of Conservation and Recreation to convey certain property at James River State Park in Buckingham County and to accept certain property in exchange.

[\[H 2023\]](#)

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Westvaco Corporation, its successors and*

*assigns, upon terms as the Department deems proper, with the approval of the Governor and the Attorney General, parcels of real property located in James River State Park in Buckingham County.*

*§ 2. In consideration for such conveyance, the Department is authorized to accept, on behalf of the Commonwealth, a conveyance from Westvaco Corporation of real property adjacent to James River State Park.*

*§ 3. The exchange of real property shall be an approximate acre for acre; however, because this exchange is undertaken with specific parcels of land with specific and unchangeable boundaries, any difference in fair market value will be balanced with a cash payment in the amount of that difference to the party receiving the lesser valued property.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

## **Chapter 425 Virginia historical documents; teaching in public schools.**

An Act to repeal the second enactment of Chapter 693 of the 1994 Acts of Assembly, relating to the study of certain documents of Virginia history.

[\[S 1102\]](#)

Approved March 20, 1995

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 693 of the 1994 Acts of Assembly is repealed.

## **Chapter 575 Purchase and dispensing of controlled substances by WAMAC.**

An Act to provide for the purchase and dispensing of controlled substances by the Williamsburg Area Medical Assistance Corporation.

[\[H 2246\]](#)

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Williamsburg Area Medical Assistance Corporation, a private nonprofit organization pursuant to § 501 (c) (3) of the U.S. Internal Revenue Code, may purchase*

*controlled substances pursuant to the regulations of the Department of General Services governing such purchases, upon the approval of the contractor, and dispense controlled substances consistent with the requirements of Chapters 33 (§ [54.1-3300](#) et seq.) and 34 (§ [54.1-3400](#) et seq.) of Title 54.1 of the Code of Virginia.*

*§ 2. The Williamsburg Area Medical Assistance Corporation shall be authorized to accept the volunteer services of any licensed physician, licensed pharmacist, registered or licensed practical nurse, or other health care provider, and to apply for, accept, or expend gifts or donations from public or private sources to enable the organization to execute its objectives.*

## **Chapter 587 Coal and gas road improvement tax.**

An Act to authorize certain expenditures of coal and gas road improvement funds by certain counties.

[\[H 2576\]](#)

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *The governing body of any county having a population of at least 31,000 but no more than 31,600 may enter into an agreement with an adjoining county of an adjacent state to improve Route 83-8, a highway that intersects with Virginia Route 83 and Route 616 in any such Virginia county and may use coal and gas road improvements funds for such improvement.*

## **Chapter 480 Virginia byways.**

An Act to designate certain highways as Virginia byways.

[\[H 2564\]](#)

Approved March 20, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Virginia Route 627 in Dinwiddie County from Virginia Route 613 to U. S. Route 460; Virginia Route 708 in Dinwiddie and Amelia Counties from U. S. Route 460 to Virginia Route 153; Virginia Route 153 in Amelia County from Virginia Route 708 to Virginia Route 38; Virginia*

*Route 38 in Amelia County from Virginia Route 153 to U. S. Route 360; Virginia Route 671 in Amelia County from U. S. Route 360 to Virginia Route 642; Virginia Route 642 in Amelia County from Virginia Route 671 to Virginia Route 617; Virginia Route 617 in Amelia County from Virginia Route 642 to Virginia Route 616; Virginia Route 616 in Amelia County from Virginia Route 617 to Virginia Route 617; Virginia Route 617 in Amelia County from Virginia Route 616 to Virginia Route 600 south of Sailor's Creek State Park; Virginia Route 618 in Amelia and Prince Edward Counties from Virginia Route 617 to Virginia Route 619; Virginia Route 619 in Prince Edward County from Virginia Route 618 to Virginia Route 600; Virginia Route 600 in Prince Edward County from Virginia Route 619 through Rice to U. S. Route 460; Virginia Route 45 in Prince Edward and Cumberland Counties from U. S. Route 460 to Virginia Route 637; Virginia Route 637 in Cumberland County from Virginia Route 45 to Virginia Route 600; Virginia Route 600 in Cumberland County from Virginia Route 637 to Virginia Route 653; Virginia Route 653 in Cumberland County from Virginia Route 600 to Virginia Route 638; Virginia Route 638 in Cumberland County from Virginia Route 653 to Virginia Route 45; Virginia Route 45 in Cumberland County from Virginia Route 638 to Virginia Route 636; Virginia Route 636 in Cumberland and Buckingham Counties from Virginia Route 45 to Virginia Route 24; and Virginia Route 24 in Buckingham and Appomattox Counties from Virginia Route 636 to U. S. Route 460 Bypass in the Town of Appomattox, south of the Appomattox Battlefield Park, shall be considered Virginia byways. However, designation by this act of portions of federal-aid primary highways that traverse or are adjacent to real property zoned commercial or industrial under authority of state law, or traverse or are adjacent to real property defined by the Commonwealth Transportation Board to be unzoned commercial areas or unzoned industrial areas as determined by actual land use, shall not be Virginia byways. Property owners may use and develop their real property within such commercial and industrial areas for the same commercial and industrial uses as prior to the designation unless the local governmental authority has changed the zoning as to such uses, or does not control land use by zoning and the land use is discontinued which created the unzoned commercial and industrial areas as defined by the Commonwealth Transportation Board. Local governmental bodies may encourage the use of such commercial and industrial areas in the manner that will help to stimulate and encourage tourism in the region and will promote the economic well-being of the region.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 508 Uniforms in public schools.

An Act to amend the Code of Virginia by adding in Article 3 of Chapter 14 of Title 22.1 a section numbered [22.1-276.2](#) and to repeal Chapter 671 of the 1991 Acts of Assembly and Chapter 211 of the 1992 Acts of Assembly, relating to the wearing of uniforms in public schools.

[\[S 1054\]](#)

Approved March 23, 1995

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 14 of Title 22.1 a section numbered [22.1-276.2](#) as follows:

§ [22.1-276.2](#). *Uniforms in public schools; Board of Education guidelines.*

*A. The Board of Education shall develop model guidelines for local school boards to utilize when establishing requirements for pupils to wear uniforms. In developing these guidelines, the Board shall consider (i) ways to promote parental and community involvement, (ii) relevant state and federal constitutional concerns, such as freedom of religion and freedom of speech, and (iii) the ability of pupils to purchase such clothing.*

*B. Upon approval by the Board of the model guidelines, local school boards may establish requirements, consistent with the Board's guidelines, for the students enrolled in any of their schools to wear uniforms while in attendance at such school during the regular school day. No state funds may be used for the purchase of school uniforms.*

2. That Chapter 671 of the 1991 Acts of Assembly and Chapter 211 of the 1992 Acts of Assembly are repealed.

## Chapter 596 Regional cooperation.

An Act to encourage regional cooperation by three or more political subdivisions of the Commonwealth.

[\[H 1731\]](#)

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *That an appropriate additional point or points shall be credited to any application or request for state funds, including but not limited to, grants, loans, or subsidies of any kind, for projects related to economic, housing, community, or infrastructure development, which application documents a benefit to three or more political subdivisions of the Commonwealth by such project.*

## **Chapter 639 Health services operation in Richmond City.**

An Act to provide for the operation of the local health department by certain cities and exemptions to the licensure requirements of restaurants.

[\[H 2362\]](#)

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. § 1. *Option of certain cities to operate local health departments under contract with the State Board of Health.*

*Notwithstanding any other provision of law to the contrary, general or special, the governing body of any city having a population between 200,000 and 250,000 may enter into a contract with the State Board of Health to provide local health services in that city. The governing body may provide such health services either through a separate local department or through another organizational arrangement. The governing body shall not eliminate any service required by law or reduce the level of service below that required by law. In addition, the local governing body shall not eliminate or reduce the level of any service currently delivered in connection with the Virginia Medicaid Program.*

*Any contract executed between the city and the Board shall set forth the rights and responsibilities of the local governing body for the delivery of health services and shall require that the governing body, with the concurrence of the State Health Commissioner, appoint the local health director of health services in accordance with local procedures, who shall be employed full-time as an employee of the governing body and shall be responsible for directing all state mandated public health programs. All employees of the local health department operated by the governing body of the city shall be employees of the governing body.*

*The local governing body shall maintain and submit such financial and statistical records as may be required by the State Board of Health.*

*The city shall be the sole owner of all equipment and supplies, including all equipment and supplies used by the local health department at the time of execution of the contract, which were or are purchased for providing public health services regardless of the source of the funds for such purchases.*

*The local governing body shall operate the local health department, pursuant to the terms of the contract, within local appropriations and any state funds which may be made available to it, pursuant to the appropriations act. State funds for the operation of health services and facilities shall continue to be allocated to any city which has elected to provide health services by contract pursuant to this section as if such services were provided in a city without such a contract.*

*Notwithstanding any other provision of law to the contrary, any person who is transferred from state to local employment in accordance with a contractor authorized by this section, and who is a member of the Virginia Retirement System at the time of the transfer, shall continue to be a member of the Virginia Retirement System during the period of local employment. Any such transferred employee shall remain a member of the Virginia Retirement System under the same terms and conditions as would apply if the transferred employee had remained a state employee, so long as the employee is employed with a local health department pursuant to a contract under this section or returns to state employment. For purposes of any employment of the transferred employee as a state employee after local employment, the membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System.*

*For any employee who is transferred to local employment in accordance with a contract authorized by this section, that employee's membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System. The local governing body shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 of Title 51.1 of the Code of Virginia, as amended.*

*The power to contract conferred by this section shall not be deemed to confer any additional authority for any such city providing local health services to impose fees for local health services.*

*§ 2. Exemptions to licensure requirements of restaurants.*

*Notwithstanding the provisions of Chapters 3 (§ [35.1-18](#) et seq.) and 4 (§ [35.1-25](#) et seq.) of Title 35.1, the requirements for the licensure of restaurants shall not apply to community centers when holding occasional dinners and bazaars of one or two days'*

*duration, at which food prepared in the homes of members or in the kitchen of the community center is offered for sale to the public.*

## **Chapter 640 Assistance for a county sheriff disabled in line of duty.**

An Act to provide disabled county sheriffs with assistance from the Commonwealth; appropriation.

[\[H 2383\]](#)

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That the Commonwealth shall pay the cost of wheelchairs, including motorized wheelchairs, related appliances and equipment, and reasonable costs to equip or retrofit one motor vehicle for handicapped accessibility for any former county sheriff who, on or before January 1, 1964, was disabled while in the line of duty as the result of the criminal misconduct of another for which such person was convicted of a felony.*

*§ 2. That the sum of \$16,000 is hereby appropriated from the general fund of the state treasury, to be paid by check issued by the State Treasurer on a warrant of the Comptroller for these purposes.*

*§ 3. That the provisions of this act shall expire on December 31, 1995.*

## **Chapter 650 Medical Savings Account Act.**

An Act to establish the Virginia Medical Savings Account Act.

[\[S 1035\]](#)

Approved March 25, 1995

Whereas, health care reform has been and will be among the most important issues before policy makers in the coming decade; and

Whereas, to be effective, health care reform must be focused on educating people to approach health care with the same cost-consciousness they should use to handle their other day-to-day living expenses and on motivating people to be responsible for managing their own needs; and

Whereas, in the coming year, the Congress of the United States will be discussing the concept of medical savings accounts--mechanisms for empowering people to manage the dollars available for their health care by paying directly for necessary services; and Whereas, Virginia should be on the cutting edge of health care reform with innovative and sensible concepts; now, therefore,

Be it enacted by the General Assembly of Virginia:

*THE VIRGINIA MEDICAL SAVINGS ACCOUNT ACT.*

1. *§ 1. The Virginia Medical Savings Account Plan established; plan to be established upon Congressional authorization; state agency actions required.*

*For the purpose of providing the Commonwealth's people with a future that includes affordable health care, there is hereby established the Virginia Medical Savings Account Plan. Upon the passage of federal legislation authorizing the components of the Plan, the state agencies named in this act shall take action to implement the Plan as follows:*

*1. The Department of Medical Assistance Services shall develop and implement a plan to utilize medical savings accounts for provision of primary and acute care to the working poor and individuals who are eligible to receive medical assistance services as defined in the federal legislation or in any regulations promulgated to implement such legislation.*

*Further, upon the effective date of this act, the Department shall develop a plan and apply for a waiver from the Health Care Finance Administration to implement a medical savings account demonstration project to provide health care services to the working poor and certain individuals eligible for medical assistance services.*

*2. The Bureau of Insurance within the State Corporation Commission shall provide the General Assembly and the Departments of Medical Assistance Services and Workers' Compensation a report on the available plans/policies for high-deductible, indemnity health insurance policies or other comparable insurance mechanisms for providing low-cost catastrophic care. The Bureau shall also, in developing this report, advise the Departments on inclusion of the essential health services used as the basis for certain managed-care commercial health insurance coverage.*

*3. The Department of Workers' Compensation shall develop and implement a plan to utilize medical savings accounts for provision of acute care to the employees who are eligible to receive services through workers' compensation insurance. The Department shall concentrate its focus on containing costs for employers while ensuring adequate care for injured or sick workers. The Department shall cooperate with the Department of Taxation in developing a system for voluntary employer contributions to medical savings accounts and reasonable tax deductions for these contributions.*

*4. The Department of Taxation shall, consistent with federal law and regulation, develop and present to the General Assembly a system for refundable tax credits which shall include a sliding scale for the working poor as defined in federal or state law and a system of tax credits, including innovative uses of such tax credits, for employers voluntarily contributing to employee medical savings accounts and health care providers who participate in providing care to medical savings account holders at a reduced price or without compensation.*

*§ 2. Components of the Virginia Medical Savings Account Plan.*

*Upon the passage of federal legislation authorizing the components of the Plan, the Departments of Medical Assistance Services, Workers' Compensation, and Taxation and the Bureau of Insurance shall develop the Virginia Medical Savings Account Plan. The Plan shall set forth the requirements for establishing medical savings accounts, which shall include, but not be limited to:*

*a. Definitions of eligible participants.*

*b. Criteria for accounts, including such matters as trustees, maximum amounts, contracts for managing debit cards, etc.*

*c. Use of direct debit cards and methods for ensuring their use solely for payment for necessary health care services.*

*d. Programs to educate recipients in handling health care services in a cost-effective manner while ensuring that necessary care is obtained.*

*e. Integration of existing coverage.*

*f. A system of refundable tax credits, which has been coordinated with the Virginia Department of Taxation.*

*g. A system for withholding the amounts (refundable tax credits) to be deposited to the medical savings accounts.*

*h. A system for calculating individual need for health care services in order to ensure that adequate sums are calculated for the care of individuals with greater need.*

*i. A system for providing a viable sliding scale for refundable tax credits for the working poor.*

*j. A system for allowing voluntary employer contributions to the medical savings accounts and tax deductions for such contributions.*

*k. A system for allowing tax credits for health care practitioners providing services to holders of medical savings accounts at reduced cost or without compensation.*

*l. A cafeteria menu of insurance plans to provide high-deductible, indemnity health insurance policies.*

*m. Any other specific provisions necessary to the efficient implementation of the Virginia Medical Savings Account Plan.*

*§ 3. Operation of medical savings accounts.*

*Upon the authorization in federal law to establish medical savings accounts and upon development and enactment of the Plan described in § 2 of this act, medical savings accounts may be established in the Commonwealth.*

*§ 4. Role of the Joint Commission on Health Care.*

*The Joint Commission on Health Care shall monitor the development of the Plan required in § 2 and make recommendations to the designated agencies on modifications of the Plan. Periodic reports shall be provided to the Commission by the designated agencies as the Commission may require.*

## **Chapter 666 Personnel administration; sick leave.**

An Act to preserve the accumulation of sick leave of classified state employees in effect on July 1, 1994.

[\[H 1959\]](#)

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Commonwealth's policy governing sick leave accumulation by classified state employees in effect on July 1, 1994, shall remain in effect until six months from the time the Governor notifies the Speaker of the House of Delegates and the President Pro Tempore of the Senate of a change in such policy.*

## **Chapter 795 Norfolk/Virginia Beach Toll Road.**

An Act to provide for the discontinuation of tolls collected on Virginia Route 44 (the Norfolk-Virginia Beach Toll Road).

[\[S 785\]](#)

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. *§ 1. Effective June 1, 1995, the Commonwealth Transportation Board shall (i) cease the collection of tolls for the use of Virginia Route 44 and (ii) initiate such necessary actions, not inconsistent with the terms of any applicable trust indenture, to repay any*

*and all bonds or other obligations issued in connection with the construction, improvement, operation, and maintenance of Virginia Route 44.*

*§ 2. Any surplus funds remaining in any account of the Norfolk-Virginia Beach Toll Road after the repayment of such bonds or other obligations shall be used exclusively for maintenance and improvements to that portion of the state highway system designated Virginia Route 44.*

# Uncodified Acts of Assembly - 1996

## Chapter 2 Election of governing body in certain towns.

An Act to provide for the election of the governing body in certain towns.

[\[H 481\]](#)

Approved February 23, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law to the contrary, when a town has been redistricted as a result of annexation and the redistricting occurred prior to the regularly scheduled May 7, 1996, general election for some or all the members of the town's governing body, the May 1996 general election shall be conducted from the newly established districts so long as the redistricting measure was adopted prior to February 1, 1996.*

*§ 2. Notwithstanding any other provision of law to the contrary, elections that would be held on May 7, 1996, for members of the governing body of any town which has been redistricted as a result of annexation, shall be delayed if the redistricting plan of such town is not precleared by the Attorney General of the United States pursuant to § 5 of the Voting Rights Act of 1965 on or before April 23, 1996, and shall be held at a later date as provided in this act, unless otherwise provided by order of a court of competent jurisdiction.*

*§ 3. In each such town, such rescheduled election shall be held on the first Tuesday (i) that is more than sixty days after the Attorney General issues a letter stating that he interposes no objection to the redistricting plan submitted by the town; (ii) that is not the scheduled date of a primary election; and (iii) that is not within the sixty days before or the thirty-five days after a primary or general election.*

*§ 4. Independent candidates for such rescheduled elections shall qualify in the manner provided by §§ [24.2-505](#), [24.2-506](#), and [24.2-507](#) of the Code of Virginia, and party nominees shall be nominated and certified at least thirty days before the new election date.*

*§ 5. All candidates shall file the statements required by §§ [24.2-501](#) and [24.2-502](#) of the Code at least thirty days before the new election date.*

*§ 6. Notwithstanding any provision of law to the contrary, the terms of the members of any governing body elected under the provisions of this act shall commence on the first day of the second month following the election and shall terminate on the day on which the terms would have expired had the general election been held on its regularly scheduled day.*

*§ 7. The terms of the members of any governing body affected by this act that would otherwise expire on June 30, 1996, shall be extended until the date that the terms of the members elected under this act commence, notwithstanding any provision of law to the contrary.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall expire on December 31, 1996.

## **Chapter 59 November council elections for Town of Bridgewater.**

An Act to require certain town mayors and council members to be elected at the time of the November general election.

[\[H 565\]](#)

Approved March 4, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Election of mayor and council for certain towns.*

*A. The qualified voters of each town of the Commonwealth whose 1990 population was more than 3,900 but less than 4,000 shall elect a mayor, if provided for by charter, and a council, which shall be the governing body thereof, for their terms provided for by charter. Notwithstanding the provisions of § [24.2-222](#) or any other provision of law, general or special, any election of mayor or council members of such a town shall take place on the Tuesday after the first Monday in November of an even-numbered year, and the persons so elected shall enter upon the duties of their offices on the January 1 succeeding their election and remain in office until their successors have qualified.*

*B. In any such town:*

*1. Any mayor or council member elected in 1992 for a four-year term, or in 1994 for a two-year term, shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 1996 and, notwithstanding*

*any charter provision to the contrary, shall take office on the January 1 following his election.*

*2. Any mayor or council member elected in 1994 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 1998 and, notwithstanding any charter provision to the contrary, shall take office on January 1 following his election.*

*C. Notwithstanding the provisions of § [24.2-503](#), candidates for town mayor or council subject to the provisions of this act shall file their written statements of financial interests and qualification pursuant to §§ [24.2-501](#) and [24.2-502](#) not later than 7:00 p.m. on the second Tuesday in June.*

*D. Any county voting precinct established pursuant to § [24.2-307](#) which includes residents of such a town shall be wholly contained within the boundaries of the town. No such voting precinct shall include both such a town or portion thereof and county territory located outside the boundaries of the town.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 719 Federal retirees missing deadline for filing.**

An Act to establish a second supplemental federal retiree settlement program.

[\[H 292\]](#)

Approved April 6, 1996

Whereas, during its special session in July 1994, the General Assembly passed legislation authorizing the Tax Commissioner to enter into settlement agreements with retired federal and military Virginia taxpayers affected by the *Harper v. Virginia Department of Taxation* case; and

Whereas, such legislation contained a November 1, 1994, deadline for the affected taxpayers to file certain forms and other supporting documentation, where necessary, with the Department of Taxation in order to participate in the settlement; and

Whereas, such legislation also contained a February 1, 1995, deadline for the affected taxpayers to deliver a settlement agreement accepting the final settlement offer to the Department of Taxation; and

Whereas, a large number of such taxpayers failed to provide the necessary supporting documentation, missed a deadline for filing, or mailed or otherwise sent the appropriate documentation which was not received by the Department of Taxation, thereby missing the opportunity to participate in the settlement; and

Whereas, during the 1995 Session, the General Assembly passed legislation (Chapters 185 and 203 of the 1995 Acts of Assembly) granting retired federal and military taxpayers who failed to provide the necessary supporting documentation or missed the deadline for filing a response or delivering a settlement agreement, due to circumstances beyond their control, a period of 60 days, which expired May 15, 1995, to participate in the settlement by providing the documentation, filing the response, or delivering the settlement agreement; and

Whereas, a large number of retired federal and military taxpayers again missed the opportunity to participate in the settlement by failing to provide the necessary supporting documentation, file a response, or deliver a settlement agreement by May 15, 1995; and

Whereas, the General Assembly wants as many of the affected taxpayers as possible to participate in the settlement; and

Whereas, it is the intent of the General Assembly that this act provide the final opportunity for affected taxpayers to submit any claim to the General Assembly for a tax refund pursuant to the settlement program or for any other relief related to the *Harper* case; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. The Tax Commissioner is hereby authorized to determine which retired federal and military taxpayers were denied participation in either the Federal Retiree Settlement Act (Enactment clause 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I) or the supplemental federal retiree settlement program (Chapters 185 and 203 of the 1995 Acts of Assembly); and is authorized to enter into settlement agreements with such taxpayers in an amount equal to the settlement amounts retirees will receive or have received under the Federal Retiree Settlement Act.*

*1. To be eligible to receive these payments, a taxpayer shall (i) have failed to fully or partially participate in either the original settlement program or the supplemental settlement program; (ii) have notified the Tax Department by June 10, 1996, that he or she is not currently participating or did not participate in the prior settlement programs; (iii) provide the Department with the information the Department deems to be necessary for purposes of determining the validity of and quantifying a taxpayer's claimed tax overpayment; and (iv) submit a properly executed settlement agreement, which releases the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income received during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer*

*is a party. To meet the notice requirement of clause (ii) above, the taxpayer's contact with the Department to put it on notice must be documented in the Department's records.*

*2. The payments shall be made over a four-year period in annual installments and shall be disbursed by the Tax Commissioner or his designees to the taxpayers participating in the settlement as follows:*

*a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act. Disbursements to these taxpayers shall be limited to an amount equal to the percentage of disputed refunds and shall not include any additional amounts.*

*b. Disbursements shall be made in up to four payments, the first of which shall be made on July 31, 1996, or as soon thereafter as practical with each of the remaining three disbursements to be made on each March 31 thereafter through 1999.*

*c. Payments under the settlement program created by this act shall be to taxpayers over the same payment schedule as if the taxpayers were participating in the Federal Retiree Settlement Act, except that the initial payment shall be equal to the first two payments that the participants would have received had they participated in the Federal Retiree Settlement Act.*

*d. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.*

*3. The Tax Commissioner is authorized to order payments to be made out of the state treasury as if the amount each affected taxpayer is entitled to receive pursuant to this act is a refund pursuant to § [58.1-309](#).*

*4. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.*

*5. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).*

*6. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by Chapter 5 of the 1994 Acts of Assembly, Special Session I, and nothing in this act shall be construed or interpreted to authorize any taxpayer to be entitled to the relief granted in the Harper litigation.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 845 Higher Educational Institutions Bond Act of 1996.**

An Act to authorize the issuance of bonds subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia in an amount not to exceed \$113,324,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds, together with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds and to provide for the sale of such bonds at public or private sale; to authorize the Treasury Board, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds; to authorize the issuance of refunding bonds, by and with the consent of the Governor; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that the interest income on such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapters 824 and 878 of the Acts of Assembly of 1994 and Chapter 191 of the Acts of Assembly of 1995.

[\[H 877\]](#)

Approved April 8, 1996

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public

Accounts, his opinion that the anticipated net revenues of each of the capital projects set forth below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 1996."*

*§ 2. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$113,324,000, plus amounts needed to fund issuance costs, reserve funds and other financing expenses. The proceeds of such bonds, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>tution</i>	<i>Number</i>	<i>Debt</i>	<i>Name</i>	<i>Project</i>	<i>Institution</i>
<i>Virginia</i>	<i>15400</i>	<i>\$ 1,142,000</i>	<i>Newcomb Hall</i>	<i>Expansion</i>	<i>University of Virginia</i>
<i>15473</i>	<i>2,000,000</i>	<i>Student Housing -</i>	<i>Clinch Valley College</i>	<i>Virginia Poly-</i>	<i>technic</i>
<i>Institute</i>	<i>14303</i>	<i>1,078,900</i>	<i>Major</i>	<i>Repairs</i>	
<i>Dorm/Dining</i>	<i>Virginia Polytechnic</i>	<i>Institute</i>			
<i>14815</i>	<i>7,484,300</i>	<i>Parking Auxiliary</i>	<i>Project</i>	<i>Virginia Polytechnic</i>	

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Institute	15524	15,075,000	Residence Hall
Virginia Polytechnic Institute		15525	
3,269,000 Dining Hall	Virginia Commonwealth University		
15160	4,348,300 MCV Visitors Deck	Virginia Commonwealth University	
	15523	11,587,000 Academic Parking Deck	George Mason University
17,500,000 Residence Hall V	George Mason University	15345	
2,000,000 Arlington Metro			
	Parking George Mason University	15533	
3,400,000 Housing Renovations	College of William and Mary		
14735	1,020,400 University Center	College of William and Mary	
	15541	750,000 Dormitory Renovation II	College of William and Mary
14736	2,039,000 Utility System	College of William and Mary	
	15745	5,000,000 Dormitory Repairs	James Madison University
	15361	2,393,100 Dining Facility	Renovation James Madison University
	15485		
6,221,000 Student Services	James Madison University		
15620	3,214,000 Parking Structure	James Madison University	
	15619	11,771,000 Residence Hall	Longwood College
	15502	8,460,000 New Dining Hall	Virginia State University
	15622	3,571,000 Jones Dining Hall	TOTAL
\$113,324,000			

*§ 3. The proceeds of the bonds, including any premium, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes, and the proceeds of any bond anticipation notes shall be deposited in a special capital outlay fund in the state treasury and shall be disbursed by the State Treasurer for paying all or any part of the cost of the acquisition, construction, renovation, enlargement, improvement and equipping of said capital projects in the amounts provided in § 2 hereof, plus issuance costs, reserve funds and other financing expenses. The proceeds of the bonds the issuance of which has been anticipated by bond anticipation notes shall be used to pay such bond anticipation notes. The Treasury Board shall be authorized to supplement the*

*special capital outlay fund in the state treasury from excess moneys in any debt service, sinking or comparable fund established in connection with previous issues of higher educational institutions bonds so long as such excess fund moneys are not otherwise restricted by law or by express contract with the holders of such prior bonds.*

*§ 4. The bonds shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and may be made redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. The bonds shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or the State Treasurer, when authorized by the Treasury Board. The principal of, premium, if any, and the interest on the bonds shall be payable in lawful money of the United States of America. The Treasury Board shall fix the denomination or denominations of the bonds and the place or places of payment of principal, premium, if any, and interest, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth.*

*The bonds may be in registered form or as may be required by federal law in effect on the date of issuance. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and the principal, premium, if any, and interest due thereon. Bonds issued in registered form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal of, premium, if any, and interest on the bonds.*

*The Treasury Board may sell the bonds in such manner, at public or private sale, and for such price as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. The bonds may be sold at par, at a premium or at a discount.*

*The bonds and the refunding bonds authorized hereby may be issued at one time or in part from time to time and may, in the discretion of the Treasury Board, be issued and sold at the same time with other general obligation bonds of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, either as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series ....., " or as a combination of both.*

*§ 5. The bonds shall be signed on behalf of the Commonwealth by the Governor, or shall bear his facsimile signature, and by the State Treasurer, or shall bear his facsimile signature, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds bear the facsimile signature of the State Treasurer, the bonds shall be signed by such administrative assistant as the State Treasurer shall determine, or by such registrar or paying agent as may be designated to sign such bonds by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds ceases to be such officer before the delivery of such bonds, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond are the proper officers to sign such bond although, at the date of such bond, such persons may not have been such officers.*

*§ 6. All expenses incurred under this act shall be paid from the proceeds of the bonds, bond anticipation notes, or refunding bonds from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine, including excess moneys in any debt service, sinking or comparable fund created in connection with prior issues of higher educational institutions bonds to the extent not otherwise restricted by law or by contract with the holders of such prior bonds.*

*§ 7. The Treasury Board is hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds. Such bond anticipation notes shall be dated, shall mature at such time or times not exceeding five years from their date or dates, and may be redeemable before their maturity or maturities at such price or prices, all as may be determined by the Treasury Board, by and with the consent of the Governor. Such bond anticipation notes shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board or the State Treasurer, when authorized by the Treasury Board, may determine. Such bond anticipation notes shall be executed in the manner provided in § 5 hereof for the execution of bonds.*

*The bond anticipation notes authorized hereby may be issued at one time or in part from time to time and may, in the discretion of the Treasury Board, be issued and sold at the same time with other bond anticipation notes of the Commonwealth authorized pursuant*

*to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, either as a separate issue or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series ....., " or as a combination of both.*

*§ 8. Pending the application of the proceeds of the bonds and any bond anticipation notes to the purpose for which they have been authorized, all or any part of such proceeds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such proceeds, and the interest thereon and any profit realized from such investments shall be credited to such proceeds, and any losses shall be deducted therefrom.*

*§ 9. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect a building fee or other comprehensive student fee and other rates, fees and charges for or in connection with the use, occupation and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge such rates, fees and charges remaining after payment of (a) the expenses of operating the project or system, as the case may be, and (b) the expenses related to all other activities funded by the building fee or other comprehensive student fee, if applicable, to the payment of the principal of, premium, if any, and interest on the portion of the bonds issued for such capital project. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 10. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on the bonds and any refunding bonds herein authorized. The proceeds of bonds, the issuance of which has been anticipated by bond anticipation notes, are hereby irrevocably pledged for the payment of principal of and interest on such bond anticipation notes. In addition, the Treasury Board may pledge the full faith and credit of the Commonwealth for the payment of principal of and interest on any bond anticipation notes. In the event the net revenues pledged hereby are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds, any refunding bonds or any bond anticipation notes herein authorized where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appro-*

*appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 11. The interest income on the bonds and any refunding bonds or bond anticipation notes issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The interest on the bonds and any refunding bonds or bond anticipation notes may be subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 12. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds of the Commonwealth, to be designated as provided in § 2 hereof to refund any or all of the bonds issued under this act. No refunding bonds shall be issued in a principal amount exceeding that necessary to amortize the principal of and premium, if any, and interest on the bonds to be refunded and pay all issuance costs and other financing expenses of the refunding bonds. Such refunding bonds may be issued whether or not the bonds to be refunded are then subject to redemption.*

*§ 13. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapters 824 and 878 of the Acts of Assembly of 1994 and Chapter 191 of the Acts of Assembly of 1995 are repealed; however, such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such acts.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 90 Scenic highway; Route 640.**

An Act to designate a portion of Virginia Route 640 as a scenic highway and Virginia byway.

[\[H 714\]](#)

Approved March 5, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Virginia Route 640*

*between the Town of Saint Paul to the junction of Virginia Route 770 and Virginia Route 640 shall be considered a scenic highway and Virginia byway.*

## **Chapter 117 Hunting in Hanover, Prince George and Surry Counties.**

An Act to amend and reenact Chapter 187 of the Acts of Assembly of 1954, as amended by Chapter 235 of the Acts of Assembly of 1993, and to repeal Chapter 56 of the Acts of Assembly of 1944, as amended, relating to hunting with a rifle in the Counties of Surry, Hanover and Prince George.

[\[S 56\]](#)

Approved March 7, 1996

Be it enacted by the General Assembly of Virginia:

1. That Chapter 187 of the Acts of Assembly of 1954, as amended by Chapter 235 of the Acts of Assembly of 1993, is amended and reenacted as follows:

§ 1. It shall be unlawful for any person to hunt deer in Prince George County with a pistol, ~~rifle~~ or shotgun loaded with slugs.

However a landowner or lessee or any other person designated by the game warden may kill deer with a rifle if he has obtained a permit issued pursuant to § [29.1-529](#).

§ 2. Any person violating any provision of this act shall be guilty of a Class 1 misdemeanor.

2. That Chapter 56 of the Acts of Assembly of 1944, as amended, is repealed.

## **Chapter 139 Purple Heart Trail.**

An Act to designate Interstate Route 95 and a portion of Virginia Route 3 as the Purple Heart Trail.

[\[H 349\]](#)

Approved March 8, 1996

Whereas, the Military Order of the Purple Heart of the USA in the Commonwealth of Virginia desires to promote the principles and objectives of patriotism, fraternalism, history, and education among the peoples of the Commonwealth; and

Whereas, these principles and objectives of the Order can be expressed through perpetuating the ideals and heritage fostered by George Washington, who, as the general commanding the Military Forces of America during the War of the Revolution, established and awarded the Purple Heart decoration; and

Whereas, General George Washington's birthplace in Westmoreland County, Virginia, has been designated a National Monument; and

Whereas, Ferry Farm, General George Washington's boyhood home in Stafford County, Virginia, has been recognized by federal and state authorities as a national historical site; and

Whereas, General George Washington's home at Mount Vernon in Fairfax County, Virginia, the place where the General is entombed, is considered a national shrine; and

Whereas, it has long been a practice to honor national heroes and patriots by naming national and state landmarks for them; and

Whereas, there is an opportunity for the citizens of Virginia thus to honor both living and deceased combat-wounded veterans who are recipients of the Purple Heart Medal, an award established by General George Washington on August 7, 1782, at Newburgh-on-the-Hudson, following his victory over British forces at the Battle of Yorktown; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The portion of Virginia Route 3 from George Washington's Birthplace National Monument in Westmoreland County, Virginia, to the junction of Virginia Route 3 with Interstate Route 95 at Fredericksburg, Virginia, and the entire length of Interstate Highway 95 in Virginia are hereby designated as the Purple Heart Trail, in honor of General George Washington and the combat-wounded veterans awarded the Purple Heart Medal. The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route.*

## **Chapter 140 Junius H. Moody Bridge.**

An Act to designate the Virginia Route 199 Bypass bridge across U.S. Route 60 at Lightfoot the "Junius H. Moody Bridge."

[\[H 387\]](#)

Approved March 8, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 199 Bypass bridge across U.S. Route 60 at Lightfoot in James City County is hereby designated the "Junius H. Moody Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge.*

## **Chapter 162 Eminent domain; commissioners.**

An Act to amend and reenact the fourth enactment of Chapter 520 of the Acts of Assembly of 1991 as amended by the second enactment of Chapter 681 of the Acts of Assembly of 1994, relating to eminent domain commissioners.

[\[H 819\]](#)

Approved March 9, 1996

Be it enacted by the General Assembly of Virginia:

1. That the fourth enactment of Chapter 520 of the Acts of Assembly of 1991 as amended by the second enactment of Chapter 681 of the Acts of Assembly of 1994 is amended and reenacted as follows:
4. That the amendments included in this act shall expire on July 1, ~~1996~~1997, and the law shall continue in force as it existed prior to July 1, 1991.

## **Chapter 129 Chesapeake Bay Restoration Fund.**

An Act to amend and reenact the second enactments of Chapters 749 and 823 of the 1995 Acts of Assembly, relating to the Chesapeake Bay Restoration Fund.

[\[S 281\]](#)

Approved March 8, 1996

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 749 of the 1995 Acts of Assembly is amended and reenacted as follows:
2. § 1. Advisory committee established; membership; duties.
  - A. There is hereby established within the legislative branch the Chesapeake Bay Restoration Fund Advisory Committee to be known as "the Committee." The Committee

shall advise the General Assembly on the expenditure of moneys received in the Chesapeake Bay Restoration Fund (the Fund).

B. The Committee shall consist of seven persons as follows: two members of the House of Delegates and two persons appointed by the Speaker of the House of Delegates, one of whom shall be a representative of the Chesapeake Bay Foundation; one member of the Senate and two persons appointed by the Senate Committee on Privileges and Elections, one of whom shall be a representative of the Virginia Association of Soil and Water Conservation Districts. All persons appointed to the Committee shall be representative of the interests associated with the restoration and conservation of the Chesapeake Bay. At least one citizen member shall be a current holder of the "Friend of the Chesapeake" license plate. Members of the Committee shall serve for terms of four years. Legislators' terms shall be concurrent with their elected terms of office. Appointments to fill vacancies shall be for the unexpired term and shall be made in the same manner as the original appointment. Members shall not be eligible to serve more than two consecutive terms. The Committee shall elect a chairman and vice-chairman from among its legislative membership. Members shall receive no compensation for their services, but shall be reimbursed out of the Fund for their necessary and actual expenses incurred in connection with their duties as Committee members. *The Division of Legislative Services shall be reimbursed from the Fund for costs, as shall be approved by the Committee, incurred in providing administrative assistance to the Committee.* The Committee shall meet at least one time each year, and additional meetings may be held at the call of the chairman.

C. The Committee shall develop goals and guidelines for the use of the Fund, which may include but not be limited to cooperative programs with, or project grants to, state agencies, the federal government, or any not-for-profit agency, institution, organization, or entity, public or private, whose purpose is to provide environmental education and projects relating to the restoration and conservation of the Chesapeake Bay. Moneys in the Fund may not be used to supplant existing general fund appropriations except as provided in subsection B.

D. No later than December 1 of each year, the Committee shall present to the Governor and the General Assembly a plan for expenditure of any amounts in the Fund.

E. Staffing of the Committee shall be provided by the Division of Legislative Services.

2. That the second enactment of Chapter 823 of the 1995 Acts of Assembly is amended and reenacted as follows:

2. § 1. Advisory committee established; membership; duties.

A. There is hereby established within the legislative branch the Chesapeake Bay Restoration Fund Advisory Committee to be known as "the Committee." The Committee shall advise the General Assembly on the expenditure of moneys received in the Chesapeake Bay Restoration Fund (the Fund).

B. The Committee shall consist of seven persons as follows: two members of the House of Delegates and two persons appointed by the Speaker of the House of Delegates, one of whom shall be a representative of the Chesapeake Bay Foundation; one member of the Senate and two persons appointed by the Senate Committee on Privileges and Elections, one of whom shall be a representative of the Virginia Association of Soil and Water Conservation Districts. All persons appointed to the Committee shall be representative of the interests associated with the restoration and conservation of the Chesapeake Bay. At least one citizen member shall be a current holder of the "Friend of the Chesapeake" license plate. Members of the Committee shall serve for terms of four years. Legislators' terms shall be concurrent with their elected terms of office. Appointments to fill vacancies shall be for the unexpired term and shall be made in the same manner as the original appointment. Members shall not be eligible to serve more than two consecutive terms. The Committee shall elect a chairman and vice-chairman from among its legislative membership. Members shall receive no compensation for their services, but shall be reimbursed out of the Fund for their necessary and actual expenses incurred in connection with their duties as Committee members. *The Division of Legislative Services shall be reimbursed from the Fund for costs, as shall be approved by the Committee, incurred in providing administrative assistance to the Committee.* The Committee shall meet at least one time each year, and additional meetings may be held at the call of the chairman.

C. The Committee shall develop goals and guidelines for the use of the Fund, which may include but not be limited to cooperative programs with, or project grants to, state agencies, the federal government, or any not-for-profit agency, institution, organization, or entity, public or private, whose purpose is to provide environmental education and projects relating to the restoration and conservation of the Chesapeake Bay. Moneys in the Fund may not be used to supplant existing general fund appropriations except as provided in subsection B.

D. No later than December 1 of each year, the Committee shall present to the Governor and the General Assembly a plan for expenditure of any amounts in the Fund.

E. Staffing of the Committee shall be provided by the Division of Legislative Services.

## Chapter 195 Medical assistance services; assistance for HIV-positive individuals.

An Act to amend and reenact § [32.1-330.1](#) of the Code of Virginia and to repeal the second enactment of Chapter 200 of the 1994 Acts of Assembly, relating to medical assistance services; premium assistance program for HIV-positive individuals.

[\[H 1148\]](#)

Approved March 11, 1996

Be it enacted by the General Assembly of Virginia:

1. That § [32.1-330.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [32.1-330.1](#). Department to implement premium assistance program for HIV-positive individuals.

The Board of Medical Assistance Services shall ~~solely~~ from funds eligible for this purpose from Title II of the Ryan White Comprehensive AIDS Resources Emergency CARE Act (42 U.S.C. § 300ff-21 et seq.) *or other funds appropriated or made available to this purpose*, implement, and may promulgate any necessary regulations for implementation of, a premium assistance program for HIV-positive individuals which shall have, at minimum, the following characteristics:

1. Payment of health insurance premiums for individuals who are not eligible for Medicaid and who can document (i) HIV infection and inability to continue working for medical reasons and (ii) eligibility to continue their employer's group policy pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985;
2. Financial eligibility criteria allowing a maximum income of no more than 200 percent of the federal poverty guidelines and countable liquid assets of no more than \$10,000 in value;
3. Funds eligible under Title II of the Ryan White CARE Act shall not be used toward copayments and deductible payments; and
4. Coverage of family members, if the HIV-infected person's policy is the sole source of health insurance.

~~Upon the conclusion of one year of operation, the Board shall evaluate and shall report to the Governor and the General Assembly by January 1, 1996, on the effects of this program, including, but not limited to, the cost, utilization, and cost-avoidance.~~

2. That the second enactment of Chapter 200 of the 1994 Acts of Assembly is repealed.

## **Chapter 207 Advisory referendum on airport in Rockbridge County.**

An Act to provide for an advisory referendum in Rockbridge County on the question of constructing, operating, and maintaining an airport in the county.

[\[H 4\]](#)

Approved March 16, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The officials conducting the November 5, 1996, election in Rockbridge County shall conduct an advisory referendum on that date in the county to poll the voters on the question of whether they are in favor of the construction, operation, and maintenance of an airport in the county.*

*The question on the ballot shall be:*

*"Do you support the construction, operation, and maintenance of an airport in Rockbridge County?"*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the county at least once in the period forty-five to sixty days before the election.*

*The results of the referendum shall be advisory only.*

## **Chapter 221 Trapping ban in Virginia Beach.**

An Act to prohibit trapping in certain areas in the City of Virginia Beach.

[\[H 397\]](#)

Approved March 16, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there shall be a closed season for trapping of fur-bearing animals within 300*

*yards of First Landing/Seashore State Park and the Virginia Marine Science Museum in the City of Virginia Beach. This closure will not prohibit trapping for scientific research, health or public safety purposes by employees or agents of the Commonwealth or the City of Virginia Beach nor prohibit private landowners or their designated agent from trapping nuisance animals.*

## **Chapter 375 Income tax, state; defers additional allowance.**

An Act to amend and reenact the second enactment of Chapter 289 of the 1989 Acts of Assembly, as amended and reenacted by Chapter 888 of the 1990 Acts of Assembly and Chapters 385 and 401 of the 1992 Acts of Assembly and Chapters 139 and 147 of the 1994 Acts of Assembly, relating to withholding of Virginia individual income taxes.

[\[S 415\]](#)

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 289 of the 1989 Acts of Assembly, as amended and reenacted by Chapter 888 of the 1990 Acts of Assembly and Chapters 385 and 401 of the 1992 Acts of Assembly and Chapters 139 and 147 of the 1994 Acts of Assembly, is amended and reenacted as follows:
2. That the provisions of this act shall become effective on January 1, ~~1997~~ 1999.

## **Chapter 208 Service handgun awarded to widow of Special Agent R. Lynn Roach.**

An Act to award a service handgun to the widow of Special Agent R. Lynn Roach.

[\[H 58\]](#)

Approved March 16, 1996

Whereas, Special Agent R. Lynn Roach, who served the Commonwealth as a member of the Virginia Department of State Police for over seventeen years, was killed in a traffic accident on September 10, 1995; and  
Whereas, Special Agent Roach joined the State Police in 1978, served in Amherst County and in Chesapeake, then returned to Montgomery County as coordinator of the Montgomery County Drug Task Force; and

Whereas, Special Agent Roach was instrumental in the establishment of a 24-hour hot-line in Montgomery County and took justifiable pride in the reputation of the task force as one of the best in Virginia; and

Whereas, it is fitting and appropriate that Special Agent R. Lynn Roach's exceptional service to the Commonwealth be recognized by the General Assembly; now, therefore, Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Mary S. Roach, the widow of Special Agent R. Lynn Roach, be, and hereby is, vested with title to, and authorized to possess and retain as her own, Special Agent R. Lynn Roach's service handgun, which he used as a member of the Virginia Department of State Police. This transfer is made as a visible and express token of the appreciation of the General Assembly for the professionalism, devotion, and dedication of Special Agent R. Lynn Roach.*

## **Chapter 301 Conveyance of certain ABC property to Richfood, Inc.**

An Act to authorize the Alcoholic Beverage Control Board to convey certain real estate.

[\[S 151\]](#)

Approved March 22, 1996

Whereas, the Virginia Alcoholic Beverage Control Board (the Board), Department of Alcoholic Beverage Control of the Commonwealth of Virginia, owns a parcel of land in the City of Richmond bounded by Sherwood Avenue and Robin Hood Road on which is located a warehouse, a paved parking area, and an abandoned railroad sidetrack; and Whereas, the abandoned railroad sidetrack is of no use to the Board for its present or anticipated future purposes; and

Whereas, the land adjacent to the area occupied by the abandoned railroad sidetrack is owned by Richfood, Inc., which owns and operates the Richfood Dairy milk processing plant located thereon; and

Whereas, Richfood Dairy requires additional land to continue and expand its dairy operations at that site; and

Whereas, the conveyance of a strip of land approximately 320 feet by 130 feet between Sherwood Avenue and Robin Hood Road upon which is located the abandoned railroad sidetrack would provide the space needed for Richfood Dairy's operations; and

Whereas, such conveyance would provide additional real estate tax revenue to the City of Richmond, as well as enable Richfood Dairy to maintain its 150-person workforce at the site and to expand that workforce in the future; and

Whereas, Richfood, Inc., is the only owner of property adjacent to that strip of land which is 320 feet by 130 feet, except the Board which has no anticipated use for it; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Notwithstanding any other provision of law, the Alcoholic Beverage Control Board, Department of Alcoholic Beverage Control of the Commonwealth of Virginia, is hereby authorized to convey to Richfood, Inc., a strip of land approximately 320 feet by 130 feet between Sherwood Avenue and Robin Hood Road in the City of Richmond lying between the property of Richfood, Inc., and the portion of the property owned by the Board that is paved for vehicle parking and upon which is located a railroad sidetrack; the conveyance shall be on terms determined by the Board without competitive bidding. The purchase price for any conveyance shall be no less than the fair market value of the property conveyed as determined by an independent appraisal. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute and deliver such deed and other documents as may be necessary to accomplish such conveyance.*

## **Chapter 377 Childhood sexual abuse.**

An Act to retroactively apply removal of the statute of repose in childhood sexual assault cases.

[\[S 459\]](#)

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That as authorized by Section 14 of Article IV of the Constitution of Virginia, Chapter 268 of the 1995 Acts of Assembly shall apply to all actions accruing on or after July 1, 1991, for injury to the person resulting from sexual abuse occurring during the infancy or incompetency of the person and which were or are filed on or after July 1, 1995.*

## Chapter 523 L. Latane Trice Bridge.

An Act to designate the Virginia Route 629 bridge at Walkerton the "L. Latane Trice Bridge."

[\[H 1553\]](#)

Approved April 1, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 629 bridge at Walkerton, presently known as the Walkerton Bridge, shall, upon completion of the new bridge, be designated the "L. Latane Trice Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge.*

## Chapter 385 Roanoke Regional Airport Commission.

An Act to amend and reenact § 24 of Chapter 140 of the Acts of Assembly of 1986, relating to the Roanoke Regional Airport Commission.

[\[H 84\]](#)

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 24 of Chapter 140 of the Acts of Assembly of 1986 is amended and reenacted as follows:

§ 24. Fiscal year; Commission budget.

A. The fiscal year of the Commission shall begin on July 1 and end on June 30.

B. The Commission shall annually, prior to ~~February 15~~ *March 16*, prepare and submit to the participating political subdivisions (i) a proposed operating budget showing its estimated revenues and expenses on an accrual basis for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion of the deficit proposed to be borne by each participating political subdivision, and (ii) a proposed capital budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000 (or such higher amount as the Commission and the participating political subdivisions may determine) and having an estimated useful life of twenty years or more and the source of funds for such expenditures, including any amount requested from the

participating political subdivisions. Depreciation shall be excluded from the Commission's operating budget with respect to assets purchased by the Commission with funds appropriated to it for such purpose by a participating political subdivision and, for this determination, it shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable Commission budget to the extent such purchase price is included in the approved budget. Assets purchased by the Commission with bond proceeds shall be depreciated over the useful life of such assets purchased with bond proceeds.

C. If the governing body of a participating political subdivision shall approve the Commission's proposed operating budget, it shall appropriate to the Commission such political subdivision's portion of such deficit. If during any fiscal year the Commission shall receive revenues in excess of those estimated by the Commission in its approved budget for such year, the budgeted deficit for such fiscal year shall automatically be reduced and, except as herein provided, the appropriation of each participating political subdivision shall be proportionately reduced. Notwithstanding the foregoing, with the consent of the governing bodies of the participating subdivisions, all or a portion of such appropriations may be maintained so as to enable the Commission to expend such excess revenues for its proper purposes.

D. If the governing body of a participating political subdivision shall approve the Commission's proposed capital budget, it shall appropriate to the Commission such participating political subdivision's portion of the expenditures set forth therein. Any such appropriation shall automatically be reduced by the participating political subdivision's proportionate share of any grant funds received by the Commission for the purchase of assets included in the Commission's approved capital budget in excess of the grant funds shown in such capital budget as a source of funds for such expenditure, unless prohibited by the basic provider of the grant funds.

E. The Commission may expend any and all moneys within its control without obtaining the approval of the participating political subdivisions, but, except as otherwise provided in this Act with respect to contracts and agreements between the Commission and any political subdivision, the Commission shall not commit any participating political subdivision in an amount in excess of that appropriated to the Commission by the governing body of such political subdivision.

F. If at any time during any fiscal year it shall appear that the cash disbursements of the Commission will exceed its cash receipts for such fiscal year, including amounts appropriated to it by the participating political subdivisions, the Commission may request sup-

plemental appropriations from the participating political subdivisions and any other political subdivision.

### **Chapter 563 Quorum of council in town of New Castle.**

An Act to authorize changes in the size of a quorum of council in certain towns.

[\[H 1552\]](#)

Approved April 3, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The council of any town with a population of less than 200, situated within a county whose population was less than 5,000 according to the 1990 census, may by resolution establish the size of a quorum of the council at three of its five members, notwithstanding any charter provision as to the size of a quorum to the contrary.*

2. That an emergency exists and this act is in force from its passage.

### **Chapter 567 Regulation of lighting in Arlington County.**

An Act to provide for regulation of lighting in certain counties.

[\[S 211\]](#)

Approved April 4, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing body of any county operating under a county manager plan of government may provide by ordinance for the regulation of exterior illumination levels of buildings and property.*

### **Chapter 571 City of Bristol; out-of-state property agreements.**

An Act to allow the City of Bristol, Virginia, to enter into agreements with Sullivan County, Tennessee.

[\[S 409\]](#)

Approved April 4, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The City of Bristol, Virginia, is expressly granted authority to enter into agreements with Sullivan County, Tennessee, in accordance with the provisions of § 15.1-21 of the Code of Virginia, including agreements for the development of property, and to enter into long-term leases.*

## **Chapter 495 Energy; funding weatherization assistance programs.**

An Act to require the Department of Social Services, or any other agency succeeding in pertinent authority, to allocate federal low-income fuel assistance program funding to low-income weatherization assistance programs.

[\[H 675\]](#)

Approved April 1, 1996

Whereas, the Low Income Home Energy Assistance Program (LIHEAP), a federally funded program administered by the Department of Social Services (DSS), provides short-term home heating fuel assistance to low-income individuals; and

Whereas, during program year 1994-1995 DSS paid out more than \$21 million in LIHEAP benefits, and the average benefit paid per household was \$181; and

Whereas, the Weatherization Assistance Program (WAP), administered by the Department of Housing and Community Development (HCD) and principally funded by the U.S. Department of Energy, is designed to reduce the energy costs of low-income households by weatherizing homes and providing essential repairs to heating systems; and

Whereas, WAP's statewide budget in 1994-1995 was \$4.7 million, and a budget of \$3.5 million is projected in 1995-1996 due to declining federal funding for WAP; and

Whereas, for the past two years general fund appropriations have been necessary to keep the program operational statewide, a condition necessary to qualify for federal funding; and

Whereas, WAP and LIHEAP should be better coordinated to ensure that individuals and families eligible for fuel assistance benefits have weatherized homes and heating systems in good repair to help reduce each home's heating costs while freeing up fuel assistance dollars for other eligible program participants; and

Whereas, Federal LIHEAP regulations permit up to 15 percent of states' LIHEAP grants to be spent on weatherization, and an additional 10 percent may be spent on

weatherization upon application to and approval by the program's federal administrators; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§1. That the Department of Social Services, or any other agency succeeding in pertinent authority, is directed to allocate at least 7.5 percent of all federal low-income fuel assistance program funding made available to the Commonwealth to low-income weatherization assistance programs, to the extent such allocation is permitted by federal law.*

## **Chapter 627 Jamestown ferry; discontinuation of tolls.**

An Act to provide for the discontinuation of tolls collected for use of the ferry across the James River between Scotland and Jamestown.

[\[H 1056\]](#)

Approved April 5, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commonwealth Transportation Board shall immediately cease the collection of tolls for the use of the ferry across the James River between Scotland and Jamestown.*

2. That the provisions of this act shall not become effective until July 1, 1997, in order to allow the Department of Transportation sufficient time to receive or solicit proposals for the operation of the Jamestown-Scotland Ferry service pursuant to the Public-Private Transportation Act of 1995 or the Virginia Public Procurement Act.

## **Chapter 694 Neighborhood Assistance Act; tax credits.**

An Act to amend and reenact § 63.1-323 of the Code of Virginia and to amend and reenact Chapter 629 of the Acts of Assembly of 1981, as amended by Chapter 407 of the Acts of Assembly of 1986, Chapter 660 of the Acts of Assembly of 1990, and Chapter 779 of the Acts of Assembly of 1995, relating to the neighborhood assistance tax credit.

[\[H 1476\]](#)

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-323 of the Code of Virginia is amended and reenacted as follows:

§ 63.1-323. Tax credit authorized; proposals; regulations; amount for programs.

Any business firm that engages in the activities of providing neighborhood assistance, job training or education for individuals not employed by the business firm, community services or crime prevention services in an impoverished area or for impoverished people shall receive a tax credit as provided in § 63.1-324, if the Commissioner of Social Services or his designee approves the proposal of such business firm or of a neighborhood organization. The proposal shall set forth the program to be conducted, the impoverished area or impoverished people selected, the estimated amount to be invested in the program and the plans for implementing the program. A copy of the proposal shall be submitted by the Commissioner of Social Services or his designee to all planning district commissions within whose boundaries the proposal will operate. The planning district commissions shall thereafter notify their respective local units of government of the contents of the proposal. Such commission or the governing body of each governmental subdivision may thereafter comment in writing on the proposal to the Commissioner or his designee. If, in the opinion of the Commissioner or his designee, a business firm's investment can more consistently meet with the purposes of this chapter if made through contributions to a nonprofit neighborhood organization, a tax credit may similarly be allowed as provided in § 63.1-324. The Commissioner of Social Services or his designee is hereby authorized to promulgate regulations for the approval or disapproval of such proposals by business firms or neighborhood organizations. Such regulations shall contain a requirement that an annual audit be provided by the business firm or neighborhood organization as a prerequisite for approval. Through June 30, ~~1996~~ *1998*, the total amount of tax credit granted for programs approved under this chapter for each fiscal year shall not exceed \$5,250,000. From July 1, ~~1996~~ *1998*, through June 30, ~~1998~~ *2000*, the total amount of tax credit granted for programs approved under this chapter for each fiscal year shall not exceed eight million dollars. Tax credits shall not be authorized after fiscal year ~~1998~~ *2000*.

2. That Chapter 629 of the Acts of Assembly of 1981, as amended by Chapter 407 of the Acts of Assembly of 1986, Chapter 660 of the Acts of Assembly of 1990, and Chapter 779 of the Acts of Assembly of 1995 is amended and reenacted as follows:

4. That this act shall expire on July 1, ~~1998~~ *2000*, and be of no further force and effect; however, a business firm which received the tax credit provided by this act while it was

in effect shall be entitled to carry over that credit for the next five succeeding taxable years whether or not this act shall expire on July 1, ~~1998~~ 2000.

## **Chapter 699 Payment of court fines, costs.**

An Act to allow certain circuit court clerks discretion to accept credit card payment in lieu of cash for fines and costs.

[\[S 152\]](#)

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [19.2-353.3](#), the clerk of the circuit court in the County of Franklin, Tazewell or Patrick may, in his discretion, accept credit card payment in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties, and costs collected for offenses tried in circuit court, including motor vehicle violations, committed against the Commonwealth or against any such county.*

## **Chapter 701 C. Jefferson Stafford Bypass.**

An Act to designate a portion of U.S. Route 460 as the C. Jefferson Stafford Highway.

[\[S 192\]](#)

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. U.S. Route 460 from U.S. Route 19 west of Bluefield to the Virginia/West Virginia State Line is hereby designated the "C. Jefferson Stafford Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route.*

## **Chapter 781 Health departments; implementation of needs-based allocation formula.**

An Act to require the Board of Health to develop a certain needs-based allocation formula.

[\[S 21\]](#)

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§1. Board of Health to develop certain formula.*

*A. The Board of Health shall develop a proposed needs-based allocation formula for the calculation of the local shares of state funds to be appropriated for district and local health departments and allocated via the state/local cooperative budget. In developing the needs-based allocation formula, the Board shall consider local demographic factors, including, but not limited to, growth rates; population density; population characteristics, including the proportion of elderly; local wealth; mortality data; teen pregnancy rates; disease incidences; environmental concerns; and other factors influencing local public health costs and service delivery.*

*B. The Board shall establish a task force consisting of local health department directors and local government representatives to recommend the proposed needs-based allocation formula required by subsection A of this section. Two-thirds of the task force membership shall be district or local health directors and one-third of the task force membership shall represent local government. All members of the task force shall be voting members. One-half of the local government representatives shall be chosen by the Virginia Municipal League and one-half shall be chosen by the Virginia Association of Counties.*

*C. The Commissioner shall report, on behalf of the Board, on the development of the needs-based allocation formula required by this section by September 30, 1996, to the Senate Committees on Education and Health and Finance and the House of Delegates Committees on Health, Welfare and Institutions and Appropriations, including the recommendations of the task force and any changes made by the Board in the task force recommendations for the components of the formula, the scope of any no-loss provisions, the additional required appropriations, and the effects of the funding on the various district and local health departments as compared to the methods, totals, and percentages of the present formula.*

*D. The formula required to be developed in this section shall not be utilized as the basis of any budget projections or allocations until such time as the General Assembly has, by legislative action, so authorized.*

## **Chapter 860 Atlantic States Marine Fisheries Compact.**

An Act to amend and reenact the third enactment of Chapter 283 of the Acts of Assembly of 1995, relating to the Atlantic States Marine Fisheries Compact.

[\[H 390\]](#)

Approved April 9, 1996

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 283 of the Acts of Assembly of 1995 is amended and reenacted as follows:
3. That the first enactment of this act and the repeal of Article 1 (§ [28.2-1000](#)) of Chapter 10 of Title 28.2 of the Code of Virginia shall become effective on July 1, ~~1996~~ 1997.

## **Chapter 875 Community college service delivery boundary.**

An Act relating to local community college boards service delivery boundaries.

[\[H 987\]](#)

Approved April 9, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Local community college boards' service delivery boundaries.*

*A. The governing body of a county or city served by more than one community college may determine by official action whether the jurisdiction in its entirety or parts thereof shall participate in one or more community college service regions. The governing body shall notify the State Board for Community Colleges in writing of this official action.*

*B. Any such action shall be effective one biennium budget cycle after being taken; however, any such action taken by a governing body served by more than one community college prior to January 1, 1996, shall be deemed to be effective on the date the action was so taken.*

*C. This act shall expire on July 1, 1997.*

## **Chapter 789 Enterprise Zone Act; eligibility.**

An Act to facilitate the use of enterprise zone incentives by pharmaceutical, health care and home care products companies undertaking significant new research and development activities.

[\[S 553\]](#)

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [59.1-279](#) respecting requirements for qualified business firms, the requirement that at least forty percent of the new employees employed at a qualified business either have incomes below eighty percent of the area median income for the jurisdiction prior to employment or are residents of the zone may be waived by the Governor for pharmaceutical, health care and home care products companies, which are undertaking expansions for the primary purpose of basic research or research and development in the experimental or laboratory sense, following receipt and review of an application from the mayor or chairman of the board of supervisors of the city, town or county in which the waiver is being requested. Any application shall be only for an individual qualified business firm.*

*If provisions of the first section of this enactment are held invalid, then it shall not affect the validity of the requirements of § [59.1-279](#) as they pertain to all other entities seeking to be designated as qualified business firms.*

## **Chapter 803 Property transfer; George Washington's Grist Mill State Park.**

An Act authorizing the Department of Conservation and Recreation to lease and subsequently convey the George Washington's Grist Mill State Park in Fairfax County.

[\[S 147\]](#)

Approved April 7, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to*

§ [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease and subsequently to convey to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor and the Attorney General, the parcel of real property and appurtenances known as the George Washington's Grist Mill State Park in Fairfax County. If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property be maintained and open to public use and that if such condition is not met, the property shall revert to the Commonwealth.

Subject to the fulfillment of the terms and conditions of a memorandum of understanding entered into pursuant to § 2 of this act, the initial term of this lease may be for five years or less, the lease may be renewed at the option of the lessee for periods of similar length, and the property may, after the initial lease term, be conveyed to the Mount Vernon Ladies' Association of the Union. The memorandum of understanding shall set out the matters to be performed by each party to include, but not be limited to, capital investment, staffing, programming, and maintenance and operations support. All lease renewals will require approvals of the Governor and the Attorney General as stated for the initial term. The memorandum of understanding, the lease, all lease renewals and any instrument conveying the property shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Conservation and Natural Resources and the House Appropriations Committee for review.

§ 2. The Department of Conservation and Recreation and the Mount Vernon Ladies' Association of the Union shall develop, agree upon, and sign the memorandum of understanding by August 15, 1996.

## **Chapter 1033 Small claims courts.**

An Act authorizing certain cities and counties to establish within their general district courts a small claims courts division, which shall be designated the small claims court.

[\[H 1452\]](#)

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Cities of Harrisonburg and Richmond and the Counties of Brunswick,

*Greensville, Roanoke, Rockingham and Washington are hereby authorized to establish within their general district court a small claims court division, which shall be designated the small claims court, pursuant to the provisions of § [16.1-122.1](#).*

## **Chapter 864 Pilot school/community health centers.**

An Act to require the Department of Medical Assistance Services, in cooperation with the Department of Education, to examine the funding and components of the pilot school/-community health centers.

[\[H 1440\]](#)

Approved April 9, 1996

Whereas, several years ago, the General Assembly authorized the development of a limited number of pilot school/community health centers, by leveraging Medicaid funds and appropriating state funds for the initial implementation of such centers; and

Whereas, in some rural communities, the school/community health centers are virtually the only service delivery for poor children; and

Whereas, the effectiveness of these centers can be attested to; however, the original concept of appropriations to the localities in the form of grants for the state share and Medicaid payments for services representing the federal share may need to be evaluated; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. Pilot school/community health centers.*

*The Department of Medical Assistance Services, in cooperation with the Department of Education, shall, consistent with the biennium budget cycle, examine and may revise the funding and components of the pilot school/community health centers. Any revisions shall be designed to maximize access to health care for poor children, and to improve the funding by making use of every possible, cost-effective means, Medicaid reimbursement or program. Any revisions shall be focused on prevention of large costs for acute or medical care and may include, but not be limited to:*

- 1. Funding sources and means of distribution for the state match which will clearly demonstrate that local governments are not funding the state match for these centers.*
- 2. The benefits and drawbacks of allowing school divisions to provide services to disabled students as Medicaid providers.*

3. *The appropriate credentials of the providers of care in the school health centers, e.g., licensure by the Board of Education and compliance with federal requirements or licensure by a regulatory board within the Department of Health Professions.*
  4. *Utilization of the individualized education plan, when signed by a physician, as the plan of care authorizing services.*
  5. *Delivery of medically necessary services, such as rehabilitation services, psychiatric and psychological evaluations and therapy, transportation, and nursing.*
  6. *Payment for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services, with proper medical oversight, in consultation with the students' primary care physicians.*
  7. *The role of the Medallion and Options programs in regard to the school health centers and flexibility for school divisions regarding any required referrals.*
- Any funds necessary to support revisions to the school/community health center projects shall be included in the budget estimates for the departments, as appropriate.*

## **Chapter 877 Human rights commissions in Arlington County.**

An Act to allow certain counties with a human rights commission to subpoena witnesses.

[\[S 212\]](#)

Approved April 10, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The county board of any county operating under a county manager plan of government which has established a local commission on human rights, may provide by ordinance that whenever the commission has reasonable cause to believe that any person has engaged in or is engaging in a violation of an authorized local human rights ordinance, and after making a good faith effort to obtain, voluntarily, the attendance of witnesses necessary to determine whether such violation occurred, the commission is unable to obtain such attendance, it may request the county attorney, with the approval of the county board, to apply to the judge of the circuit court for the locality in which the witness resides or is doing business for a subpoena against such person refusing to appear as a witness, and the judge of such court may, upon good cause shown, cause the subpoena to be issued. Such ordinance shall provide that any witness subpoena so issued shall include a statement that any statements made will be under oath and the witness is entitled to be represented by an attorney. Such ordinance shall further provide*

*that any person failing to comply with such subpoena so issued shall be subject to punishment for contempt by the court issuing the subpoena, and that any person so subpoenaed may apply to the judge who issued a subpoena to quash it.*

## **Chapter 886 November council elections for Town of Bridgewater.**

An Act to require certain town mayors and council members to be elected at the time of the November general election.

[\[S 142\]](#)

Approved April 10, 1996

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Election of mayor and council for certain towns.

*A. The qualified voters of each town of the Commonwealth whose 1990 population was more than 3,900 but less than 4,000 shall elect a mayor, if provided for by charter, and a council, which shall be the governing body thereof, for their terms provided for by charter. Notwithstanding the provisions of § [24.2-222](#) or any other provision of law, general or special, any election of mayor or council members of such a town shall take place on the Tuesday after the first Monday in November of an even-numbered year, and the persons so elected shall enter upon the duties of their offices on the January 1 succeeding their election and remain in office until their successors have qualified.*

*B. In any such town:*

*1. Any mayor or council member elected in 1992 for a four-year term, or in 1994 for a two-year term, shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 1996 and, notwithstanding any charter provision to the contrary, shall take office on the January 1 following his election.*

*2. Any mayor or council member elected in 1994 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 1998 and, notwithstanding any charter provision to the contrary, shall take office on January 1 following his election.*

*C. Notwithstanding the provisions of § [24.2-503](#), candidates for town mayor or council subject to the provisions of this act shall file their written statements of financial interests and qualification pursuant to §§ [24.2-501](#) and [24.2-502](#) not later than 7:00 p.m. on the second Tuesday in June.*

*D. Any county voting precinct established pursuant to § [24.2-307](#) which includes residents of such a town shall be wholly contained within the boundaries of the town. No such voting precinct shall include both such a town or portion thereof and county territory located outside the boundaries of the town.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 982 Land exchange: Pettigrew Wildlife Management Area.**

An Act authorizing the Board of Game and Inland Fisheries to convey certain of its land in Caroline County, and to accept certain property in exchange; conveyance of certain property to the Virginia Department of Transportation.

[\[H 633\]](#)

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, the Board of Game and Inland Fisheries is hereby authorized to convey, as part of an exchange of lands conditioned by the provisions of §§ 1 and 2 and upon such additional terms, and as the Board of Game and Inland Fisheries deems proper, with the approval of the Governor and the Secretary of Natural Resources, and after consultation with the Caroline County Board of Supervisors, a parcel of land known as the Pettigrew Wildlife Management Area. As additional consideration, approximately seventy percent of the Pettigrew Wildlife Management Area shall be placed under a perpetual conservation easement and, notwithstanding the provisions of Chapter 10.1 (§ [10.1-1009](#) et seq.) of Title 10.1, granted to the County of Caroline or such state or local agency as the county may designate, dedicated to open space uses. The area covered by the perpetual easement shall, at a minimum, include an undeveloped buffer area of 1,000 feet in width extending parallel to U.S. Route 17 along the existing Pettigrew boundary and all that portion of the property south of a line drawn 2,000 feet north of and parallel to Mount Creek. The perpetual conservation easement shall be generally consistent with the easement policies of the Virginia Outdoors Foundation, subject to the final design and location of State Routes 614 and 615, and U.S. Route 17.*

*§ 2. In consideration for such conveyance, the Board of Game and Inland Fisheries is authorized to accept certain lands, with or without improvements, of equal or greater fair market value with wildlife value suitable to the Board of Game and Inland Fisheries, and of acreage approximately two and one-half times that of the Pettigrew Wildlife Management Area. For the purposes of the exchange proposed by this section, the exchange properties shall be appraised at their current fair market values. The Pettigrew Wildlife Management Area shall be appraised immediately prior to any exchange without consideration for the conservation or open space easement.*

*§ 3. The deeds of conveyance and other documents shall be in the form approved by the Attorney General.*

2. That, notwithstanding the provisions of Chapter 774 of the Acts of Assembly of 1995, approval is hereby given by the General Assembly for the transfer of five acres, more or less, to the Virginia Department of Transportation for highway purposes and other incidental purposes associated with the construction of Route 199, Project 0199-047-FO3-RW206. The proceeds from such transfer are appropriated to the institution to be held, used, and administered in the same manner as all other gifts and bequests are held, used, and administered.

## **Chapter 1003 Workforce Transition Act of 1995; employees of Department of Health.**

An Act to amend and reenact the fourth enactment of Chapters 152 and 811 of the 1995 Acts of Assembly, relating to the Workforce Transition Act of 1995.

[\[H 988\]](#)

Approved April 17, 1996

Be it enacted by the General Assembly of Virginia:

1. That the fourth enactment of Chapter 152 of the 1995 Acts of Assembly is amended and reenacted as follows:

4. That the costs associated with an employee's resignation or retirement pursuant to the incentive programs established by the second or third enactment of this act shall be paid within twelve months following the date of the employee's resignation or retirement, or within such shorter period as may be required, by the agency with which the employee was employed. The costs shall be paid first from appropriations available to the agency. If such sums are insufficient, then, if the agency's governing authority (as defined in the

fifth enactment of this act) certifies that the agency is unable to pay the costs when due from appropriations available to the agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations. Any such treasury loan shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the Appropriations Act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs. *On or after July 1, 1996, the general fund shall bear any additional costs of the local share of funding for state payroll employees associated with the resignation or retirement, pursuant to the incentive programs established by the second or third enactments of this act, or the severance program established by the first enactment of this act, of any employee of a local health department which has a contract with the State Board of Health, pursuant to § [32.1-31](#), for the operation of the local health department.*

2. That the fourth enactment of Chapter 811 of the 1995 Acts of Assembly is amended and reenacted as follows:

4. That the costs associated with an employee's resignation or retirement pursuant to the incentive programs established by the second or third enactment of this act shall be paid within twelve months following the date of the employee's resignation or retirement, or within such shorter period as may be required, by the agency with which the employee was employed. The costs shall be paid first from appropriations available to the agency. If such sums are insufficient, then, if the agency's governing authority (as defined in the fifth enactment of this act) certifies that the agency is unable to pay the costs when due from appropriations available to the agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations. Any such treasury loan shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the Appropriations Act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for

the payment of these costs, the general fund shall bear its actual share of such costs. *On or after July 1, 1996, the general fund shall bear any additional costs of the local share of funding for state payroll employees associated with the resignation or retirement, pursuant to the incentive programs established by the second or third enactments of this act, or the severance program established by the first enactment of this act, of any employee of a local health department which has a contract with the State Board of Health, pursuant to § [32.1-31](#), for the operation of the local health department.*

## **Chapter 1039 Interstate ozone reduction agreements.**

An Act to require legislative approval of any proposed interstate agreement related to the transport of ozone and to require certain studies of the economic, employment, and competitive impacts of such a proposed agreement.

[\[H 1512\]](#)

Approved April 17, 1996

Whereas, the Clean Air Act Amendments of 1990 contain a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources which will improve ambient air quality and health and welfare in all parts of the nation; and

Whereas, the number of areas failing to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with implementation of the Clean Air Act Amendments of 1990; and

Whereas, scientific research on the transport of ozone across state boundaries is proceeding under the auspices of the United States Environmental Protection Agency (EPA), state agencies and private entities, and this research will lead to improved scientific understanding of the causes and nature of ozone transport and emission control strategies potentially applicable thereto; and

Whereas, the Ozone Transport Commission established by the Clean Air Act Amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia exceeding those mandated by federal law; and

Whereas, the Commonwealth of Virginia and other parties have challenged the constitutionality of The Ozone Transport Commission and its regulatory proposals under the Guarantee, Compact, and Joinder Clauses of the United States Constitution; and

Whereas, the United States EPA, acting under color of federal law, is encouraging states east of and bordering the Mississippi River and Texas to develop and to enter into an

interstate agreement on ozone transport requiring reductions in emissions of nitrogen oxides exceeding the requirements of the Clean Air Act Amendments of 1990; and Whereas, before such an interstate agreement is entered into, the environmental benefits of such additional emission control requirements should be thoroughly weighed against any adverse effects such controls might have on state economic development, competitiveness, employment, or income; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. Neither the Department of Environmental Quality nor any other agency of the Commonwealth shall, without the prior review and approval by resolution or other act of the General Assembly, enter into any interstate agreement related to the transport of ozone, if such agreement contains emission control requirements exceeding those required by applicable law.*

*§ 2. To assist the review and approval required by § 1, the Virginia Economic Development Partnership and the Department of Environmental Quality shall conduct a study of the impacts of any such proposed interstate ozone transport agreement on the Commonwealth's economy, including, but not limited to, impacts on economic development, employment, income, and industrial competitiveness and shall assess the alternative methods of achieving air quality standards. The State Corporation Commission and other agencies shall assist in the preparation of the study upon request. The study shall be submitted to the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources not less than ten days prior to any scheduled hearing or other consideration of a proposed interstate agreement related to the transport of ozone.*

# Uncodified Acts of Assembly - 1997

## Chapter 1 Lag pay for state employees; abolished.

An Act to amend and reenact Item 528 of Chapter 912 of the 1996 Acts of Assembly, relating to pay periods for state employees.

[\[H 1630\]](#)

Approved January 15, 1997

Be it enacted by the General Assembly of Virginia:

1. That Item 528 of Chapter 912 of the 1996 Acts of Assembly is hereby amended and reenacted as follows:

[See printed bill for full text]

## Chapter 18 Racing Commission; licenses for Colonial Downs.

An Act to reenact §§ [59.1-365](#) and [59.1-385](#) and to amend and reenact §§ [59.1-380](#) and [59.1-383](#) of the Code of Virginia and the fourth enactment of Chapter 915 of the 1996 Acts of Assembly, relating to the Virginia Racing Commission; licenses.

[\[H 2235\]](#)

Approved February 17, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ [59.1-365](#) and [59.1-385](#) of the Code of Virginia are reenacted as follows:

§ [59.1-365](#). Definitions.

Unless another meaning is required by the context, the following words shall have the meanings prescribed by this section:

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten cents.

"Commission" means the Virginia Racing Commission.

"Drug" shall have the meaning prescribed by § [54.1-3401](#). The Commission shall by regulation define and designate those drugs the use of which is prohibited or restricted.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the Commission.

"Horse racing" means a competition on a set course involving a race between horses on which pari-mutuel wagering is permitted.

"Licensee" includes any person holding an owner's, operator's or limited license under §§ [59.1-375](#) through [59.1-386](#) of this chapter. The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Pari-mutuel wagering" means the system of wagering on horse races in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law and includes pari-mutuel wagering on simulcast horse racing originating within the Commonwealth or from any other jurisdiction.

"Permit holder" includes any person holding a permit to participate in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel betting thereon as provided in § [59.1-387](#).

"Person" includes a natural person, partnership, joint venture, association, or corporation.

"Pool" means the amount wagered during a race meeting or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, owns or controls, directly or indirectly, five percent or more of the stock of any person which is a licensee, or who in concert with his spouse and immediate family members, has the power to vote or cause the vote of five percent or more of any such stock.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Racetrack" means an outdoor course laid out for horse racing which shall include at least one building or structure adjacent or appurtenant thereto which is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official.

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Commission.

"Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.

"Steward" means a racing official, duly appointed by the Commission, with powers and duties prescribed by Commission regulations.

"Stock" includes all classes of stock of an applicant or licensee corporation, and any debt or other obligation of such corporation or stockholder thereof or stock of an affiliated corporation if the Commission finds that the holder of such obligation or stock derives therefrom such control of or voice in the operation of the applicant or licensee corporation that he should be deemed a stockholder.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding race horses in the Commonwealth of Virginia.

§ [59.1-385](#). Suspension or revocation of license.

A. After a hearing with fifteen days' notice the Commission may suspend or revoke any license, or fine the holder thereof a sum not to exceed \$100,000, in any case where it has reason to believe that any provision of this chapter, or any regulation or condition of the Commission, has not been complied with or has been violated. The Commission may revoke a license if it finds that facts not known by it at the time it considered the application indicate that such license should not have been issued.

B. Deliberations of the Commission hereunder shall be conducted pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). If any such license is suspended or revoked, the Commission shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with § [59.1-373](#). Suspension or revocation of a license by the Commission for any violation shall not preclude criminal liability for such violation.

2. That §§ [59.1-380](#) and [59.1-383](#) of the Code of Virginia are amended and reenacted as follows:

§ [59.1-380](#). Duration, form of owner's license; bond.

A. A license issued under § [59.1-378](#) shall be for the period set by the Commission, not to be less than twenty years, but shall be reviewed annually. The Commission shall

designate on the license the duration of such license, the location of such track or satellite facility or proposed track or satellite facility and such other information as it deems proper. The Commission shall establish criteria and procedures for license renewal.

B. Any license now issued by the Commission to own a satellite facility shall be invalid unless on or before ~~July~~ *September* 1, 1997, (i) a written agreement is reached between the holder of any such license and Virginia representatives of the recognized horsemen's groups for the funding of purses for live racing and (ii) live racing, as described in the October 12, 1994, case decision of the Commission, is conducted at a racetrack licensed pursuant to § [59.1-382](#). No further licenses to own a satellite facility shall be issued unless a written agreement is reached between the holder of any such license and Virginia representatives of the recognized horsemen's groups for the funding of purses for live racing and the appeal of the Commission's October 12, 1994, case decision is adjudicated by the Virginia Court of Appeals.

C. The Commission shall require a bond with surety acceptable to it, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth.

§ [59.1-383](#). Duration, form of operator's license; bond.

A. A license issued under § [59.1-382](#) shall be for a period of twenty years from the date of issuance, but shall be reviewed annually. The Commission may, as it deems appropriate, change at the beginning of any year the dates on which the licensee is authorized to conduct a race meeting or pari-mutuel wagering. An applicant for renewal of a license may omit any information which in the opinion of the Commission is already available to it. The Commission shall establish criteria and procedures for license renewal.

Any license issued under § [59.1-382](#) shall designate on its face the type or types of horse racing or pari-mutuel wagering for which it is issued, the location of the track or satellite facility where such meeting or wagering is to be conducted, the period during which such license is in effect and such other information as the Commission deems proper.

B. Any license now issued by the Commission to operate a satellite facility shall be invalid unless on or before ~~July~~ *September* 1, 1997, (i) a written agreement is reached between the holder of any such license and Virginia representatives of the recognized horsemen's groups for the funding of purses for live racing and (ii) live racing, as described in the October 12, 1994, case decision of the Commission, is conducted at a racetrack licensed pursuant to § [59.1-382](#). No further licenses to operate a satellite facility shall be issued unless a written agreement is reached between the holder of any such license and Virginia representatives of the recognized horsemen's groups for the

funding of purses for live racing and the appeal of the Commission's October 12, 1994, case decision is adjudicated by the Virginia Court of Appeals.

C. The Commission shall require a bond with surety acceptable to it, and in an amount determined by it to be sufficient to cover any indebtedness incurred by such licensee during the days allotted for racing.

3. That the fourth enactment of Chapter 915 of the 1996 Acts of Assembly is amended and reenacted as follows:

4. That the provisions of the second enactment of this act shall expire on ~~July-September~~ 1, 1997, or on the date that live racing is conducted at a racetrack licensed pursuant to § [59.1-382](#), whichever date is earlier, ~~unless reenacted by the 1997 Session of the General Assembly.~~

4. That the provisions of the first enactment of Chapter 915 of the 1996 Acts of Assembly, except for § [59.1-403](#), as reenacted and as amended and reenacted by the first and second enactments of this act, shall expire on September 1, 1997.

## **Chapter 44 State agencies to provide copies of documents.**

An Act to require agencies and instrumentalities of the Commonwealth to provide copies of requested documents, free of charge, to certain law-enforcement officers.

[\[H 2709\]](#)

Approved March 2, 1997

Whereas, the Department of State Police and other law-enforcement agencies require the reproduction of documents in the possession of state agencies, which documents are invaluable in assisting in the conduct of criminal investigations; and

Whereas, the cost incurred by law-enforcement agencies in having such documents copied for investigative files is high; and

Whereas, state and law-enforcement agencies have the same goal of protecting the public interest; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That all agencies and instrumentalities of the Commonwealth shall provide, at no cost, copies of documents requested by the Department of State Police or other law-enforcement officers as part of an active criminal investigation.*

*§ 2. "Law-enforcement officer" means the same as that term is defined in § 9-169.*

## **Chapter 46 Ruby's Road.**

An Act to designate Virginia Route 601 in Bland County "Ruby's Road."

[\[S 691\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 601 in Bland County is hereby designated "Ruby's Road." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 52 Douthat State Park Way.**

An Act to designate a portion of Interstate Route 64 the "DOUTHAT STATE PARK WAY."

[\[S 864\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Interstate Route 64 between the Virginia/West Virginia boundary and the intersection of Interstate Route 64 and Interstate Route 81 is hereby designated the "DOUTHAT STATE PARK WAY." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 53 Route 629; Virginia byway.**

An Act to designate a portion of Virginia Route 629 a Virginia byway.

[\[S 868\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Virginia Route 629 between Interstate Route 64 and Virginia Route 39 shall be considered a Virginia byway.*

## **Chapter 76 116th Infantry Regiment Memorial Highway.**

An Act to designate portions of Virginia Route 11 and Virginia Route 460 the "116th Infantry Regiment Memorial Highway."

[\[H 2093\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 11 between Winchester and Roanoke and that portion of Virginia Route 460 between Bedford and Roanoke are hereby designated the "116th Infantry Regiment Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 92 Earle Davis Gregory Highway.**

An Act to designate a portion of Virginia Route 49 the "Earle Davis Gregory Highway."

[\[H 1856\]](#)

Approved March 3, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 49 between the Virginia/North Carolina boundary and the Town of Crewe is hereby designated the "Earle Davis Gregory Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## Chapter 675 Study; fees assessed by circuit court clerks for information technology.

An Act to amend and reenact § 14.1-125.2 of the Code of Virginia, to amend and reenact the second enactment of Chapter 431 of the 1996 Acts of Assembly, and to provide for a task force to develop plans to upgrade land-records management technology, all relating to fees assessed by circuit court clerks for information technology.

[\[H 2579\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 14.1-125.2 of the Code of Virginia is amended and reenacted as follows:

§ 14.1-125.2. Additional fee to be assessed by circuit court clerks for information technology.

A. In addition to the fees otherwise authorized by this chapter, the clerk of each circuit court shall assess a three-dollar fee, known as the "Technology Trust Fund Fee," in each law and chancery action, upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in the judgment lien docket book. Such fee shall be deposited by the State Treasurer into a trust fund. The State Treasurer shall maintain a record of such deposits.

B. Two dollars of every three-dollar fee shall be allocated by the Compensation Board from the trust fund for the purposes of: (i) obtaining office *automation* and information technology equipment, including software and conversion services; (ii) preserving, maintaining and enhancing court records, including, but not limited to, the costs of repairs, maintenance, service contracts and system upgrades *which may include, but not necessarily be limited to, a digital imaging system*; and (iii) improving public access to court records. The Compensation Board in consultation with the circuit court clerks shall develop policies governing the allocation of funds for these purposes. In allocating funds, the Compensation Board ~~shall~~*may* consider the current automation of the clerks' offices and the recommendations made in ~~any study conducted by the Department of Information Technology (the "Department")~~ *the 1996 report by the Joint Legislative Audit and Review Commission ("JLARC")* regarding automation of the circuit court clerks' offices. *Except for improvements as provided in subsection E, such policies shall require a clerk to submit to the Compensation Board a written certification from the Council on Information Management that the clerk's proposed technology improvements will be*

*compatible with a system to provide statewide remote access to land records in accordance with the recommendations of JLARC and the Task Force on Land Records Management (the "Task Force") established by the Council on Information Management.*

The annual budget submitted by each circuit court clerk pursuant to § 14.1-50 shall ~~may~~ include a request for technology improvements in the upcoming fiscal year to be allocated by the Compensation Board from the trust fund. Such request shall not exceed the deposits into the trust fund credited to that locality. The Compensation Board shall allocate the funds requested by the clerks in an amount not to exceed the deposits into the trust fund credited to their respective localities.

C. The remaining one dollar of each such fee shall ~~may~~ be allocated by the Compensation Board from the trust fund for the purposes of (i) funding studies by the Department to design a remote access system, accessible to end-users on a uniform, statewide basis, which interfaces with the multiple systems used by the circuit court clerks' offices, to determine uniform, statewide implementation strategies, and allocations to circuit court clerks and a budget for the remote access system and to establish guidelines for additional fees, such as hook-up fees, connect-time charges, and transaction fees, to be charged by the circuit court clerks for such remote access; and (ii) implementing the remote access system developed by the Department pursuant to its study. In conducting its study, the Department shall receive input from circuit court clerks, attorneys, bankers, appraisers, title companies, realtors, and other end-users of such instruments and judgments ~~Task Force~~; (ii) funding studies by the Department of Information Technology or other public or private organizations to develop individual land-records automation plans for individual circuit court clerks' offices; and (iii) implementing the plan to modernize land records in individual circuit court clerk's offices and provide remote access to land records throughout the Commonwealth.

D. Such fee shall not be assessed to any instrument to be recorded in the deed books nor any judgment to be docketed in the judgment lien docket books tendered by any federal, state or local government.

*E. Notwithstanding any other provisions of this chapter, each circuit court clerk may apply to the Compensation Board for an allocation from the Technology Trust Fund for automation and technology improvements for any one or more of the following: (i) equipment and services to convert paper, microfilm, or similar documents to a digital image format, (ii) the conversion of information into a format which will accommodate remote access, and (iii) the law and chancery division of his office. However, allocations for (iii) above shall not exceed the pro rata share of the collections of the three-dollar fee relative to the chancery and law actions filed in the jurisdiction as provided in this section.*

~~E-F.~~ Information regarding the technology programs adopted by the circuit court clerks shall be shared with the Department of Information Technology, the State Library of Virginia, and the Office of the Executive Secretary of the Supreme Court.

~~F-G.~~ Nothing in this section shall be construed to diminish the duty of local governing bodies to furnish supplies and equipment to the clerks of the circuit courts pursuant to § 15.1-19. Revenue raised as a result of this section shall in no way supplant current funding to circuit court clerks' offices by local governing bodies.

2. That the second enactment of Chapter 431 of the 1996 Acts of Assembly is amended and reenacted as follows:

2. That the provisions of this act shall expire on July 1, ~~1997~~ 1998.

3.

*§ 1. The Director of the Council on Information Management shall establish the Task Force on Land Records Management (the "Task Force"). The Task Force shall develop a plan to modernize land records in individual circuit court clerk's offices and provide remote access to land records throughout the Commonwealth. Such plan shall not include any provision which incorporates the proposal for a statewide central record-keeping system recommended by the 1996 study conducted by the Department of Information Technology. The Task Force shall consist of nine voting members, appointed by the Director, and three non-voting members. Four of the voting members shall be circuit court clerks nominated by the Virginia Court Clerks Association. The other five voting members shall be appointed from the following: commissioners of the revenue; land-records users from local governments; and other users of land records such as real estate attorneys, real estate brokers and salespersons, title examiners, and land surveyors. One of the non-voting members shall be a member of the staff of the Supreme Court of Virginia; one shall be a member of the staff of the Library of Virginia; and one shall be a member of the staff of the Compensation Board.*

*§ 2. The Task Force shall submit an interim report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by September 1, 1997, which report shall define the concept of land-records management and make recommendations regarding the format, content, and technology standards for land records.*

*§ 3. The Task Force shall submit a final report to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by January 1, 1998, which report shall include an inventory of automated land-records technology in circuit court clerks' offices, provide recommendations for the future automation of land records in*

*individual circuit court clerk's offices, recommend policies for the Compensation Board to follow in allocating funds appropriated from the Technology Trust Fund, and address user fees charged for access to land records.*

*§ 4. The Compensation Board may contract with the Department of Information Technology or private contractors to prepare, at the request of the respective circuit court clerk, individual land-records automation plans for each circuit court clerk's office. Such plans shall be developed in concert with the findings and recommendations of the Task Force. Each plan shall address the extent of technology in each office; establish objectives to allow for optical disk imaging and the remote access to land records; identify actions to achieve the objectives; and provide recommendations as to the appropriate equipment and services necessary to facilitate these actions, and their associated costs and implementation schedules.*

4. That except as permitted in subsections C and E of § 14.1-125.2 on the effective date of this act, the Compensation Board shall not allocate funds from the Technology Trust Fund prior to May 1, 1998.

## **Chapter 22 Tributary plan for York, James and Rappahannock River Basins.**

An Act to amend and reenact § 2.1-51.12:2 of the Code of Virginia and to repeal the second enactment of Chapter 1031 of the Acts of Assembly of 1996, relating to tributary strategy development and implementation.

[\[H 2412\]](#)

Approved February 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-51.12:2 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-51.12:2. Tributary plan content; development timelines.

A. Each tributary plan developed pursuant to § 2.1-51.12:1 shall include the following:

1. Recommended specific strategies, goals, commitments and methods of implementation designed to achieve the nutrient goals of the 1987 Chesapeake Bay Agreement and the 1992 amendments to that agreement signed by the Governors of Virginia, Maryland, and Pennsylvania, the Mayor of the District of Columbia, the Administrator of the United States Environmental Protection Agency and the Chairman of the

Chesapeake Bay Commission, collectively known as the Chesapeake Executive Council.

2. A report on progress made pursuant to the "Chesapeake Bay Basinwide Toxics Reduction and Prevention Strategy" signed by the Chesapeake Executive Council on October 14, 1994, that is applicable to the tributary for which the plan is prepared.
3. A report on progress on the "Submerged Aquatic Vegetation Restoration Goals" signed by the Chesapeake Executive Council on September 15, 1993, that is applicable to the tributary for which the plan is prepared.
4. A report on progress related to the objectives of the "Local Government Partnership Initiative" signed by the Chesapeake Executive Council on November 30, 1995.
5. Specifically identified recommended state, local and private responsibilities and actions, with associated timetables, for implementation of the plan, to include the (i) person, official, governmental unit, organization or other responsible body; (ii) specific programmatic and environmental benchmarks and indicators for tracking and evaluating implementation and progress; (iii) opportunities, if appropriate, to achieve nutrient reduction goals through nutrient trading; (iv) estimated state and local benefits derived from implementation of the proposed alternatives in the plan; (v) state funding commitments and specifically identified sources of state funding as well as a method for considering alternative or additional funding mechanisms; (vi) state incentives for local and private bodies for assisting with implementation of the plans; and (vii) estimate and schedule of costs for the recommended alternatives in each plan.
6. Scientific documentation to support the recommended actions in a plan and an analysis supporting the documentation if it differs from the conclusions used by the Chesapeake Bay Program.
7. An analysis and explanation of how and when the plan is expected to achieve the elements of subdivisions 1, 2 and 3 of this subsection.
8. A process for and schedule of adjustment of the plan if reevaluation concludes that the specific nutrient reduction goals will not be met.
9. An analysis of the cost effectiveness and equity of the recommended nutrient reduction alternatives.
10. An opportunity for public comment and a public education and information program that includes but is not limited to information on specific assignments of responsibility needed to execute the plan.

B. Tributary plans shall be developed by the following dates for the:

1. Potomac River Basin, January 1, 1997.
2. Rappahannock River Basin, January 1, ~~1998~~ 1999.

3. York River Basin, ~~January~~ July 1, 1998.

4. James River Basin, ~~January~~ July 1, 1998.

5. Eastern and western coastal basins, January 1, 1999.

*C. In developing tributary plans, the Secretary shall consider, among other factors: (i) studies relevant to the establishment of nutrient reduction goals; (ii) the relative contributions and impacts of point and nonpoint sources of nutrients; (iii) the scientific relationship between nutrient controls and the attainment of water quality goals; and (iv) estimates of costs for each publicly owned treatment works affected by point source nutrient reduction goals and estimates of costs for nonpoint source nutrient reduction goals.*

*D. In any tributary plan reevaluation, the Secretary shall consider, among other factors: (i) whether all publicly owned treatment works in the basin under consideration have either installed biological nutrient removal technology or achieved equivalent nutrient reduction by other means; (ii) total nutrient reductions achieved by nonpoint sources to the tributary; (iii) the need for additional nutrient controls for the attainment of water quality goals; (iv) a comparison between nutrient reductions achieved by point source controls and nonpoint source controls in order to equitably allocate any additional reductions; and (v) the cost effectiveness, including nutrient trading options, of any additional nutrient reduction controls.*

2. That the second enactment of Chapter 1031 of the Acts of Assembly of 1996 is repealed.

## **Chapter 95 E. David Ringley Bridge.**

An Act to designate the Virginia Route 33 bridge over Interstate Route 64 in New Kent County the "E. David Ringley Bridge."

[\[H 2228\]](#)

Approved March 3, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 33 bridge over Interstate Route 64 in New Kent County is hereby designated the "E. David Ringley Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 73 Protection against liability for retaining Trigon stock.**

An Act to protect local treasurers and public officers against liability for retaining the common stock of Trigon Healthcare.

[\[H 1998\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law to the contrary, in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees, no treasurer or public officer shall be liable for any loss resulting from retaining the common stock in Trigon Healthcare received as a result of the demutualization of Blue Cross and Blue Shield of Virginia, a mutual company doing business as Trigon Blue Cross Blue Shield, and the issuance of common stock to the holders of policies of insurance with Blue Cross and Blue Shield of Virginia.*

*§ 2. The protection against potential liability provided by this act to treasurers and public officers for any loss resulting from retaining the common stock in Trigon Healthcare extends only to the common stock received as a result of the demutualization of Blue Cross and Blue Shield of Virginia, a mutual company doing business as Trigon Blue Cross Blue Shield, retained by treasurers and public officers after the expiration of any initial lockup period.*

*§ 3. The protection against potential liability provided by this act shall expire (i) with respect to one-third of the number of shares of such common stock on the first anniversary of the expiration of the initial lockup period, (ii) with respect to an additional one-third of the number of shares on the second anniversary of the expiration of the initial lockup period, and (iii) with respect to all remaining shares on the third anniversary of the expiration of the initial lockup period.*

## **Chapter 97 Scenic highway; Yates Ford Road.**

An Act to designate a portion of Yates Ford Road in Fairfax County as a scenic highway and Virginia byway.

[\[H 2851\]](#)

Approved March 3, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Yates Ford Road in Fairfax County between Clifton Road and Chapel Road shall be considered a scenic highway and Virginia byway.*

## **Chapter 98 Designating names of certain bridges on Routes 60 & 622.**

An Act to designate certain bridges on U.S. Route 60 and Virginia Route 622 as the "Stewart U. Taylor Bridges," the "John Vernon Taylor Bridge," and the "Henry Clay Taylor Bridge."

[\[H 2905\]](#)

Approved March 3, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the twin bridges over Diascund Creek on U.S. Route 60 between James City County and New Kent County are hereby designated the "Stewart U. Taylor Bridges." The two wooden bridges on Virginia Route 622 that cross Diascund Creek at the New Kent/James City County boundary and in James City are hereby designated, respectively, the "John Vernon Taylor Bridge" and the "Henry Clay Taylor Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of these bridges. These designations shall not affect any other designations heretofore or hereafter applied to any of these bridges.*

## **Chapter 151 Courts; pro bono counsel for family abuse victims.**

An Act to repeal the second enactment of Chapter 806 of the 1995 Acts of Assembly, relating to appointment of pro bono counsel in certain cases.

[\[H 2231\]](#)

Approved March 6, 1997

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 806 of the 1995 Acts of Assembly is repealed.

## **Chapter 194 Regulation of lighting in Albemarle County.**

An Act to amend and reenact Chapter 567 of the Acts of Assembly of 1996, relating to regulation of lighting in certain counties.

[\[S 814\]](#)

Approved March 9, 1997

Be it enacted by the General Assembly of Virginia:

1. That Chapter 567 of the Acts of Assembly of 1996 is amended and reenacted as follows:

§ 1. The governing body of any county *(i)* operating under a county manager plan of government or *(ii)* with a population of less than 100,000 operating under a county executive form of government, may provide by ordinance for the regulation of exterior illumination levels of buildings and property.

## **Chapter 211 Personnel system in certain cities.**

An Act to allow the city council of certain cities to establish a personnel system.

[\[H 2045\]](#)

Approved March 9, 1997

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Notwithstanding any contrary provisions of law, general or special, in any city with a population over 200,000 according to the 1990 census, the city council, upon receiving any recommendations submitted to it by the city manager, may establish a personnel system for the city administrative officials and employees. Such system shall be based on merit and professional ability and shall not discriminate on the basis of race, national origin, religion, sex, age, disabilities, political affiliation or marital status. The personnel system shall consist of rules and regulations which provide for the general administration of personnel matters, a classification plan for employees, a uniform pay plan and a procedure for resolving grievances of employees as provided by general law for either local government or state government employees.*

## Chapter 75 Hotel Roanoke Conference Center Commission.

An Act to amend and reenact § 21 of Chapter 440 of the 1991 Acts of Assembly, as amended by the first enactment of Chapter 628 of the 1994 Acts of Assembly, relating to the Hotel Roanoke Conference Center Commission.

[\[H 2017\]](#)

Approved March 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 21 of Chapter 440 of the 1991 Acts of Assembly, as amended by the first enactment of Chapter 628 of the 1994 Acts of Assembly, is amended and reenacted as follows:

§ 21. Fiscal year; Commission budget.

A. The fiscal year of the Commission shall begin on July 1 and end on June 30.

B. The Commission shall annually, prior to ~~February 15~~ *April 1* of each year, prepare and submit to the participating parties (i) a proposed operating budget showing its estimated revenues and expenses on an accrual basis for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion of the deficit proposed to be borne by each participating party, and (ii) a proposed capital budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000 (or such higher amount as the Commission and the participating parties may determine) and having an estimated useful life of twenty years or more and the source of funds for such expenditures, including any amount requested from the participating parties. Depreciation shall be excluded from the Commission's operating budget with respect to assets purchased by the Commission with funds appropriated to it for such purpose by a participating party and, for this determination, it shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable Commission budget to the extent such purchase price is included in the approved budget. Assets purchased by the ~~Authority~~ *Commission* with bond proceeds shall be depreciated over the useful life of such assets purchased with bond proceeds.

C. If the governing body of a participating party shall approve the Commission's proposed operating budget, it shall provide to the Commission such participating party's portion of such deficit. If during any fiscal year the Commission shall receive revenues in

excess of those estimated by the Commission in its approved budget for such year, the budgeted deficit for such fiscal year shall automatically be reduced and, except as herein provided, the contribution of each participating party shall be proportionately reduced. Notwithstanding the foregoing, with the consent of the governing bodies of the participating parties, all or a portion of such contributions may be maintained so as to enable the Commission to expend such excess revenues for its proper purposes.

D. If the governing body of a participating party shall approve the Commission's proposed capital budget, it shall provide to the Commission such participating party's portion of the expenditures set forth therein. Any such contribution shall automatically be reduced by the participating party's proportionate share of any grant funds received by the Commission for the purchase of assets included in the Commission's approved capital budget in excess of the grant funds shown in such capital budget as a source of funds for such expenditure, unless prohibited by the basic provider of the grant funds.

E. The Commission may expend any and all moneys within its control without obtaining the approval of the participating parties, but, except as otherwise provided in this Act with respect to contracts and agreements between the Commission and any participating party, the Commission shall not commit any participating party in an amount in excess of that appropriated to the Commission by the governing body of such party.

F. If at any time during any fiscal year it shall appear that the cash disbursements of the Commission will exceed its cash receipts for such fiscal year, including amounts appropriated to it by the participating parties, the Commission may request supplemental appropriations from the participating parties and any other party.

G. No moneys appropriated to the University by the Commonwealth, except moneys generated by the continuing education programs offered by the University, shall be contributed to the Commission by the University. The University is authorized to expend nongeneral funds from continuing education programs in support of its share of the operating costs of the Hotel Roanoke Conference Center. The University shall report to the chairmen of the House Appropriations and Senate Finance Committees by August 15 of each fiscal year all planned and actual transfers to the Hotel Roanoke Conference Center.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 253 Small claims courts.**

An Act to amend and reenact the second enactment of Chapter 799 of the 1988 Acts of Assembly, as amended by Chapter 565 of the 1990 Acts of Assembly and Chapter 593 of the 1993 Acts of Assembly, relating to small claims divisions in the general district courts.

[\[H 2193\]](#)

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 799 of the 1988 Acts of Assembly, as amended by Chapter 565 of the 1990 Acts of Assembly and Chapter 593 of the 1993 Acts of Assembly, is amended and reenacted as follows:
2. That the provisions of this act shall become effective October 1, 1988, ~~and shall expire on July 1, 1998.~~
2. That any small claims court created prior to July 1, 1997, shall continue in effect.

## **Chapter 237 College Woods; transfer of property.**

An Act to authorize The College of William and Mary in Virginia to convey certain land to the Department of Transportation; appropriation.

[\[S 869\]](#)

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of Chapter 774 of the 1995 Acts of Assembly, The College of William and Mary in Virginia is hereby authorized to convey, with the approval of the Governor and the Attorney General, 730.0 square meters (0.18 acres), more or less, of the property known as College Woods which includes Lake Matoaka, being shown on Sheet 3 of the plans for Virginia Route 616, State Highway Project 0616-047-155, M-501, and lying on the east, right side of Virginia Route 616, Strawberry Plains Road centerline from a point in the lands of the landowner approximately 9.00 meters opposite approximate Station 11+65.65 to the lands now or formerly belonging to Sarah Bailey approximately 12.50 meters opposite approximate Station 13+41.00, to the*

*Virginia Department of Transportation for highway purposes and other incidental purposes associated with the construction of Virginia Route 616, Project 0616-047-155, M-501.*

2. That the proceeds from the transfer of property authorized by this act are hereby appropriated to The College of William and Mary in Virginia to be held, used, and administered in the same manner as all other gifts and bequests are held, used, and administered.

## **Chapter 243 Small claims court; representation.**

An Act to amend and reenact § [16.1-122.4](#) of the Code of Virginia, relating to representation in small claims court.

[\[H 1645\]](#)

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1. That § [16.1-122.4](#) of the Code of Virginia is amended and reenacted as follows:

§ [16.1-122.4](#). Representation and removal; rights of parties.

A. All parties shall be represented by themselves in actions before the small claims court except as follows:

1. A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership *whoshall have all the rights and privileges given an individual to represent, plead and try a case without an attorney*. An attorney may serve in this capacity if he is appearing pro se, but he may not serve in a representative capacity.

2. A plaintiff or defendant who, in the judge's opinion, is unable to understand or participate on his own behalf in the hearing may be represented by a friend or relative if the representative is familiar with the facts of the case and is not an attorney.

B. A defendant shall have the right to remove the case to the general district court at any point preceding the handing down of the decision by the judge.

## **Chapter 264 Use of hunting weapons.**

An Act to repeal Chapter 187 of the Acts of Assembly of 1954, as amended by Chapter 235 of the Acts of Assembly of 1993 and Chapter 117 of the Acts of Assembly of 1996, relating to hunting and shooting in Prince George County.

[\[H 2628\]](#)

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1. That Chapter 187 of the Acts of Assembly of 1954, as amended by Chapter 235 of the Acts of Assembly of 1993 and Chapter 117 of the Acts of Assembly of 1996, is repealed.

**Chapter 265 Interstate Route 73 corridor.**

An Act to authorize installation of certain signs by the Department of Transportation.

[\[H 2690\]](#)

Approved March 11, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation may install, at suitable locations, signs or other markers indicating the corridor or approximate corridor through which proposed Interstate Route 73 is proposed to be constructed. Such signs or markers shall bear the legend "FUTURE I-73 CORRIDOR" or a message of like purport.*

**Chapter 298 Unemployment compensation; tax rates for new employers.**

An Act to amend and reenact the third enactment of Chapter 323 of the Acts of Assembly of 1995, relating to unemployment compensation; tax rates for new employers.

[\[S 960\]](#)

Approved March 12, 1997

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 323 of the Acts of Assembly of 1995 is amended and reenacted as follows:

3. That the provisions of this act shall expire on January 1, ~~1998~~2000.

## **Chapter 332 Fire suppression system; installation by certain hotels and motels.**

An Act to extend a certain deadline for compliance with a regulation of the Department of Housing and Community Development.

[\[S 1188\]](#)

Approved March 13, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any existing hotel or motel which is required to install an automatic sprinkler system meeting the requirements of the Virginia Uniform Statewide Building Code, Volume I, 1987 Edition, Second Amendment (effective March 1, 1990) for Use Group R-1, shall install such automatic sprinkler system on or before September 1, 1997.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 348 Conveyance of Hampton Roads Marina.**

An Act to authorize the Governor to convey certain improved subaqueous lands in the Hampton River at Hampton, Virginia, to Hampton Roads Marina, L.L.C.

[\[H 2725\]](#)

Approved March 13, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Governor is hereby authorized, upon consultation with the Marine Resources Commission and the Attorney General, to convey to Hampton Roads Marina, L.L.C., all rights, title and interest, and all riparian rights appurtenant thereto, in certain improved subaqueous lands in Hampton, Virginia, being an extension of the property of the Hampton Roads Marina, L.L.C. in the Hampton River and more particularly described as follows:*

*Beginning at a set nail spike located approximately on the original mean low water line of Herbert's Creek prior to the aforementioned permitted filling, said spike being located at the northwest corner of the property herein described and being the true point and*

*place of Beginning; thence with a survey tie line, (said tie line generally proceeds along a timber bulkhead which is located on the southerly lines of said Herbert's Creek), the following three courses: (1) North eighty degrees fifty minutes four seconds East (N 80 degrees 50' 04" E), a distance of one hundred and 95/100 (100.95) feet to a set drill hole; (2) thence South nine degrees nineteen minutes eleven seconds East (S 09 degrees 19' 11" E), a distance of seventy-eight and 13/100 (78.13) feet to a set drill hole; (3) thence North eighty-five degrees thirty-one minutes three seconds East (N 85 degrees 31' 03" E), a distance of one hundred sixty-four and 74/100 (164.74) feet to a set drill hole, said drill hole lying at a point where the southerly line of said Herbert's Creek joins the westerly line of the Hampton River; thence along a survey tie line and with the westerly line of said Hampton River the following two courses: (1) South ten degrees thirty-nine minutes forty-six seconds East (S 10 degrees 39' 46" E), a distance of one hundred eighty-five and 32/100 (185.32) feet with said survey tie line, (said tie line generally proceeds along a timber bulkhead which is located on the westerly line of said Hampton River), to a point in the current approximate mean low water line of said Hampton River; (2) thence South fifty-six degrees seven minutes thirty-eight seconds West (S 56 degrees 07' 38" W), a distance of one hundred sixty-five and 52/100 (165.52) feet along said approximate mean low water line to a point lying in the easterly line of property now or formerly standing in the name of Herbert House Condominiums; thence departing said approximate mean low water line and along the easterly and northerly lines of said property now or formerly standing in the name of said Herbert House Condominiums the following four courses: (1) North one degree fourteen minutes four seconds East (N 01 degrees 14' 04" E), a distance of one hundred twenty-two (122.00) feet to a set iron pin; (2) thence North thirty-five degrees forty minutes fifty-six seconds West (N 35 degrees 40' 56" W), a distance of one hundred sixty-six and 84/100 (166.84) to a found iron pipe at a point of curvature; (3) thence along a curve to the left having a radius of fifteen (15.00) feet, arc length of eighteen and 49/100 (18.49) feet, delta angle of seventy degrees thirty-seven minutes twenty-five seconds (70 degrees 37' 25"), a chord bearing North seventy degrees fifty-nine minutes thirty-nine seconds West (N 70 degrees 59' 39" W), and a chord length of seventeen and 34/100 (17.34) feet to a found iron pipe at a point of tangency; (4) thence South seventy-three degrees forty-one minutes thirty-nine seconds West (S 73 degrees 41' 39" W), a distance of twenty-four and 70/100 (24.70) feet to a point located approximately on the original mean low water line of Herbert's Creek prior to the aforementioned permitted filling; then North thirty degrees thirteen minutes eighteen seconds West (N 30 degrees 13' 18" W), a distance of seventy-six and 74/100 (76.74) feet along aforesaid approximate original mean low water line to a set*

*nail spike, said nail spike being the true point and place of Beginning and containing forty thousand seven hundred fifty-five (40,755) square feet, more or less.*

2. That the conveyance shall be subject to such terms and conditions as are deemed proper and shall be in a form approved by the Attorney General.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 483 License plates; use of machine-readable scan lines.**

An Act to require the Department of Motor Vehicles and the Department of State Police to work toward using bar code technology.

[\[H 2042\]](#)

Approved March 18, 1997

Whereas, the Department of Motor Vehicles (DMV) currently uses the latest bar code technology on its vehicle registration card and vehicle title paper; and

Whereas, DMV is planning to include bar code technology in the issuance of future driver's licenses; and

Whereas, DMV continues to explore opportunities to use bar code technology wherever feasible and effective; and

Whereas, the Department of State Police is currently exploring opportunities to use bar codes on state inspection stickers; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. The Department of Motor Vehicles and the Department of State Police, in conjunction with the Council on Information Technology, shall work together toward using bar code technology, as well as all other types of emerging technology, to improve the operation of the agencies whenever feasible and effective.*

## **Chapter 520 Citizen standing to appeal permit content.**

An Act to amend Chapter 1032 of the Acts of Assembly of 1996, by adding a fifth enactment clause, relating to appeals of certain agency actions.

[\[H 2415\]](#)

Approved March 18, 1997

Be it enacted by the General Assembly of Virginia:

1. That Chapter 1032 of the Acts of Assembly of 1996 is amended by adding a fifth enactment clause as follows:

5. That the "final and unappealable decision of a court of competent jurisdiction" referred to in enactment clauses 3 and 4 was rendered by the United States Supreme Court in the case of *Commonwealth vs. Browner* on January 21, 1997.

## **Chapter 359 Medical assistance services.**

An Act relating to certain waived services provided by the Department of Medical Assistance Services.

[\[S 1058\]](#)

Approved March 15, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Request for revision of certain waiver.*

*A. The Department of Medical Assistance Services shall request, with all due haste, that the Health Care Finance Administration grant a revision to the existing waiver known as the Ventilator Dependency Program or Technology Waiver. The request shall include mechanisms, which are cost effective, to expand eligibility for such waived services for individuals whose families have been and are caring for them in their homes, under the following conditions: (i) such individuals are eligible for medical assistance services; (ii) such individuals would have been eligible for services through the waiver for the ventilator dependency program when under the age of twenty-one, if such individual had not been covered, as a dependent, under a policy of insurance or other health care benefit plan; and (iii) such individual would be eligible for home health services under the waiver at the time of application, if he had been institutionalized for a period of ninety days or more.*

*Insofar as possible within federal requirements for waived services, the waiver-revision request shall not require that adult recipients who have not been receiving such waived services while under the age of twenty-one be institutionalized to be eligible. The waiver-revision request shall take into consideration the cost savings to the Commonwealth of the family caregiving, including the length and intensity of such caregiving, and the extent to which continued family caregiving, without significant assistance in the*

*home, places other family members at risk of institutionalization or deteriorating health conditions.*

*B. The Department of Medical Assistance Services shall report to the Senate Committee on Education and Health and the House Committee on Health, Welfare, and Institutions by November 1, 1997, on such waiver-revision request.*

## **Chapter 596 Alternative education programs.**

An Act to repeal the second enactments of Chapters 819 and 856 of the Acts of Assembly of 1993, relating to the education of students who are suspended, excluded or expelled.

[\[H 1936\]](#)

Approved March 20, 1997

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 819 of the Acts of Assembly of 1993 is repealed.
2. That the second enactment of Chapter 856 of the Acts of Assembly of 1993 is repealed.

## **Chapter 620 Atlantic States Marine Fisheries Compact.**

An Act to repeal Chapter 283 of the Acts of Assembly of 1995, as amended by Chapter 860 of the Acts of Assembly of 1996, relating to the Atlantic States Marine Fisheries Compact.

[\[H 2537\]](#)

Approved March 20, 1997

Be it enacted by the General Assembly of Virginia:

1. That Chapter 283 of the Acts of Assembly of 1995, as amended by Chapter 860 of the Acts of Assembly of 1996, is repealed.

## **Chapter 642 Juvenile detention commissions.**

An Act to amend and reenact the second enactment of Chapter 833 of the Acts of Assembly of 1993, relating to powers of regional juvenile detention commissions.

[\[S 931\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 833 of the Acts of Assembly of 1993 is amended and reenacted as follows:
2. That the provisions of this act shall apply only to the Middle Peninsula Juvenile Detention Commission which serves the Ninth and Fifteenth Judicial Districts, *the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, the Rappahannock Juvenile Detention Commission which serves portions of the Fifteenth and Sixteenth Judicial Districts, and the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts.*
2. That an emergency exists and this act is in force from its passage.

## **Chapter 673 Judicial Retirement System.**

An Act to permit the purchase of prior service credit for certain beneficiaries of the Judicial Retirement System.

[\[H 2555\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1.  
*§ 1. Any beneficiary of the Judicial Retirement System (§ [51.1-300](#) et seq.) who served as a substitute judge on a full-time basis for any city of this Commonwealth with a population between 90,000 and 100,000, as reported in the 1990 census of the population of the United States, may purchase prior service credit not otherwise credited to the Judicial Retirement System or the retirement system of such city if (i) such city had no part-time judgeships during the time period to be credited and (ii) the beneficiary makes payment of five percent of final salary for each year purchased to the Virginia Retirement System.*
2. That all purchases of prior service credit under the provisions of this act shall be completed by December 31, 1997.

## **Chapter 435 Property conveyance; ABC Board.**

An Act to amend and reenact § 1 of Chapter 301 of the 1996 Acts of Assembly authorizing the Alcoholic Beverage Control Board to convey certain real estate; revision of property description.

[\[S 832\]](#)

Approved March 16, 1997

Whereas, the Virginia Alcoholic Beverage Control Board (the Board), Department of Alcoholic Beverage Control of the Commonwealth of Virginia, owns a parcel of land in the City of Richmond bounded by Sherwood Avenue and Robin Hood Road on which is located an office, a warehouse, a paved parking area, and an abandoned railroad sidetrack; and

Whereas, the abandoned railroad sidetrack is of no use to the Board for its present or anticipated future purposes; and

Whereas, the land adjacent to the area occupied by the abandoned railroad sidetrack is owned by Richfood, Inc., which owns and operates the Richfood Dairy milk processing plant located thereon; and

Whereas, Richfood Dairy requires additional land to continue and expand its dairy operations at that site; and

Whereas, the conveyance of a part of said parcel, being a strip of land approximately 95 feet in width extending between and bounded by Sherwood Avenue and Robin Hood Road and containing 1.21 acres, more or less, upon which is located the abandoned railroad sidetrack would provide the additional space needed for Richfood Dairy's operations; and

Whereas, such conveyance would provide additional real estate tax revenue to the City of Richmond, as well as enable Richfood Dairy to maintain its workforce at the site with the opportunity to expand that workforce in the future; and

Whereas, Richfood, Inc., is the only owner of property adjacent to that strip of land, except the Board which has no anticipated use for it; and

Whereas, by Chapter 301 of the 1996 Acts of Assembly, the Board was authorized to sell and convey that strip of land to Richfood, Inc., but; upon survey subsequent to enactment of Chapter 301 the boundaries and dimensions of said strip of land were determined to be different from the boundaries and dimensions described in Chapter 301; and

Whereas, by current survey, the Board and Richfood, Inc., have now established revised boundaries and dimensions which more accurately describe the strip of land to be

conveyed and which should be substituted in Chapter 301 for the original boundaries and dimensions for completion of the intended conveyance; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1. That § 1 of Chapter 301 of the 1996 Acts of Assembly is amended and reenacted as follows:

§ 1. Notwithstanding any other provision of law, the Alcoholic Beverage Control Board, Department of Alcoholic Beverage Control of the Commonwealth of Virginia, is hereby authorized to convey to Richfood, Inc., ~~a strip of land approximately 320 feet by 130 feet between Sherwood Avenue and Robin Hood Road in the City of Richmond lying between the property of Richfood, Inc., and the portion of the property owned by the Board that is paved for vehicle parking and upon which is located a railroad sidetrack; or its designated affiliate an irregularly shaped strip or parcel of land lying and being in the City of Richmond, Virginia, approximately 95 feet in width (except slightly less near Robin Hood Road), containing 1.21 acres more or less, bounded on the north by Robin Hood Road, on the south by Sherwood Avenue, and on the east and west by parallel lines lying approximately 95 feet apart, the east line of which extends 530.88 feet along the current division line between the properties of the Board and Richfood Dairy and the west line of which extends 579.33 feet along and forming a new division line located immediately east of the edge of pavement of the Board's rear parking lot, and being a part of the approximately 21 acre tract comprising the Board's office and warehouse facility;~~ the conveyance shall be on terms determined by the Board without competitive bidding. The purchase price for any conveyance shall be no less than the fair market value of the property conveyed as determined by an independent appraisal. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute and deliver such deed and other documents as may be necessary to accomplish such conveyance.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 678 School calendar.**

An Act to permit closing schools on election days.

[\[H 2669\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Closing of schools on election days.*

*The school board of a county with a population of no less than 26,595 and no more than 27,790, may set the school calendar for any regional education program or school operated jointly by the school division with one or more other school divisions, to close the public schools for students or for students and for teachers on any general or special election day.*

## **Chapter 695 Charles City County; division and conveyance of land to siblings.**

An Act to allow Charles City County to permit certain property divisions.

[\[H 1568\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of subdivision A 12 of § 15.1-466, relating to the division of a lot or parcel for the purpose of a sale or gift to a member of the immediate family, in Charles City County a member of the immediate family may include a sibling.*

## **Chapter 580 Conveyance of George Washington's Grist Mill State Park.**

An Act to amend and reenact § 1 of Chapter 803 of the 1996 Acts of Assembly and § 1 of Chapter 811 of the 1996 Acts of Assembly and to repeal Chapter 264 of the 1936 Acts of Assembly and Chapter 29 of the 1940 Acts of Assembly, relating to the authority to lease and convey the George Washington's Grist Mill State Park in Fairfax County.

[\[S 961\]](#)

Approved March 20, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 803 of the 1996 Acts of Assembly is amended and reenacted as follows:

§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease and subsequently to convey to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor and the Attorney General, the parcel of real property and appurtenances known as the George Washington's Grist Mill State Park in Fairfax County. If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property be maintained and open to public use and that if such condition is not met, the property shall revert to the Commonwealth.

Subject to the fulfillment of the terms and conditions of a memorandum of understanding entered into pursuant to § 2 of this act, the initial term of this lease may be for five years or less, the lease may be renewed at the option of the lessee for periods of similar length, and the property may, ~~after~~*upon the expiration of the initial lease term or during any renewal term*, be conveyed to the Mount Vernon Ladies' Association of the Union. The memorandum of understanding shall set out the matters to be performed by each party to include, but not be limited to, capital investment, staffing, programming, and maintenance and operations support. All lease renewals will require approvals of the Governor and the Attorney General as stated for the initial term. The memorandum of understanding, the lease, all lease renewals and any instrument conveying the property shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Conservation and Natural Resources and the House Appropriations Committee for review.

2. That § 1 of Chapter 811 of the 1996 Acts of Assembly is amended and reenacted as follows:

§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease and subsequently to convey to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor and the Attorney General, the parcel of real property and appurtenances known as the George Washington's Grist Mill State Park in Fairfax County. If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property be maintained and open to public use and that if such condition is not met, the property shall revert to the Commonwealth.

Subject to the fulfillment of the terms and conditions of a memorandum of understanding entered into pursuant to § 2 of this act, the initial term of this lease may be for five years

or less, the lease may be renewed at the option of the lessee for periods of similar length, and the property may, *after upon the expiration of the initial lease term or during any renewal term*, be conveyed to the Mount Vernon Ladies' Association of the Union. The memorandum of understanding shall set out the matters to be performed by each party to include, but not be limited to, capital investment, staffing, programming, and maintenance and operations support. All lease renewals will require approvals of the Governor and the Attorney General as stated for the initial term. The memorandum of understanding, the lease, all lease renewals and any instrument conveying the property shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Conservation and Natural Resources and the House Appropriations Committee for review.

3. That Chapter 264 of the 1936 Acts of Assembly and Chapter 29 of the 1940 Acts of Assembly are repealed.

## **Chapter 658 Capital Region Airport Commission.**

An Act to amend and reenact § 11 of Chapter 380 of the Acts of Assembly of 1980, relating to the Capital Region Airport Commission.

[\[S 1189\]](#)

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 11 of Chapter 380 of the Acts of Assembly of 1980 is amended and reenacted as follows:

§ 11. Eminent domain; right of entry.

The Commission is hereby granted full power to exercise within the participating political subdivisions the right of eminent domain in the acquisition of any lands, easements, privileges or other property interests which are necessary for airport and landing field purposes, including the right to acquire by eminent domain, avigation easements over lands or water outside the boundaries of its airport or landing fields where necessary in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airport and landing fields even though such avigation easement be inconsistent with the continued use of such land for the same purposes for which it had been used prior to such acquisition, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or

growing on said land at the time of such acquisition. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of the Commission in accordance with Title 25 of the Code of Virginia.

*The authorized agents and employees of the Commission may enter upon any lands, waters, and premises within the participating political subdivisions for the purpose of making surveys, or obtaining environmental samplings as they may deem necessary for the purposes of this chapter, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending. The Commission shall make reimbursement for any actual damage resulting to such lands, waters, and premises as a result of such activities. The Commission shall disclose the results of any such environmental samplings to the property owner if requested.*

## **Chapter 756 Coal Employment and Production Incentive Tax Credit.**

An Act to amend and reenact the fourth enactment of Chapter 429 of the Acts of Assembly of 1989, relating to the Virginia Coal Employment and Production Incentive Tax Credit.

[\[H 2846\]](#)

Approved March 22, 1997

Be it enacted by the General Assembly of Virginia:

1. That the fourth enactment of Chapter 429 of the Acts of Assembly of 1989 is amended and reenacted as follows:
4. That the provisions of this act shall expire for all tax years beginning on and after January 1, ~~2001~~2005.

## **Chapter 860 Board of Housing and Community Development.**

An Act to amend and reenact §§ [36-108](#) and [36-135](#) as it is currently effective of the Code of Virginia and to repeal Chapter 53 of the 1995 Acts of Assembly and the second and third enactments of Chapter 620 of the 1996 Acts of Assembly, relating to the Board of Housing and Community Development.

[\[H 2261\]](#)

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ [36-108](#) and [36-135](#) as it is currently effective of the Code of Virginia are amended and reenacted as follows:

§ [36-108](#). Board continued; members.

There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of ~~twelve~~ *fourteen* members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder, selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor, selected from a slate presented by the Virginia Branch, Associated General Contractors of America; two members who have had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building Officials Conference; one member who is employed by a public agency as a fire prevention officer, selected from a slate presented by the State Fire Chiefs Association of Virginia; one member whose primary occupation is commercial or retail construction or operation and maintenance, selected from a slate presented by the Virginia chapters of Building Owners and Managers Association, International; one member whose primary occupation is residential, multifamily housing construction or operation and maintenance, selected from a slate presented by the Virginia chapters of the National Apartment Association; one member who is an electrical contractor who has held a Class A license for at least ten years; *one member who is a plumbing contractor who has held a Class A license for at least ten years and one member who is a heating and cooling contractor who has held a Class A license for at least ten years, both of whom are selected from a slate presented by the Virginia Association of Plumbing-Heating-Cooling Contractors*; and two members from the Commonwealth at large who may be members of local governing bodies. The members shall serve at the pleasure of the Governor.

§ [36-135](#). Board of Housing and Community Development; members; terms; chairman; appointment of ad hoc committee.

A. The Board of Housing and Community Development within the Department of Housing and Community Development shall consist of thirteen members as follows: eleven members, one representing each congressional district in the Commonwealth, who are appointed by the Governor, subject to confirmation by the General Assembly, the Executive Director of the Virginia Housing Development Authority as an ex officio nonvoting member and a member of the Virginia Fire Services Board, to be appointed by the chairman of that Board. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. A chairman of the Board shall be elected annually by the Board.

*B. Whenever the Board of Housing and Community Development proposes a change to statewide building and fire regulations, the Board may convene an ad hoc committee, including but not limited to representatives of those industry groups directly affected by such change, to advise the Board on such matters.*

2. That Chapter 53 of the 1995 Acts of Assembly and the second and third enactments of Chapter 620 of the 1996 Acts of Assembly are repealed.

## **Chapter 867 Virginia Route 3; King's Highway.**

An Act to amend Chapter 139 of the 1996 Acts of Assembly by adding a section numbered 2, relating to the designation of a portion of Virginia Route 3 as the King's Highway.

[\[H 2411\]](#)

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That Chapter 139 of the 1996 Acts of Assembly is amended by adding a section numbered 2 as follows:

*§ 2. Notwithstanding the provisions of § 1 of this act, that portion of Virginia Route 3 from George Washington's Birthplace National Monument in Westmoreland County, Virginia, to the junction of Virginia Route 3 with Interstate Route 95 at Fredericksburg, Virginia, is hereby designated the "King's Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route.*

# Uncodified Acts of Assembly - 1998

## Chapter 36 Property lease; Smiley Block Company property.

An Act authorizing the Department of Conservation and Recreation to lease to Amherst County certain property in Amherst County.

[\[H 455\]](#)

Approved March 10, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation, being the contract owner, is hereby authorized to lease to Amherst County, upon terms and conditions the Department deems proper, with the approval of the Governor and the Attorney General, the parcel of real property and appurtenances thereto, known as the Smiley Block Company property, consisting of 32.1 acres, more or less, located adjacent to the James River at State Route 1004 in Amherst County. The lease shall require that the property be maintained and open to public recreational use. If this condition is not met, the lease shall terminate and control shall revert to the Department of Conservation and Recreation.*

*§ 2. Notwithstanding the lease term limits under § [10.1-109](#), the initial term of this lease shall be for a term of thirty years and may be renewed for three additional periods of similar length. All lease renewals shall require the approval of the Governor and the Attorney General.*

## Chapter 40 Property conveyance; lands in James River.

An Act to authorize the Virginia Marine Resources Commission to convey certain formerly submerged lands of the James River to Chesterfield County.

[\[H 779\]](#)

Approved March 10, 1998

Whereas, it is the desire of the County of Chesterfield to develop a wildlife management area in the Dutch Gap area of the James River, a portion of which is property belonging to the Commonwealth of Virginia; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That the Marine Resources Commission is hereby authorized and empowered with the approval of the Governor to execute in the name of the Commonwealth a deed conveying to the County of Chesterfield, subject to such terms and conditions as the Commission may deem proper, for use in the development of a wildlife management area, such rights, title and interest as the Commonwealth may have in the tract of land described as follows: all land which may have been formerly the channel of the James River contained in Parcel A and/or Parcel E on a plat prepared by Koontz-Bryant, P.C., Engineers and Surveyors, dated December 11, 1996, entitled "Plat Showing Nine Parcels of Land Lying at the Southeast Intersection of Coxendale Road and Dutch Gap Cutoff" and recorded in the land records of Chesterfield County in Plat Book 92, Page 95 on January 6, 1997.*

## **Chapter 41 Property conveyance; Fort Boykin State Park.**

An Act authorizing the Department of Conservation and Recreation to convey Fort Boykin State Park in Isle of Wight County to Isle of Wight County.

[\[H 821\]](#)

Approved March 10, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Isle of Wight County, upon terms and conditions the Department deems proper, with the approval of the Governor and the Attorney General, 14.43 acres of real property known as Fort Boykin State Park in Isle of Wight County. The deed of conveyance shall require that the property be maintained and open to public recreational and park use. If this condition is not met, ownership and control of the property shall revert to the Department of Conservation and Recreation.*

*The deed of conveyance shall be in a form approved by the Attorney General.*

## **Chapter 59 T. George Vaughan, Jr., Memorial Highway.**

An Act to designate a portion of U.S. Route 58 the "T. George Vaughan, Jr., Memorial Highway."

### [\[S 1\]](#)

Approved March 13, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 58 between the Town of Hillsville and the City of Galax is hereby designated the "T. George Vaughan, Jr., Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 127 Trade and commerce; digital signatures.**

An Act to amend and reenact §§ 2.1-563.31, [59.1-467](#), [59.1-468](#), and [59.1-469](#) of the Code of Virginia and to repeal the second enactment of Chapter 917 of the 1997 Acts of Assembly, relating to trade and commerce; digital signatures.

### [\[S 153\]](#)

Approved March 13, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-563.31, [59.1-467](#), [59.1-468](#), and [59.1-469](#) of the Code of Virginia are amended and reenacted as follows:

§ 2.1-563.31. General powers of Council; powers and duties of Council.

A. The Council shall have the following general powers:

1. To make and enter into all contracts and agreements necessary or incidental to the performance of duties and the execution of its powers, including but not limited to contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth.

2. To accept grants from the United States government and agencies and instrumentalities thereof and any source, other than any person, firm, or corporation, or director, officer, or agent thereof which manufactures or sells information technology

equipment, goods or services. To these ends, the Council shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

3. To prescribe regulations necessary or incidental to the performance of its duties or execution of its powers, ~~including such regulations as the Council deems appropriate concerning the use of digital signatures as provided in § 59.1-469~~; however, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall not apply to such regulations.

B. The Council shall have the following powers and duties concerning the planning, budgeting, management and use of information technology resources. All agencies and institutions of higher education shall cooperate with the Council in the performance of its powers and duties:

1. To monitor trends and advances in information technology, to develop a comprehensive, statewide, four-year planning process, and plan for the acquisition, management, and use of information technology resources. The statewide plan shall be updated annually and submitted to the Governor. In developing and updating such plans, the Council shall consider the advice of the Department, and of agencies and institutions of higher education through the Advisory Committees to the Council provided for herein.

2. To provide agencies and institutions of higher education with information and guidelines in the development of information management plans and the preparation of budget requests for information technology resources.

3. To require agencies and institutions of higher education to submit information management plans to the Council and a copy to the Department. The Council shall have the authority to approve such plans and amendments thereto, including the Department's. All agencies and institutions of higher education shall maintain current information management plans which have been approved by the Council.

4. To monitor implementation of information management plans.

5. To direct the development and promulgation of policies, standards, and guidelines for managing information technology resources in the Commonwealth.

6. To review agency and institution budget requests for information technology resources and to recommend budget request priorities to the Department of Planning and Budget.

7. To direct the compilation and maintenance of an inventory of all information technology resources, including but not limited to personnel, facilities, equipment, goods and contracts for services.

8. To develop an approval process to ensure that all information technology procurements conform to the statewide information management plan and the information management plans of agencies and institutions of higher education. The Council shall be authorized to disapprove the procurements that do not conform to the statewide information management plan and the agency plans.

9. To establish statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth. In cooperation with the Division of Legislative Automated Systems, the Council shall also establish standards for public access to the Legislative Information System which standards shall include provisions for protecting the security and integrity of the system and the cost of public access.

10. To oversee and administer the Virginia Technology Infrastructure Fund created in Chapter 22.13 (§ 9-145.52 et seq.) of Title 9.

#### CHAPTER 39.

#### DIGITAL ~~ELECTRONIC~~ SIGNATURES.

§ [59.1-467](#). Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

~~"Digital "~~*Electronic signature*~~" means an any electronic identifier, created by a computer, intended by the party using person making, executing, or adopting it to have the same force and effect as the use of a manual signature authenticate and validate a record.~~

*"Record" means information that is (i) inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form.*

~~"Signed" or "signature" "Sign" or "signed" means any symbol or method executed or adopted by a party to affix an electronic signature to a record with the present intention to be bound by or to authenticate a record, including digital methods such signature.~~

*"Use" or "used" means to send, receive, exchange, or otherwise rely upon an electronic signature.*

§ [59.1-468](#). Authenticity and validity of electronic signatures.

A. Where *state* law requires a signature, or provides for certain consequences in the absence of a signature, that law is satisfied by a ~~digital~~ *an electronic signature*.

B. In ~~assessing whether a digital signature was executed or adopted with respect to a record by a particular person~~ *determining the evidentiary weight to be given a particular electronic signature*, the trier of fact ~~may~~ *shall* consider ~~any relevant information or circumstances, including whether the digital~~ *electronic signature is: (i) unique to the*

signer, ~~is~~ (ii) capable of verification, ~~is~~ (iii) under the signer's sole control, ~~or is~~ (iv) linked to the record in such a manner that *it can be determined* if ~~the any data contained in the record is~~ was changed subsequent to the electronic signature ~~is invalidated being affixed to the record, and whether the method used to create the signature was and~~ (v) created by a method appropriately reliable for the purpose for which the ~~digital~~ electronic signature was used. *The trier of fact may consider any other relevant and probative evidence affecting the authenticity and/or validity of the electronic signature.*

§ [59.1-469](#). Commonwealth's use of electronic signatures.

*Consistent with other applicable law, every agency, department, board, commission, authority, political subdivision or other instrumentality of the Commonwealth may ~~receive digital~~ use electronic signatures in lieu of manual signatures, provided such digital signatures meet the standards established by the Council on Information Management shall be: (i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and (v) created by a method appropriately reliable for the purpose for which the electronic signature was used. Agencies, departments, boards, commissions, authorities, political subdivisions or other instrumentalities of the Commonwealth may establish other criteria to ensure the authenticity and validity of electronic signatures. The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this chapter shall require a public entity to use or permit the use of a digital signature.*

2. That the amendments to subsection B of § [59.1-468](#) shall only apply to any electronic signature made, executed, or adopted after July 1, 1998.

3. That the second enactment of Chapter 917 of the 1997 Acts of Assembly is repealed.

## **Chapter 145 Coal loading facilities.**

An Act to require the State Water Control Board to require coal loading facilities to obtain discharge permits.

[\[H 1135\]](#)

Approved March 16, 1998

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the State Water Control Board shall require any coal loading facility (i) from

*which there is a potential or actual discharge of industrial wastes or other wastes to state waters and (ii) that is not regulated under the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (§ [45.1-226](#) et seq.) to obtain a certificate as provided in § [62.1-44.16](#).*

## **Chapter 256 Trigon funds of local school divisions.**

An Act to amend and reenact § 1 of the third enactment of Chapter 803 of the Acts of Assembly of 1997, § 1 of the third enactment of Chapter 888 of the Acts of Assembly of 1997, and § 1 of the third enactment of Chapter 891 of the Acts of Assembly of 1997, relating to the disposition of certain property received by certain political subdivisions of the Commonwealth pursuant to the conversion of a mutual insurance company to a stock corporation.

[\[H 607\]](#)

Approved April 7, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the third enactment of Chapter 803 of the Acts of Assembly of 1997 is amended and reenacted as follows:

§ 1. The governing body of each locality that receives cash, shares of stock, or both, as a result of the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield (hereafter referred to as "Trigon"), from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., by reason of its school division's status as a present or former group policyholder of Trigon shall, by appropriate ordinance or resolution, authorize the treasurer of such locality to create two separate funds upon the books of the locality, as hereinafter described. Upon the enactment or adoption of such ordinance or resolution, the treasurer of the locality shall place all such stock, including any proceeds derived from the sale or other conveyance of any such stock, and cash, into these separate funds. The stock or proceeds and cash shall be divided equally between the two separate funds set forth in subsections A and B of this section; however, (i) the local governing body may place a greater proportion or all of the stock or proceeds and cash in the fund described in subsection A, with the consent of the school board and (ii) if on or before January 1, 1997, a school board has requested and the local governing body has approved the allocation of the proceeds from the sale of its stock for a school construction or renovation project, the remainder of such

proceeds shall be used to create a fund to offset health insurance premium increases incurred by the present and future employees of the school board and governing body.

A. The first fund shall be known as the "County/City of \_\_\_\_\_ Schools Health Insurance Premium Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely to offset health insurance premium expenses incurred by or on behalf of present and future employees of the school division of the locality; *however, the governing body of the locality may use a portion of the principal placed into the fund, a portion of the income arising from or attributable to the fund, or both, to compensate present or future retired employees of the school division of the locality for (i) health insurance premium expenses payable by the retired employees, (ii) health insurance premium expenses paid for by such retired employees for periods prior to July 1, 1997, during which the retired employees were insured under a health insurance policy through the school division of the locality as a group policyholder of Trigon, or (iii) both (i) and (ii), in such amounts, if any, as the governing body shall determine appropriate.* No disbursement from the fund may be made except upon specific appropriation by the governing body in accordance with applicable law.

B. The second fund, if any, shall be known as the "County/City of \_\_\_\_\_ School Construction, Renovation, Maintenance, Capital Outlay, and Debt Service Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely for the purposes of school construction, school renovation, major school maintenance, capital outlay, and debt service in the public schools of the locality. No disbursement from this fund may be made except upon specific appropriation by the governing body in accordance with applicable law.

C. All stock or proceeds and cash placed into separate funds pursuant to the provisions of this act, including all income arising from or attributable to such funds, shall be deemed public funds of the locality and shall be subject to all limitations upon deposit and investment provided by general law, including without limitation the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.). Income, dividends, distributions and sale proceeds accruing to the separate funds shall be retained in the funds and may be expended only in accordance with the terms of this act.

D. Any funds transferred by the Department of Personnel and Training to a participating employer upon its withdrawal from a plan or plans as provided in subsection F of § 2.1-20.1:02 of the Code of Virginia shall be (i) placed in the separate funds described in subsections A and B of this section if the withdrawing employer is a school board or school

division or (ii) deposited in the general fund of the locality if the withdrawing employer is not a school board or school division.

2. That § 1 of the third enactment of Chapter 888 of the Acts of Assembly of 1997 is amended and reenacted as follows:

§ 1. The governing body of each locality that receives cash, shares of stock, or both, as a result of the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield (hereafter referred to as "Trigon"), from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., by reason of its school division's status as a present or former group policyholder of Trigon shall, by appropriate ordinance or resolution, authorize the treasurer of such locality to create two separate funds upon the books of the locality, as hereinafter described. Upon the enactment or adoption of such ordinance or resolution, the treasurer of the locality shall place all such stock, including any proceeds derived from the sale or other conveyance of any such stock, and cash, into these separate funds. The stock or proceeds and cash shall be divided equally between the two separate funds set forth in subsections A and B of this section; however, (i) the local governing body may place a greater proportion or all of the stock or proceeds and cash in the fund described in subsection A, with the consent of the school board and (ii) if on or before January 1, 1997, a school board has requested and the local governing body has approved the allocation of the proceeds from the sale of its stock for a school construction or renovation project, the remainder of such proceeds shall be used to create a fund to offset health insurance premium increases incurred by the present and future employees of the school board and governing body.

A. The first fund shall be known as the "County/City of \_\_\_\_\_ Schools Health Insurance Premium Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely to offset health insurance premium expenses incurred by or on behalf of present and future employees of the school division of the locality; *however, the governing body of the locality may use a portion of the principal placed into the fund, a portion of the income arising from or attributable to the fund, or both, to compensate present or future retired employees of the school division of the locality for (i) health insurance premium expenses payable by the retired employees, (ii) health insurance premium expenses paid for by such retired employees for periods prior to July 1, 1997, during which the retired employees were insured under a health insurance policy through the school division of the locality as a group policyholder of Trigon, or (iii) both (i) and (ii), in such amounts, if any, as the governing body shall determine appropriate.* No disbursement from the fund may be made

except upon specific appropriation by the governing body in accordance with applicable law.

B. The second fund, if any, shall be known as the "County/City of \_\_\_\_\_ School Construction, Renovation, Maintenance, Capital Outlay, and Debt Service Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely for the purposes of school construction, school renovation, major school maintenance, capital outlay, and debt service in the public schools of the locality. No disbursement from this fund may be made except upon specific appropriation by the governing body in accordance with applicable law.

C. All stock or proceeds and cash placed into separate funds pursuant to the provisions of this act, including all income arising from or attributable to such funds, shall be deemed public funds of the locality and shall be subject to all limitations upon deposit and investment provided by general law, including without limitation the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.). Income, dividends, distributions and sale proceeds accruing to the separate funds shall be retained in the funds and may be expended only in accordance with the terms of this act.

D. Any funds transferred by the Department of Personnel and Training to a participating employer upon its withdrawal from a plan or plans as provided in subsection F of § 2.1-20.1:02 of the Code of Virginia shall be (i) placed in the separate funds described in subsections A and B of this section if the withdrawing employer is a school board or school division or (ii) deposited in the general fund of the locality if the withdrawing employer is not a school board or school division.

3. That § 1 of the third enactment of Chapter 891 of the Acts of Assembly of 1997 is amended and reenacted as follows:

§ 1. The governing body of each locality that receives cash, shares of stock, or both, as a result of the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield (hereafter referred to as "Trigon"), from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., by reason of its school division's status as a present or former group policyholder of Trigon shall, by appropriate ordinance or resolution, authorize the treasurer of such locality to create two separate funds upon the books of the locality, as hereinafter described. Upon the enactment or adoption of such ordinance or resolution, the treasurer of the locality shall place all such stock, including any proceeds derived from the sale or other conveyance of any such stock, and cash, into these separate funds. The stock or proceeds and cash shall be

divided equally between the two separate funds set forth in subsections A and B of this section; however, (i) the local governing body may place a greater proportion or all of the stock or proceeds and cash in the fund described in subsection A, with the consent of the school board and (ii) if on or before January 1, 1997, a school board has requested and the local governing body has approved the allocation of the proceeds from the sale of its stock for a school construction or renovation project, the remainder of such proceeds shall be used to create a fund to offset health insurance premium increases incurred by the present and future employees of the school board and governing body.

A. The first fund shall be known as the "County/City of \_\_\_\_\_ Schools Health Insurance Premium Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely to offset health insurance premium expenses incurred by or on behalf of present and future employees of the school division of the locality; *however, the governing body of the locality may use a portion of the principal placed into the fund, a portion of the income arising from or attributable to the fund, or both, to compensate present or future retired employees of the school division of the locality for (i) health insurance premium expenses payable by the retired employees, (ii) health insurance premium expenses paid for by such retired employees for periods prior to July 1, 1997, during which the retired employees were insured under a health insurance policy through the school division of the locality as a group policyholder of Trigon, or (iii) both (i) and (ii), in such amounts, if any, as the governing body shall determine appropriate.* No disbursement from the fund may be made except upon specific appropriation by the governing body in accordance with applicable law.

B. The second fund, if any, shall be known as the "County/City of \_\_\_\_\_ School Construction, Renovation, Maintenance, Capital Outlay, and Debt Service Fund." All principal placed into this fund, together with all income arising from or attributable to the fund, shall be used solely for the purposes of school construction, school renovation, major school maintenance, capital outlay, and debt service in the public schools of the locality. No disbursement from this fund may be made except upon specific appropriation by the governing body in accordance with applicable law.

C. All stock or proceeds and cash placed into separate funds pursuant to the provisions of this act, including all income arising from or attributable to such funds, shall be deemed public funds of the locality and shall be subject to all limitations upon deposit and investment provided by general law, including without limitation the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.). Income, dividends, distributions and sale

proceeds accruing to the separate funds shall be retained in the funds and may be expended only in accordance with the terms of this act.

D. Any funds transferred by the Department of Personnel and Training to a participating employer upon its withdrawal from a plan or plans as provided in subsection F of § 2.1-20.1:02 of the Code of Virginia shall be (i) placed in the separate funds described in subsections A and B of this section if the withdrawing employer is a school board or school division or (ii) deposited in the general fund of the locality if the withdrawing employer is not a school board or school division.

### **Chapter 473 Higher Educational Institutions Bond Act of 1998.**

An Act to authorize the issuance of bonds subject to the provisions of Article X, Section 9 (c) of the Constitution of Virginia in an amount not to exceed \$89,997,400, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds, together with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds at public or private sale, and to issue notes to borrow money in anticipation of the issuance of such bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that the interest income on such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapter 845 of the Acts of Assembly of 1996.

[\[H 31\]](#)

Approved April 14, 1998

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with the provisions of Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 1998."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$89,997,400, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds by the issuance of bond anticipation notes ("BANs"), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Number</i>	<i>Debt</i>	<i>Project Name</i>
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Uncodified Acts of Assembly - 1998

University of Virginia 15400 \$ 1,142,000 Newcomb Hall  
Expansion University  
of Virginia 16092 3,500,000 Rugby Road  
Apartments Renovation University  
of Virginia 16094 4,000,000 Observatory Hill  
Dining Renovation  
University of Virginia 16151 4,500,000 Clinch Valley Col-  
lege Residence  
Hall Virginia Polytechnic Institute 14303  
1,078,900 Major Repairs  
Dorm/Dining Virginia Polytechnic Institute  
14815 5,991,700 Parking Auxiliary  
Project Virginia Polytechnic Insti-  
tute 15525 3,269,000 Dining Hall Virginia  
Polytechnic Institute 16095 2,098,000 Diet-  
rick Dining Hall HVAC Virginia Commonwealth University  
15160 998,300 MCV Visitors Deck Virginia Com-  
monwealth University 16093 12,381,000 Student  
Residence Hall George Mason University 15345 2,000,000  
Arlington Metro  
Parking George Mason University 15533 3,400,000 Housing  
Renovations College of William and Mary 15745  
6,660,000 Dormitory Renovation James Madison  
University 15361 1,082,000 Dining Facility  
Renovation James  
Madison University 15620 3,214,000 Parking  
Structure Christopher Newport University XXXXX  
12,726,000 Residence Hall,  
Phase II Virginia Community College System  
XXXXX 635,500 Mt. Empire Community  
College Parking  
Auxiliary Project University of Vir-  
ginia XXXXX 8,000,000 Clinch Valley College  
Student Services

				Building	Longwood
College	XXXXX	2,800,000	Residence Hall		
			Renovations	Longwood Col-	
lege	15502	2,975,000	New Dining Hall	Mary Wash-	
ington	College		15980	1,500,000	Residence
Hall HVAC	Mary Washington		College		16096
5,000,000	Seacobeck Dining Hall				
			Renovation	Virginia State	University
	15622	1,046,000	Jones Dining Hall	TOTAL	
		\$89,997,400			

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of the bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of said capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be*

*issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and BANs and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell the bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds [Bond Anticipation Notes], Series \_\_\_\_."*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

**§ 6. Sources of payment of expenses.**

*All expenses incurred under this act shall be paid from the proceeds of the bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

**§ 7. Revenues.**

*Each institution of higher education mentioned above is hereby authorized (i) to fix, revise, charge and collect a building fee or other comprehensive student fee and other rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the payment of the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

**§ 8. Authorized investments.**

*Pending the application of the proceeds of the bonds and BANs to the purpose for which they have been authorized and the application of the net revenues and other sums set aside for the payment of bonds and BANs, all or any part of such funds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such funds, and the interest thereon and any profit realized from such investments shall be credited to such funds, and any losses shall be deducted therefrom.*

**§ 9. Security for bonds and BANs.**

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest on and any premium on the bonds or BANs to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient*

*in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The interest income on the bonds and any BANs issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that the interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds or BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (b) or (c), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapter 845 of the Acts of Assembly of 1996 is repealed; however, such repeal shall not operate to invalidate, alter the security of or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 553 Rappahannock River Basin Commission.**

An Act to authorize the creation of a Rappahannock River Basin Commission.

[\[S 598\]](#)

Approved April 15, 1998

Whereas, the Rappahannock River is a resource of great value to the Commonwealth of Virginia and to each of the localities within the Rappahannock River Basin; and  
Whereas, members of the General Assembly and representatives of each of the local governments representing jurisdictions in the Rappahannock River Basin have met pursuant to Senate Joint Resolution No. 92 (1996) and Senate Joint Resolution No. 270 (1997) for two years as the Rappahannock River Basin Study Commission (RRBSC) to examine, evaluate and make recommendations on the potential structure, goals and purposes of a mechanism to address coordination, communications and planning on issues of river basin-wide significance; and

Whereas, the RRBSC has found that (i) there is a need for a mechanism for coordination and communication for the multitude of individual, local, state and federal activities that influence the Basin's natural resources; (ii) there is a need for easily accessible information for decision making at the public policy level as well as at the individual level; (iii) the environmental health of the Basin directly impacts economic health; and (iv) there are great benefits to be derived from the Basin's localities' meeting together and discussing their individual and mutual concerns; and

Whereas, to help address these findings (i) there should be a continuing commission composed of elected officials from throughout the Basin; (ii) such a commission should not be a regulatory body; and (iii) there should be a concise mission statement with emphasis on stewardship, protection and enhancement of the Basin's water quality and other natural resources; and

Whereas, the RRBSC has developed legislation to address these findings and to provide for establishing a Rappahannock River Basin Commission; and

Whereas, the creation of such a commission will be of great benefit to the Commonwealth by promoting better communication, assisting in achieving improved water quality and natural resources, and meeting its commitments under the Chesapeake Bay Agreement; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Definitions.-*

*As used in this act, unless the context requires a different meaning:*

*"Rappahannock River Basin" means that land area designated as the Rappahannock River Basin by the State Water Control Board pursuant to § [62.1-44.38](#) and which is also found in the Fourth, Seventeenth, Twenty-fifth, Twenty-sixth, Twenty-seventh and Twenty-eighth Senatorial Districts or the Twenty-eighth, Thirtieth, Thirty-first, Fifty-fourth, Ninety-eighth and Ninety-ninth House of Delegates Districts, as those districts exist on January 1, 1998.*

*§ 2. Rappahannock River Basin Commission; establishment.*

*The Rappahannock River Basin Commission, hereinafter referred to as the "Commission," shall be established upon passage by two-thirds of the Rappahannock River Basin's localities of a resolution that commits them to participate in the Commission as described in this act. The resolution shall contain the following language:*

*"The (jurisdiction's governing body) does hereby agree to become a member of and participate in the Rappahannock River Basin Commission as described in Chapter (to be determined upon passage) of the Acts of Assembly of 1998."*

*§ 3. Commission purposes and mission.*

*The Commission's purposes and mission shall be to provide guidance for the stewardship and enhancement of the water quality and natural resources of the Rappahannock River Basin. The Commission shall be a forum in which local governments and citizens can discuss issues affecting the Basin's water quality and quantity and other natural resources. Through promoting communication, coordination and education, and by suggesting appropriate solutions to identified problems, the Commission shall*

*promote activities by local, state and federal governments, and by individuals, that foster resource stewardship for the environmental and economic health of the Basin.*

*§ 4. Rappahannock River Basin Commission powers.*

*A. The Commission shall have no regulatory authority.*

*B. To carry out its purposes and mission, the Commission shall have the power to:*

*1. Communicate, including through legislative recommendations, Commission views to local, state and federal legislative and administrative bodies, and to others as it deems necessary and appropriate.*

*2. Undertake studies and prepare, publish and disseminate information in reports and in other forms related to the water quality and natural resources of the Basin and to further its purposes and mission.*

*3. Enter into contracts and execute all instruments necessary or appropriate.*

*4. Perform any lawful acts necessary or appropriate.*

*5. Establish a nonprofit corporation as an instrumentality to assist in the details of administering its affairs and in raising funds.*

*6. Seek, apply for, accept and expend gifts, grants and donations, services and other aids, from public or private sources. Other than those from member jurisdictions and those appropriated by the General Assembly, funds may be accepted by the Commission only after an affirmative vote by the Commission or by following such other procedure as may be established by the Commission for the conduct of its business.*

*7. Establish balanced advisory committees that may include representation from agricultural, environmental, resources-based, industrial, recreational, riparian landowner, development, educational and other interests as it deems necessary and appropriate.*

*8. Develop rules and procedures for the conduct of its business or necessary to carry out its purposes and mission, including, but not limited to, selecting a chair and vice-chairs, rotating chairmanships, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to this subdivision shall be effective upon an affirmative vote by a majority of the Commission members.*

*§ 5. Membership.*

*A. The membership of the Commission shall be as follows:*

*One member from each of the elected governing bodies of the jurisdictions found wholly or partially within the Rappahannock River Basin that, at any time, pass a resolution containing the language required by § 2. Each local governing body shall select its representative and an alternate in such manner as it decides. A local government representative's term shall be for a minimum of one year but shall not extend beyond his elected term.*

*One member shall be a representative of the Soil and Water Conservation Districts found wholly or partially within the Rappahannock River Basin. The representative and an alternate shall be selected from the elected members of the Basin's Soil and Water Conservation Districts in a manner agree upon by the Basin's Districts. The Soil and Water Conservation District representative's term shall be for a minimum of one year but shall not extend beyond his elected term.*

*Representation from the Senate and the House of Delegates shall be composed of those members of the Senate and House whose districts include a portion of the Rappahannock River Basin and who express their desire to be a Commission member to the Senate Committee on Privileges and Elections or to the Speaker of the House as appropriate for their respective chambers. Senate and House members' terms on the Commission shall coincide with their terms as members of the General Assembly or until they express a desire to no longer be a Commission member to the Senate Committee on Privileges and Elections or to the Speaker of the House as appropriate for their chambers.*

*B. Vacancies shall be filled in the same manner as the original selection.*

#### *§ 6. Voting.*

*Each member of the Commission shall have an equal vote.*

#### *§ 7. Staffing and support.*

*The local governing bodies and Planning District Commissions found wholly or partially in the Rappahannock River Basin shall provide staff support for the Commission as the localities determine appropriate. Additional staff support may be hired or contracted for by the Commission through funds raised by or provided to it. The Commission is authorized to determine the duties of such staff and fix staff compensation within available resources.*

*All agencies of the Commonwealth shall cooperate with the Commission and, upon request, shall assist the Commission in fulfilling its purposes and mission. The Secretary*

*of Natural Resources or his designee shall act as the chief liaison between the administrative agencies and the Commission.*

*§ 8. Withdrawal; dissolution.*

*A. A locality may withdraw from the Commission one year after providing a written notice to the Commission of its intent to do so.*

*B. The Commission may dissolve itself upon a two-thirds vote of all members.*

*C. The Commission may be dissolved by repeal or expiration of this act.*

*D. The Commission shall be dissolved if the membership of the Commission falls below two-thirds of those eligible.*

*E. Upon the Commission's dissolution, all funds and assets of the Commission shall be divided on a pro rata basis. The Commonwealth's share of the funds and assets shall be transferred to the Office of the Secretary of Natural Resources for appropriate distribution.*

*§ 9. Funding.*

*A. The Commission shall annually adopt a budget, which shall include the Commission's estimated expenses. The funding of the Commission shall be a shared responsibility of state and local governments. The Commonwealth's contribution shall be set through the normal state appropriations process. The Commission's local government members shall determine a process for distribution of costs among the local government members.*

*B. The Commission shall annually designate a fiscal agent.*

*C. The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by similar enterprises. The accounts and records of the Commission shall be subject to an annual audit by the Auditor of Public Accounts or his legal representative, and the costs of such audit services shall be borne by the Commission. The results of the audits shall be delivered to the chief elected officer in each of the Commission's member jurisdictions, the members of the House of Delegates and the Senate who serve on the Commission, the Chairmen of the House Appropriations Committee and the Senate Finance Committee, and the Sec-*

*retary of Natural Resources. The Commission's fiscal year shall be the same as the Commonwealth's.*

2. That the provisions of this act shall expire on July 1, 2000, and the funds and assets of the Commission shall be distributed in accordance with subsection E of § 8.

## **Chapter 559 Accelerated payments in federal retiree settlement programs.**

An Act to amend and reenact § 1 of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I; the first enactment of Chapter 185 of the 1995 Acts of Assembly; the first enactment of Chapter 203 of the 1995 Acts of Assembly; and the first enactment of Chapter 719 of the 1996 Acts of Assembly, relating to accelerated payments for participants in federal retiree settlement programs.

[\[H 100\]](#)

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the second enactment of Chapter 5 of the 1994 Acts of Assembly, Special Session I, is amended and reenacted as follows:

2.

§ 1. Upon the recommendation of the Attorney General and with the approval of the Governor, the Tax Commissioner is authorized to make settlement payments to taxpayers to resolve disputed claims for refunds of taxes paid with respect to retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States, including the United States Civil Service, the United States Armed Forces, or any agency or subdivision thereof for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:

A. For purposes of this section:

"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely respond to the August 1, 1994, notice, pursuant to subdivision F 1, as calculated by the Department of Taxation.

"Department" means the Department of Taxation.

"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed.

"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department on December 15, 1994, pursuant to subdivision F 2.

"Refund of taxes" includes any claim for interest thereon.

"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed, except for purposes of notification. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died intestate, an affidavit provided by the Department, signed by the deceased taxpayer's surviving spouse, or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the Department signed by the residuary legatees under the will shall operate to claim such refund.

B. The payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner or his designee to administer the payments. Subject to appropriation by the General Assembly, the initial appropriation of \$60 million shall be deposited in the special fund, trust or other legal entity on or before July 15, 1994, pending disbursement pursuant to this section. Subject to appropriation by the General Assembly, on each succeeding July 1 through 1998, *as necessary*, the amount of \$70 million shall be deposited in the special fund, trust or other legal entity pending disbursement pursuant to this section. All earnings on investment of these funds shall be held in the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final payments to taxpayers are made ~~on March 31, 1999~~. *The final payment shall be September 30, 1998, provided that the 1997-1998 undesignated and unreserved general fund balance as certified by the Comptroller on August 15, 1998, is greater than or equal to \$62.5 million. If the 1997-1998 undesignated and unreserved general fund balance is less than \$62.5 million as certified by the Comptroller on August 15, 1998, there shall be a special installment payment made on September 30, 1998, based on a percentage of the final payment. The percentage for this calculation shall be as follows: 1997-1998 undesignated and unreserved general fund balance divided by \$62.5 million.* For purposes of this act, earnings on the investment of the funds shall be computed at the rate of four percent per annum.

C. The moneys so appropriated shall be disbursed by the Tax Commissioner or his designee, or any entity established to administer the payments, to the taxpayers participating in the settlement as follows:

1. The Tax Commissioner shall calculate the amount of each taxpayer's disputed refund and the total of all taxpayers' disputed refunds before December 15, 1994.

2. If the Tax Commissioner or his designee determines that the amount of money available from appropriations and the earnings from such investments will be insufficient to fund fully each participating taxpayer's disputed refund, then, prior to notifying such taxpayers of their final settlement offers on December 15, 1994, the Tax Commissioner shall reduce each participating taxpayer's disputed refund by a percentage derived from the following formula:

the calculated total disputed refunds for all participating taxpayers as computed by the Tax Commissioner or his designee.      the total amount of money available for disbursement, - for disbursement, the Tax Commissioner or his designee.

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the calculated total disputed refunds for all participating taxpayers

3. If, after making this calculation or at any time prior to March 31, 1999, the Tax Commissioner or his designee determines that the total amount of the moneys to be appropriated and the earnings thereon will exceed the amount necessary to fund fully each taxpayer's disputed refund, then the Tax Commissioner will increase each taxpayer's disputed refund or final settlement offer by a percentage derived from the following formula:

the total amount of money available for disbursement, as computed by the Tax Commissioner or his designee      the calculated total disputed refunds or settlement offers for all participating taxpayers -

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the calculated total disputed refunds or final settlement offers for all participating taxpayers

The amount of any calculated increase shall be disbursed to each participating taxpayer in a single payment ~~on~~ *no later than* March 31, 1999.

4. Disbursements shall be made annually on March 31 and, out of the money available for payments each year, *except for the special installment payment made on September 30, 1998*, one-half shall be used to pay the final settlement offer to the participating taxpayers with the smallest calculated payments after any reduction; the other half shall be paid proportionately to the remaining participating taxpayers.

5. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.

D. The taxpayers shall be given the option of whether they want to participate in the settlement. Those who do not want to participate will have the option of having their entitlement to refunds determined by existing litigation or filing suit themselves.

E. The appropriation required under subsection B shall be reduced by a percentage of the dollar amount of the claims of taxpayers opting out of the settlement pursuant to subdivision F 2 (ii) and (iii) and those waiving payments pursuant to subdivision F 2 (i) derived from the following formula:

the total amount appropriated, excluding interest

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are the calculated total disputed refunds which are timely filed under this act

In the event that the total principal amount of the claims of the taxpayers opting out of the settlement exceeds \$20 million, the entire settlement shall be null and void unless reauthorized by the General Assembly on or before March 1, 1995.

F. The procedure to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:

1. The Department shall provide notice by August 1, 1994, to affected taxpayers by first-class mail stating the amount of each taxpayer's disputed refund. For purposes of this subdivision, the Tax Commissioner may use gross pension amounts in computing each taxpayer's disputed refund. The computation and methodology shall be reviewed by the Auditor of Public Accounts before taxpayers are notified of their final settlement offers. The notice shall state in bold-faced, fourteen-point type that, regardless of whether the taxpayer previously filed an amended return or returns, in order to be eligible to obtain any refund, the taxpayer must respond to the notice by November 1, 1994, and state whether the taxpayer accepts or challenges the calculations contained in the notice. The filing of a response to this notice on a form provided by the Tax Commissioner will be a prerequisite to participating in the settlement, or agreeing to accept the relief granted in pending litigation in Virginia courts, or the filing of a separate suit. This requirement shall be set out in the notice in bold-faced, fourteen-point type. Taxpayers who challenge the calculations contained in the notice shall provide with their response documentary evidence indicating that a different amount is due. Such evidence must be sufficient to allow the Department to resolve the challenge.

2. Before December 15, 1994, the Department shall compile all responses received and calculate the total amount of each participating taxpayer's disputed refund and the total of all participating taxpayers' disputed refunds and determine whether any reduction must be made pursuant to subdivision C 2. The estimate shall be forwarded to the Chairmen of the Senate Finance Committee and the House Finance and Appropriations Committees before taxpayers are notified of their final settlement offers. On December 15, 1994, the Department shall send notices by first-class mail to taxpayers who timely responded to the August notices informing them of their right to (i) receive or waive a payment calculated pursuant to subsection B; (ii) opt out of the settlement and initiate suit; or (iii) opt out of the settlement and agree to accept in full satisfaction of their claims the same relief granted to similarly situated taxpayers in pending litigation in Virginia courts determined by the Tax Commissioner to be controlling on the legal issue. The Department shall send with the notices the agreements necessary to effect settlement under

clause (i) or to opt out and agree to accept the relief granted in pending litigation under clause (iii) of this paragraph.

3. Those taxpayers who do not opt out of the settlement or waive payment will receive payments as provided in subsection C if they sign and deliver to the Tax Commissioner by February 1, 1995, the settlement agreement releasing the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income during the 1985-1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. On January 10, 1995, the Department shall send a reminder of this requirement to each taxpayer who responded to the August notice indicating an interest in participating in the settlement.

4. Those taxpayers who choose to opt out of the settlement shall (i) sign and deliver to the Tax Commissioner by February 1, 1995, an agreement to accept the relief granted in pending litigation in Virginia courts or (ii) file by February 1, 1995, an action under § [58.1-1825](#) for recovery of Virginia income taxes paid on retirement income received.

5. A taxpayer may deliver an agreement to the Tax Commissioner in person or by mail. An agreement shall be deemed timely delivered if it is mailed to the Department, postage prepaid, and postmarked no later than February 1, 1995.

6. The Department shall undertake the greatest efforts practicable to identify and reach affected taxpayers by first-class mail and advertising campaigns. The Department shall establish a toll-free hotline for affected taxpayers to call to receive information and answers to questions about the settlement. The Department shall undertake the greatest effort practicable to reach taxpayers whose notices are returned unclaimed and for whom addresses cannot be obtained. The Department as a part of its advertising campaign shall publish notices in selected newspapers throughout the Commonwealth and in other portions of the country where large numbers of affected taxpayers are likely to reside. Such notices shall include an explanation of the terms of the settlement, the information hotline number, and the requirements (in bold-faced, fourteen-point type) of subdivisions F 1, F 3, F 4, and F 5 that a taxpayer who has not been notified by direct mail must satisfy in order to participate in the settlement.

G. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services must be approved by the Attorney

General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).

H. Notwithstanding any other provision of law and pursuant to § [58.1-105](#), any taxpayer claiming a refund for any taxable year beginning on or after January 1, 1985, and ending on or before December 31, 1988, for taxes paid with respect to retirement or pension benefits received from a federal retirement system created by the federal government for any officer or employee of the United States shall comply fully with the requirements and procedures set forth in this act or such claims shall be forever barred; provided that if the settlement is null and void and is not reauthorized pursuant to subsection E, any taxpayer claiming such a refund must file an amended individual income tax return pursuant to § [58.1-1823](#) within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issues involved in Harper v. Virginia Department of Taxation, 113 S.Ct. 2510 (June 18, 1993).

2. That the first enactment of Chapter 185 of the 1995 Acts of Assembly is amended and reenacted as follows:

1.

§ 1. The Tax Commissioner is authorized to make settlement payments to certain retired federal and military taxpayers, as originally authorized in Chapter 5 of the 1994 Acts of Assembly, Special Session I. To be eligible to receive these payments a taxpayer shall have (i) responded to the August 1, 1994, notice on or before November 1, 1994, but was denied either full or partial participation in the settlement program due to the lack of certain information necessary for the Department to compute the taxpayer's disputed refund, or (ii) missed the November 1, 1994, deadline for responses due to circumstances beyond the control of the taxpayer, or (iii) having filed a timely response by the November 1 deadline, missed the February 1, 1995, deadline for delivering a settlement agreement to the Department due to circumstances beyond the control of the taxpayer. Such taxpayers are hereby granted an additional sixty days from the date of enactment to provide the Department with the necessary information to compute their disputed refunds or to provide the Department with response forms or settlement agreements and written explanations that demonstrate that the taxpayers missed the relevant deadline due to circumstances beyond their control. The burden of proof shall be on the taxpayer. Any determination of what constitutes circumstances beyond the control of a taxpayer shall be liberally construed in favor of the taxpayer. Any supporting documentation provided to the Department on forms received prior to the expiration of the additional time period shall be reviewed by the Tax Commissioner. The Tax

Commissioner shall determine whether the necessary information was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline or the February 1, 1995, deadline was due to circumstances beyond the control of the taxpayer. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:

1. For purposes of this act:

"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely filed the required information with the Department, pursuant to subdivision 4 a, as calculated by the Department of Taxation.

"Department" means the Department of Taxation.

"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed that resulted from the Department's acceptance and processing of the additional information the taxpayer provided, pursuant to subdivision 4 a. A disputed refund does not include any amount already included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal Retiree Settlement Act.

"Federal Retiree Settlement Act" means Enactment 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I.

"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department by the ninetieth day following enactment, pursuant to subdivision 4 b.

"Refund of taxes" includes any claim for interest thereon.

"Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department under the Federal Retiree Settlement Act or under this act.

"Settlement program" means the settlement program established by the Federal Retiree Settlement Act.

"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died intestate, an affidavit provided by the Department signed by the deceased taxpayer's surviving spouse, or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the Department signed by the residuary legatees under the will shall operate to claim such refund.

2. The payments shall be made ~~over a five-year period~~ in annual installments *or special installments* and shall be disbursed by the Tax Commissioner or his designee to the taxpayers participating in the settlement as follows:

a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act.

b. Disbursements shall be made in up to ~~five~~ six payments, the first of which shall be made on July 31, 1995, with each of the remaining ~~four~~ five disbursements to be made on March 31 ~~through 1999, 1996, March 31, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, as necessary.~~ The Department shall make payments to taxpayers who settle under this act in the same proportion as calculated for the payments to be made to retirees settling under the Federal Retiree Settlement Act.

c. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.

3. Payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner to administer the payments. Subject to appropriation by the General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be deposited in the special fund, trust or other legal entity on or before July 1, 1995, pending disbursement. Subject to appropriation by the General Assembly, on each succeeding July 1 through ~~1998~~ 1997, *and 1998, if necessary,* an amount sufficient to fund the annual settlement payment shall be deposited in the special fund, trust or other legal entity pending disbursement. All earnings on investment of the funds shall be held in the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final payments to taxpayers are made on *September 30, 1998, or* March 31, 1999. For those taxpayers who met the November 1, 1994, filing deadline but missed the February 1, 1995, filing deadline, the first and second settlement payments (to be paid on July 31, 1995, and March 31, 1996) shall be made out of the July 1, 1995, appropriation to be made pursuant to the Federal Retiree Settlement Act; the remaining installments shall be made annually from the subsequent annual appropriations made pursuant to such Act.

4. The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:

a. On or before thirty days from the date of enactment, the Department shall notify by first class mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the Department pursuant to the terms of the Federal Retiree Settlement Act, but who was denied participation in the settlement program due to the lack of certain information necessary to compute the taxpayer's disputed refund, or (ii) who responded

to the August 1, 1994, notice after November 1, 1994, or (iii) who delivered a settlement agreement to the Department after February 1, 1995, of the additional thirty-day period during which he may (i) submit the information necessary to compute his disputed refund or (ii) deliver to the Department a signed settlement agreement accepting the final settlement offer and releasing the Commonwealth from any further liability. Each taxpayer so notified shall also be required to submit a written explanation that demonstrates that the taxpayer missed the deadline due to circumstances beyond his control. The additional information or settlement agreement returned to the Department shall be either postmarked on or before midnight of the sixtieth day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such information shall be received by the Department by 5:00 p.m. of the sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.

b. Within ninety days following enactment, the Department shall send to each taxpayer, as appropriate, a notice and a settlement agreement that sets forth the amount of the final settlement offer. Those taxpayers who agree to accept the offer shall sign such settlement agreement releasing the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. Such settlement agreement shall be returned to the Department and shall be postmarked on or before midnight of the 120th day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such settlement agreement shall be received by the Department by 5:00 p.m. of the 120th day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.

5. A taxpayer who delivered to the Department a timely but incomplete settlement agreement under the terms of the Federal Retiree Settlement Act or this act shall be deemed to have met the filing deadline, provided that any delay in submitting completed forms to the Department may result in a delay of the first payment required under the settlement program established by the Federal Retiree Settlement Act or under this act. The taxpayer shall provide the Department a completed settlement agreement (i) on or before the thirtieth day after enactment for those taxpayers who qualify for participation in the settlement program created by the Federal Retiree Settlement Act or (ii) on or before the 150th day following enactment for those taxpayers who qualify for the settlement program created by this act.

6. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.

7. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).

8. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement Act, and nothing in this act shall be construed or interpreted to authorize any taxpayer to opt out of the settlement program or agree to accept the relief granted in pending litigation after the deadlines established in the Federal Retiree Settlement Act.

3. That the first enactment of Chapter 203 of the 1995 Acts of Assembly is amended and reenacted as follows:

**1.**

§ 1. The Tax Commissioner is authorized to make settlement payments to certain retired federal and military taxpayers, as originally authorized in Chapter 5 of the 1994 Acts of Assembly, Special Session I. To be eligible to receive these payments a taxpayer shall have (i) responded to the August 1, 1994, notice on or before November 1, 1994, but was denied either full or partial participation in the settlement program due to the lack of certain information necessary for the Department to compute the taxpayer's disputed refund, or (ii) missed the November 1, 1994, deadline for responses due to circumstances beyond the control of the taxpayer, or (iii) having filed a timely response by the November 1 deadline, missed the February 1, 1995, deadline for delivering a settlement agreement to the Department due to circumstances beyond the control of the taxpayer. Such taxpayers are hereby granted an additional sixty days from the date of enactment to provide the Department with the necessary information to compute their disputed refunds or to provide the Department with response forms or settlement

agreements and written explanations that demonstrate that the taxpayers missed the relevant deadline due to circumstances beyond their control. The burden of proof shall be on the taxpayer. Any determination of what constitutes circumstances beyond the control of a taxpayer shall be liberally construed in favor of the taxpayer. Any supporting documentation provided to the Department on forms received prior to the expiration of the additional time period shall be reviewed by the Tax Commissioner. The Tax Commissioner shall determine whether the necessary information was provided or the taxpayer's explanation for missing the original November 1, 1994, deadline or the February 1, 1995, deadline was due to circumstances beyond the control of the taxpayer. The Tax Commissioner's authority to proceed under this section is subject to the following terms and conditions:

1. For purposes of this act:

"Calculated total disputed refund" means the total of all disputed refunds for all taxpayers who timely filed the required information with the Department, pursuant to subdivision 4a, as calculated by the Department of Taxation.

"Department" means the Department of Taxation.

"Disputed refund" means the amount of the tax overpayment on retirement or pension benefits received from a federal retirement system for taxable years 1985 through 1988 for which a refund is claimed that resulted from the Department's acceptance and processing of the additional information the taxpayer provided, pursuant to subdivision 4 a. A disputed refund does not include any amount already included in the settlement offer mailed to a taxpayer on December 15, 1994, pursuant to the Federal Retiree Settlement Act.

"Federal Retiree Settlement Act" means Enactment 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I.

"Final settlement offer" means the amount of the payment to be made to a taxpayer under the settlement agreement mailed to the taxpayer by the Department by the ninetieth day following enactment, pursuant to subdivision 4 b.

"Refund of taxes" includes any claim for interest thereon.

"Settlement agreement" means the settlement agreement mailed to the taxpayers by the Department under the Federal Retiree Settlement Act or under this act.

"Settlement program" means the settlement program established by the Federal Retiree Settlement Act.

"Taxpayer" includes the estate, committee and legal beneficiaries of any taxpayer to whom a disputed refund is owed. For purposes of a deceased taxpayer's estate, if that deceased taxpayer died intestate, an affidavit provided by the Department signed by the

deceased taxpayer's surviving spouse, or if there is none, the heirs of the deceased taxpayer, shall operate to claim the disputed refund to which the taxpayer was entitled. If the deceased taxpayer died testate, an affidavit provided by the Department signed by the residuary legatees under the will shall operate to claim such refund.

2. The payments shall be made ~~over a five-year period~~ in annual installments *or special installments* and shall be disbursed by the Tax Commissioner or his designee to the taxpayers participating in the settlement as follows:

a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act.

b. Disbursements shall be made in up to ~~five~~ six payments, the first of which shall be made on July 31, 1995, with each of the remaining ~~four~~ five disbursements to be made on March 31 ~~through 1999, 1996, March 31, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, as necessary.~~ The Department shall make payments to taxpayers who settle under this act in the same proportion as calculated for the payments to be made to retirees settling under the Federal Retiree Settlement Act.

c. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.

3. Payments may be made directly from a special fund or from a trust or other legal entity established by the Tax Commissioner to administer the payments. Subject to appropriation by the General Assembly, an amount sufficient to fund the first and second annual settlement payments shall be deposited in the special fund, trust or other legal entity on or before July 1, 1995, pending disbursement. Subject to appropriation by the General Assembly, on each succeeding July 1 through ~~1998~~ 1997, and 1998, *if necessary*, an amount sufficient to fund the annual settlement payment shall be deposited in the special fund, trust or other legal entity pending disbursement. All earnings on investment of the funds shall be held in the special fund, trust or other legal entity established by the Tax Commissioner and reinvested until the final payments to taxpayers are made on *September 30, 1998, or March 31, 1999.* For those taxpayers who met the November 1, 1994, filing deadline but missed the February 1, 1995, filing deadline, the first and second settlement payments (to be paid on July 31, 1995, and March 31, 1996) shall be made out of the July 1, 1995, appropriation to be made pursuant to the Federal Retiree Settlement Act; the remaining installments shall be made annually from the subsequent annual appropriations made pursuant to such Act.

4. The procedures to be followed by the Tax Commissioner in effecting payments as authorized shall be as follows:

a. On or before thirty days from the date of enactment, the Department shall notify by first class mail each taxpayer (i) who timely filed a response to the August 1, 1994, notice issued by the Department pursuant to the terms of the Federal Retiree Settlement Act, but who was denied participation in the settlement program due to the lack of certain information necessary to compute the taxpayer's disputed refund, or (ii) who responded to the August 1, 1994, notice after November 1, 1994, or (iii) who delivered a settlement agreement to the Department after February 1, 1995, of the additional thirty-day period during which he may (i) submit the information necessary to compute his disputed refund or (ii) deliver to the Department a signed settlement agreement accepting the final settlement offer and releasing the Commonwealth from any further liability. Each taxpayer so notified shall also be required to submit a written explanation that demonstrates that the taxpayer missed the deadline due to circumstances beyond his control. The additional information or settlement agreement returned to the Department shall be either postmarked on or before midnight of the sixtieth day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such information shall be received by the Department by 5:00 p.m. of the sixtieth day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.

b. Within ninety days following enactment, the Department shall send to each taxpayer, as appropriate, a notice and a settlement agreement that sets forth the amount of the final settlement offer. Those taxpayers who agree to accept the offer shall sign such settlement agreement releasing the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. Such settlement agreement shall be returned to the Department and shall be postmarked on or before midnight of the 120th day following the enactment, or if such day is a Saturday, Sunday, or official state holiday, midnight of the next business day, or such settlement agreement shall be received by the Department by 5:00 p.m. of the 120th day following enactment, or if such day is a Saturday, Sunday, or official state holiday, by 5:00 p.m. of the next business day.

5. A taxpayer who delivered to the Department a timely but incomplete settlement agreement under the terms of the Federal Retiree Settlement Act or this act shall be deemed to have met the filing deadline, provided that any delay in submitting completed forms to the Department may result in a delay of the first payment required under the settlement program established by the Federal Retiree Settlement Act or under this act. The taxpayer shall provide the Department a completed settlement agreement (i) on or before

the thirtieth day after enactment for those taxpayers who qualify for participation in the settlement program created by the Federal Retiree Settlement Act or (ii) on or before the 150th day following enactment for those taxpayers who qualify for the settlement program created by this act.

6. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Commonwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.

7. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).

8. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by the provisions of the Federal Retiree Settlement Act, and nothing in this act shall be construed or interpreted to authorize any taxpayer to opt out of the settlement program or agree to accept the relief granted in pending litigation after the deadlines established in the Federal Retiree Settlement Act.

4. That the first enactment of Chapter 719 of the 1996 Acts of Assembly is amended and reenacted as follows:

1.

§ 1. The Tax Commissioner is hereby authorized to determine which retired federal and military taxpayers were denied participation in either the Federal Retiree Settlement Act (Enactment clause 2 of Chapter 5 of the 1994 Acts of Assembly, Special Session I) or the supplemental federal retiree settlement program (Chapters 185 and 203 of the 1995 Acts of Assembly); and is authorized to enter into settlement agreements with such taxpayers in an amount equal to the settlement amounts retirees will receive or have received under the Federal Retiree Settlement Act.

1. To be eligible to receive these payments, a taxpayer shall (i) have failed to fully or partially participate in either the original settlement program or the supplemental settlement

program; (ii) have notified the Tax Department by June 10, 1996, that he or she is not currently participating or did not participate in the prior settlement programs; (iii) provide the Department with the information the Department deems to be necessary for purposes of determining the validity of and quantifying a taxpayer's claimed tax overpayment; and (iv) submit a properly executed settlement agreement, which releases the Commonwealth and its agencies, officers and employees from any further liability for claims arising out of taxes paid on federal retirement income received during the 1985 through 1988 taxable years and dismissing any litigation as to such claims in which the taxpayer is a party. To meet the notice requirement of clause (ii) above, the taxpayer's contact with the Department to put it on notice must be documented in the Department's records.

2. The payments shall be made ~~over a four-year period~~ in annual installments *or special installments* and shall be disbursed by the Tax Commissioner or his designees to the taxpayers participating in the settlement as follows:

a. The Department shall offer each affected taxpayer an amount equal to the same percentage of the disputed refund as computed under the Federal Retiree Settlement Act. Disbursements to these taxpayers shall be limited to an amount equal to the percentage of disputed refunds and shall not include any additional amounts.

b. Disbursements shall be made in up to ~~four~~ five payments, the first of which shall be made on July 31, 1996, or as soon thereafter as practical with each of the remaining ~~three~~ four disbursements to be made on ~~each~~ March 31 ~~thereafter through 1999, 1997, March 31, 1998, September 30, 1998, and March 31, 1999, if necessary.~~

c. Payments under the settlement program created by this act shall be to taxpayers over the same payment schedule as if the taxpayers were participating in the Federal Retiree Settlement Act, except that the initial payment shall be equal to the first two payments that the participants would have received had they participated in the Federal Retiree Settlement Act.

d. Any amount received by a taxpayer pursuant to this section shall be subject to debt collection pursuant to Article 21 (§ [58.1-520](#) et seq.) of Chapter 1 of Title 58.1.

3. The Tax Commissioner is authorized to order payments to be made out of the state treasury as if the amount each affected taxpayer is entitled to receive pursuant to this act is a refund pursuant to § [58.1-309](#).

4. A taxpayer is hereby authorized, for purposes of the settlement created by this act, to sign on behalf of a spouse with whom he or she jointly filed an income tax return for a taxable year to which the settlement is related. By signing the agreement to settle the claim on behalf of both spouses, the signing taxpayer thereby agrees to indemnify the Com-

monwealth for any amounts related to the settlement payments that it may be required to pay under the law to the nonsigning spouse.

5. The Tax Commissioner is authorized to enter into such contracts or execute such instruments or agreements as may be necessary (i) to effect compromise or settlement of disputed refund claims through creation of a trust or other legal entity or (ii) to obtain administrative or investment services relevant to any such settlement or compromise. Any such contracts or agreements for services shall be approved by the Attorney General and shall be exempt from the provisions of the Virginia Public Procurement Act (§ [11-35](#) et seq.).

6. Except and to the extent specifically authorized in this act, nothing in this act shall be construed or interpreted to revive any claim barred by Chapter 5 of the 1994 Acts of Assembly, Special Session I, and nothing in this act shall be construed or interpreted to authorize any taxpayer to be entitled to the relief granted in the Harper litigation.

## **Chapter 588 Capital Region Airport Commission.**

An Act to amend and reenact §§ 9, 14 and 16 of Chapter 380 of the Acts of Assembly of 1980, relating to the Capital Region Airport Commission.

[\[S 340\]](#)

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 9, 14 and 16 of Chapter 380 of the Acts of Assembly of 1980 are amended and reenacted as follows:

§ 9. Rules and regulations.

The Commission shall have the power to adopt, amend, and repeal rules and regulations for the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Commission shall by unanimous vote of all Commissioners present determine that an emergency exists, the Commission shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

- a. Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Commission for at least ten days;
- b. Publish a notice in a newspaper of general circulation published in the participating political subdivisions declaring the Commission's intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the

Commission will hold a public hearing at which any person may appear and be heard for or against the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least ten days from the day of the publication thereof; and

c. Hold the public hearing on the day and at the time specified in such notice or any adjournment thereof, and hear persons appearing for or against such rule, regulation, alteration, amendment, or modification.

The Commission's rules and regulations shall be available for public inspection in the Commission's principal office.

The Commission's rules and regulations relating to:

a. Traffic, including but not limited to motor vehicle ~~speed limits~~ *moving violations* and the location of and payment for public parking;

b. Access to Commission facilities, including but not limited to solicitation, handbilling, and picketing; and

c. Aircraft operation and maintenance; shall have the force and effect of law, as shall any other rule or regulation of the Commission which shall contain a determination by the Commission that it is necessary to accord the same the force and effect of law in the interest of the public safety; provided, however, that with respect to motor vehicle traffic rules and regulations, the Commission shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which such rules or regulations are to be enforced. The violation of any rule or regulation of the Commission relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the participating political subdivision in which such violation occurred; all other violations of the Commission's rules and regulations having the force and effect of law shall be punishable as misdemeanors.

#### § 14. Deposit and investment of funds.

All moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this act. All moneys of the Commission shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations ~~having their principal offices in the Commonwealth~~. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act. Funds of the Commission not needed for immediate use or disbursement may, subject to the provisions of any contract between the Commission and the holders of its bonds, be invested in securities which are considered lawful investments for fiduciaries.

§ 16. Resolution or trust indenture to secure bonds.

In connection with the issuance of bonds and/or in order to secure the payment of such bonds, the Commission shall have power:

1. To pledge by resolution, trust indenture, or other agreement, all or any part of its fees, rents, or revenues;
2. To covenant to impose and maintain such schedule of fees, rents and charges as will produce funds sufficient to pay operating costs and debt service;
3. To covenant against pledging all or any part of its fees, rents, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;
4. To provide for the release of fees, rents, and revenues from any pledge and to reserve rights and powers in the fees, rents and revenues from which are subject to a pledge;
5. To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any facility or facilities of the Commission or any part thereof or with respect to limitations on its right to undertake additional projects;
6. To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
7. To covenant as to what other, or additional, debt may be incurred by it;
8. To provide for the terms, form, registration, exchange, execution, and authentication of bonds;
9. To provide for the replacement of lost, destroyed, or mutilated bonds;
10. To covenant as to the use of any or all of its property, real or personal, subject to the continued use of such property for airport purposes;
11. To create or to authorize the creation of special funds in which there may be segregated: (i) the proceeds of any loan or grant; (ii) all of the fees, rents, and revenues of any facility or facilities or parts thereof; (iii) any moneys held for the payment of the costs of operation and maintenance of any such facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (iv) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as reserve for such payments; and (v) any moneys held for any other reserve or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;
12. To redeem its bonds, and to covenant for their redemption and to provide the terms and conditions thereof;
13. To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner;

14. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

15. To covenant as to the maintenance of its facilities, the insurance to be carried thereon and the use and disposition of insurance moneys;

16. To vest in a bondholder the right, in the event of the failure of the Commission to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the Commission with such interest, security and priority as may be provided in any trust indenture, lease or contract of the Commission with reference thereto;

17. To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

18. To covenant as to the rights, liabilities, powers, and duties arising upon the breach of it of any covenant, condition, or obligation;

19. To covenant to surrender possession of all or any part of any facility or facilities acquired or constructed from bond proceeds, the revenues from which have been pledged upon the happening of any event of default, as defined in the contract, and to vest in a bondholder the right without judicial proceeding to take possession and to use, operate, manage, and control such facility or any part thereof, and to collect and receive all fees, rents, and revenues arising therefrom in the same manner as the Commission itself might do and to dispose of the moneys collected in accordance with the agreement of the Commission with such obligee, subject to the continued use of such facilities for airport purposes;

20. To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the bondholders or any proportion of them may enforce any such covenant;

21. To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character;

22. To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such

covenants and provisions, in addition to those above specified, as any purchaser of the bonds of the Commission may reasonably require; and

23. To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the Commission tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the Commission power to do all things in the issuance of bonds, and in the provisions for their security that are not inconsistent with the Constitution of the Commonwealth or this act.; and

24. *In connection with, or incidental to, the issuance or carrying of notes or bonds or the acquisition or carrying of any investments, to enter into swap agreements or other contracts or arrangements that the Commission determines to be necessary or appropriate to place obligations or investments of the Commission, as represented by notes, bonds or investments of the Commission, in whole or in part, on the interest rate, currency, cash flow or other basis desired by the Commission or to hedge payment, currency, rate, spread or other exposure. Such contracts or arrangements may be entered into by the Commission in connection with, or incidental to, entering into or maintaining (i) any agreement that secures notes or bonds of the Commission and is authorized or permitted by law or (ii) any investment, or contract providing for any investment, otherwise authorized or permitted by law.*

*Such contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commission, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.*

*In connection with or incidental to any of these contracts or arrangements, the Commission may enter into credit enhancement or liquidity agreements with such terms and conditions as it shall determine.*

## **Chapter 734 Higher Educational Institutions Bond Act of 1998.**

An Act to authorize the issuance of bonds subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia in an amount not to exceed \$89,997,400, plus amounts needed to fund issuance costs, reserve funds and other financing expenses, for the purpose of providing funds, together with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing and equipping

revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds at public or private sale, and to issue notes to borrow money in anticipation of the issuance of such bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of the principal of and the interest on such bonds; to provide that the interest income on such bonds shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapter 845 of the Acts of Assembly of 1996.

[\[S 31\]](#)

Approved April 16, 1998

Whereas, Section 9 (c) of Article X of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including the enlargement or improvement thereof, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with the provisions of Section 9 (c) of Article X of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Section 9 (c) of Article X of the Constitution of Virginia; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 1998."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, subject to the provisions of Section 9 (c) of Article X of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$89,997,400, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of the bonds by the issuance of bond anticipation notes ("BANs"), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs incurred or to be incurred for acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Number</i>	<i>Debt</i>	<i>Project Name</i>
<i>University of Virginia</i>	<i>15400</i>	<i>\$ 1,142,000</i>	<i>Newcomb Hall Expansion</i>
<i>University of Virginia</i>	<i>16092</i>	<i>3,500,000</i>	<i>Rugby Road Apartments Renovation</i>
<i>University of Virginia</i>	<i>16094</i>	<i>4,000,000</i>	<i>Observatory Hill Dining</i>
<i>Renovation University of Virginia</i>	<i>16151</i>	<i>4,500,000</i>	<i>Clinch Valley College</i>
<i>Residence Hall Virginia Polytechnic</i>	<i>14303</i>	<i>1,078,900</i>	<i>Institute Major Repairs</i>
<i>Institute Virginia Polytechnic</i>	<i>14815</i>	<i>5,991,700</i>	<i>Dorm/Dining Virginia Polytechnic Parking Auxiliary Project Vir-</i>
<i>ginia Polytechnic Institute</i>	<i>15525</i>	<i>3,269,000</i>	<i>Dining Hall Virginia Polytechnic Institute</i>
<i>16095</i>	<i>2,098,000</i>	<i>Dietrick Dining Hall HVAC</i>	

Uncodified Acts of Assembly - 1998

Virginia Commonwealth University 15160  
 998,300 MCV Visitors Deck Virginia Commonwealth  
 University 16093 12,381,000 Student Residence  
 Hall George Mason University 15345 2,000,000 Arlington  
 Metro Parking George Mason University 15533 3,400,000  
 Housing Renovations College of William and Mary  
 15745 6,660,000 Dormitory Renovation James Madison  
 University 15361 1,082,000 Dining Facility  
 Renovation James  
 Madison University 15620 3,214,000 Parking  
 Structure

Christopher Newport

University xxxxx 12,726,000 Residence  
 Hall, Phase II

Virginia Community

College System xxxxx 635,500 Mt. Empire Com-  
 munity

College Park-  
 ing

Auxiliary Pro-  
 ject

University of Virginia xxxxx 8,000,000 Clinch Valley  
 College

Student Ser-  
 vices

Building

Uncodified Acts of Assembly - 1998

Longwood College	xxxxx	2,800,000	Residence Hall
			<i>Renovations</i>
Longwood College	15502	2,975,000	New Dining
Hall Mary Washington	College		15980
1,500,000	Residence Hall HVAC		Mary Washington College
	16096	5,000,000	Seacobeck Dining Hall
			<i>Renovation Virginia</i>
State University	15622	1,046,000	Jones Dining Hall
TOTAL		\$89,997,400	

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of the bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of said capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and*

*BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and BANs and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell the bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Section 9 (a) (3), (b), and (c) of Article X of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds [Bond Anticipation Notes], Series \_\_\_\_."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution are the proper officers to sign such*

*bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources of payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of the bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*Each institution of higher education mentioned above is hereby authorized (i) to fix, revise, charge and collect a building fee or other comprehensive student fee and other rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the payment of the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Authorized investments.*

*Pending the application of the proceeds of the bonds and BANs to the purpose for which they have been authorized and the application of the net revenues and other sums set aside for the payment of bonds and BANs, all or any part of such funds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such funds, and the interest thereon and any profit realized from such investments shall be credited to such funds, and any losses shall be deducted therefrom.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii)*

*refunding BANs are hereby irrevocably pledged for the payment of principal of and interest on and any premium on the bonds or BANs to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The interest income on the bonds and any BANs issued under the provisions of this act shall at all times be exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that the interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Section 9 (c) of Article X of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds or BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the*

*applicable authorizing instrument, this act, and Section 9 (b) or (c) of Article X, as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapter 845 of the Acts of Assembly of 1996 is repealed; however, such repeal shall not operate to invalidate, alter the security of or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 123 Boundary line between Loudoun County, Va. & Jefferson County, W. Va.**

An Act to amend and reenact § 7.1-10.1 of the Code of Virginia and to repeal the second enactment of Chapter 141 of the Acts of Assembly of 1993, relating to the boundary line between Loudoun County, Virginia, and Jefferson County, West Virginia.

[\[H 889\]](#)

Approved March 13, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 7.1-10.1 of the Code of Virginia is amended and reenacted as follows:

§ 7.1-10.1. Boundary line between Loudoun County, Virginia, and Jefferson County, West Virginia.

1.A. The boundary line between Loudoun County, Virginia, and Jefferson County, West Virginia, is hereby, on the part of this Commonwealth, established and declared to be the watershed line of the top of the ridge of the Blue Ridge Mountains *as established by the survey approved by the Commission on April 29, 1997, and recorded in the land books in the courthouses of Loudoun County, Virginia, and Jefferson County, West Virginia.*

2.B. No vested right of any individual, partnership, or corporation within the territory affected by this act shall in any wise be impaired, restricted, or affected by this act. This act shall not be retrospective in its operation nor shall it in any way affect the rights of any individual, partnership, or corporation in any suit now pending in any of the courts of

this ~~State Commonwealth~~ or of the United States wherein the cause of action arose over, or is in any way based upon, the territory affected. This act shall in no wise preclude the Commonwealth of Virginia from prosecuting any individual, partnership, or corporation for violation of any of the criminal laws of this ~~State Commonwealth~~ within the territory until this act shall go into effect.

~~3.C.~~ The Keeper of the Rolls of the Commonwealth shall furnish a certified copy of this act to the Governor of the State of West Virginia and shall also furnish certified copies to the United States Senators from the Commonwealth of Virginia and to the Representative from the Tenth Congressional District of Virginia in the House of Representatives, who are requested to have the act presented to the Congress of the United States ~~for ratification by the Congress.~~

~~4.D.~~ The Commission created by Chapter 181 of the 1986 Acts of Assembly, and extended pursuant to Chapter 606 of the 1988 Acts of Assembly, Chapter 52 of the 1991 Acts of Assembly, and Chapter 448 of the 1992 Acts of Assembly, is continued and is directed, in cooperation with the like Commission created by the State of West Virginia, or other agency designated by the State of West Virginia for the purpose, *to complete its work, including the recordation of the survey in the Loudoun County Courthouse, and to survey and erect permanent markers designating the boundary line set forth in § 1 subsection A.* The markers shall be of the nature and kind the Commission deems appropriate.

*E. This section shall become effective upon its ratification and approval by the West Virginia Legislature.*

2. That an emergency exists and this act is in force from its passage.

3. That the Virginia Boundary Commission is directed to record the survey referred to herein no later than April 1, 1998. Such survey shall take into account KD Map 25 A Parcel 0002 through which the water shed line runs and shall include such residence on the Virginia side of the boundary line.

4. That the second enactment of Chapter 141 of the Acts of Assembly of 1993 is repealed.

## **Chapter 169 Funeral establishments; hardship provision.**

An Act to repeal the second enactment of Chapter 757 of the Acts of Assembly of 1996, relating to the licensure of funeral establishments.

[\[H 6\]](#)

Approved March 27, 1998

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 757 of the Acts of Assembly of 1996 is repealed.

## **Chapter 206 Naming of public buildings.**

An Act to authorize and encourage the naming of public buildings or other public structures after Virginia Medal of Honor recipients.

[\[H 1314\]](#)

Approved April 2, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In order to properly honor the Virginia heroes who have fought bravely for the Commonwealth and the United States, it shall be the policy of the Commonwealth to encourage the naming of public buildings or other public structures after Virginia Medal of Honor recipients.*

## **Chapter 250 Computer programs not compliant with Year 2000.**

An Act to require public bodies to solicit certain responsible bidders or offerors.

[\[H 276\]](#)

Approved April 7, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, to obtain responses to Requests for Proposals or Invitations to Bid for goods or nonprofessional services to remediate computers, software programs, databases, networks, or information systems which are not compliant with the "Year 2000" date change and such goods or services are to be procured through competitive negotiation or competitive sealed bidding pursuant to the Virginia Public Procurement Act (§ [11-35](#) et seq.), public bodies shall strive to solicit responsible bidders or offerors who provide such remediation in Virginia and may solicit other responsible bidders or offerors to provide*

*such remediation.*

2. That the provisions of this act shall expire on January 1, 2001.
3. That an emergency exists and this act is in force from its passage.

## **Chapter 740 Bonds for Northern Virginia Transportation District Program.**

An Act to amend and reenact §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia and § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994, relating to the Northern Virginia Transportation District Program; the issuance of bonds to finance the costs of such program; the Northern Virginia Transportation District Fund; the use of such fund to pay debt service; the amendments thereto relating to increasing the principal amount of bonds authorized to be issued to \$366,900,000 and redesignating the projects qualifying for such financing and the amounts allocated to each such project.

[\[S 566\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-221.1:3](#) and [58.1-815.1](#) are amended and reenacted as follows:

§ [33.1-221.1:3](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in Northern Virginia which shall be known as the Northern Virginia Transportation District Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station *and new rail car purchases*, Route 7 improvements in Loudoun County between Route 15 and Route 28, ~~and~~ the Route 50/Courthouse Road interchange improvements in Arlington County, *the Route 28/Route 625 interchange improvements in Loudoun County, and Metrorail*

*capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access.*

B. Allocations to this Program from the Northern Virginia Transportation District Fund established by § [58.1-815.1](#) shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality of life in Virginia.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in § [33.1-268](#) (2) (s).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.

E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [58.1-815.1](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under §§ [58.1-802](#) B and [58.1-814](#). The Fund shall also include

~~such other~~ any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including but not limited to any funds distributed pursuant to §§ [33.1-23.3](#), [33.1-23.4](#) or § [33.1-23.5:1](#), which may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly from time to time and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2-~~or~~, 3 or 4 project or projects may be funded.

B. Allocations from this Fund may be paid (i) to any authority, locality or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program which consists of the following: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station *and new rail car purchases*, Route 7 improvements in Loudoun County between Route 15 and Route 28, ~~and~~ the Route 50/Courthouse Road interchange improvements in Arlington County, *the Route 28/Route 625 interchange improvements in Loudoun County, and Metrorail capital improvements attributable to the City of Alexandria, including the King Street Metrorail station access* and (ii) for Category ~~3~~ 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

2. That § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994, is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation *Contract* Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$271,000,000~~ \$366,900,000 to finance the

cost of the projects plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Northern Virginia Transportation District Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "projects"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The projects shall be classified as Category 1, Category 2 ~~and~~, Category 3, *and Category 4* projects, each category being subject to different preconditions. Bonds to finance the cost of Category 1 *and Category 3* projects may be issued by the Commonwealth Transportation Board. Bonds to finance the cost of Category 2 projects may be issued by the Commonwealth Transportation Board only if the aggregate principal amount of ~~\$261,000,000~~ \$361,900,000 in bonds has been issued to finance the cost of Category 1 *and Category 3* projects. Category ~~3~~4 projects shall not be financed through the issuance of bonds; however, after all Bonds authorized have been issued, then to the extent the Northern Virginia Transportation District Fund contains amounts in excess of the amount needed to pay annual debt service on such Bonds in a particular fiscal year, such excess amounts may be expended to pay the cost of the work identified as Category ~~3~~4 projects.

The projects, and the amount of bonds authorized to be issued for each such project, are as follows and constitute the Northern Virginia Transportation District Program:

Category 1 projects	Bond amount
Metro Capital Improvements,	
including the Franconia-Springfield	
Metrorail Station	\$ 85,600,000

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Fairfax County Parkway	\$ 87,000,000
Route 234 Bypass	\$ 73,400,000
Route 7 improvements between Loudoun County	Route 15 and Route 28 in \$ 15,000,000
Total	\$261,000,000

Category 2 projects consist of the ~~Route 50/Courthouse Road~~ *Route 234 Bypass/Route 28* interchange improvements in ~~Arlington~~ *Prince William* County, in the amount of ~~\$10,000,000~~ *\$5,000,000*.

<i>Category 3 projects</i>	<i>Bond amount</i>
<i>Route 50/Courthouse</i>	
<i>Road interchange</i>	<i>\$10,000,000</i>
<i>Fairfax County Parkway --</i>	
<i>Partially-funded segments</i>	
<i>between Route 1 and Route 7</i>	<i>\$50,000,000</i>
<i>Route 234 Bypass from</i>	
<i>Route 28 to Route 234</i>	<i>\$15,300,000</i>
<i>Route 28/Route 625</i>	
<i>interchange</i>	<i>\$ 7,900,000</i>
<i>Metrorail capital improvements</i>	
<i>attributable to</i>	

<i>the City of Alexandria, including</i>	
<i>the King Street Metrorail Station</i>	
<i>access</i>	<i>\$ 4,400,000</i>
<i>Metrorail Capital</i>	
<i>Improvements, including</i>	
<i>new rail car purchases</i>	<i>\$13,300,000</i>
<i>Total</i>	<i>\$100,900,000</i>

*The Commonwealth Transportation Board shall only issue bonds for Category 3 projects in an amount or amounts necessary to expedite or complete the Category 3 projects if the following conditions are satisfied: (i) at least two of the jurisdictions participating in the Northern Virginia Transportation District Program have entered into a contract pursuant to § [58.1-815.1](#) and (ii) the governing bodies of at least five of the jurisdictions participating in the Northern Virginia Transportation District Program and comprising a majority of population of the jurisdictions participating in such Program have adopted resolutions endorsing the proposed sale or sales of bonds to support the Category 3 projects. Such contracts and resolutions shall remain in force so long as any debts or obligations for Category 3 projects remain outstanding.*

The work identified as Category 34 projects to be funded from the Northern Virginia Transportation District Fund, to the extent there are sums in excess of the amount needed to pay debt service on the Bonds in a given fiscal year, is as follows:

Category 34 projects

Such projects as may be concurred in by the local jurisdictions participating in the Northern Virginia Transportation District Program, as evidenced by resolutions adopted by an affirmative vote of a ~~majority~~ *each* of the jurisdictions participating in the Northern Virginia Transportation District Program and subject to such guidelines and conditions as may be promulgated by the Commonwealth Transportation Board.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds. In the event the aggregate principal amount of the issuance, for the projects and amounts authorized by the 1994 amendments to Chapter 391 of the Acts of Assembly of 1993, is less than \$127,000,000, the Commonwealth Transportation Board shall cause each Category 1 project to be shared in the reduced issuance by reducing the proceeds of the Bonds for each of the Category 1 projects on a pro rata basis. ~~For purposes of making such computation, the 1993 issuance of Bonds and the amount of bond proceeds allocated to each Category 1 project in 1993 shall be disregarded.~~

3. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Chapter 761 Bonds for Northern Virginia Transportation District Program.**

An Act to amend and reenact §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia and § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994, relating to the Northern Virginia Transportation District Program; the issuance of bonds to finance the costs of such program; the Northern Virginia Transportation District Fund; the use of such fund to pay debt service; increasing the principal amount of bonds authorized to be issued to \$366,900,000 and redesignating the projects qualifying for such financing and the amounts allocated to each such project.

[\[H 1117\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-221.1:3](#) and [58.1-815.1](#) are amended and reenacted as follows:

§ [33.1-221.1:3](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in Northern Virginia which shall be known as the Northern Virginia Transportation District Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station *and new rail car purchases*, Route 7 improvements in Loudoun County between Route 15 and Route 28, ~~and~~ the Route 50/Courthouse Road interchange improvements in Arlington County, *the Route 28/Route 625 interchange improvements in Loudoun County, and Metrorail Capital Improvements attributable to the City of Alexandria, including the King Street Metrorail station access.*

B. Allocations to this Program from the Northern Virginia Transportation District Fund established by § [58.1-815.1](#) shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality of life in Virginia.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in § [33.1-268](#) (2) (s).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.

E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available

revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [58.1-815.1](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under §§ [58.1-802](#) B and [58.1-814](#). The Fund shall also include ~~such other~~ *any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including but not limited to any funds distributed pursuant to §§ [33.1-23.3](#), [33.1-23.4](#) or § [33.1-23.5:1](#), which may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly from time to time and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2-~~or~~, 3 or 4 project or projects may be funded.*

B. Allocations from this Fund may be paid (i) to any authority, locality or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program which consists of the following: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station *and new rail car purchases*, Route 7 improvements in Loudoun County between Route 15 and Route 28, ~~and~~ the Route 50/Courthouse Road interchange improvements in Arlington County, *the Route 28/Route 625 interchange improvements in Loudoun County, and Metrorail Capital Improvements attributable to the City of Alexandria, including the King Street Metrorail station access*, and (ii) for Category ~~3~~4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation

act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

2. That § 2 of the Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994, is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation *Contract* Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$271,000,000~~ *\$366,900,000* to finance the cost of the projects plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Northern Virginia Transportation District Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "projects"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The projects shall be classified as Category 1, Category 2 ~~and~~, Category 3, *and Category 4* projects, each category being subject to different preconditions. Bonds to finance the cost of Category 1 *and Category 3* projects may be issued by the Commonwealth Transportation Board. Bonds to finance the cost of Category 2 projects may be issued by the Commonwealth Transportation Board only if the aggregate principal amount of ~~\$261,000,000~~ *\$361,900,000* in bonds has been issued to finance the cost of Category 1 *and Category 3* projects. Category ~~3~~ *4* projects shall not be financed through the issuance of bonds; however, after all Bonds authorized have been issued, then to the extent the Northern Virginia Transportation District Fund contains amounts in excess of the amount needed to pay annual debt service on such Bonds in a particular fiscal year, such excess amounts may be expended to pay the cost of the work identified as Category ~~3~~ *4* projects.

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The projects, and the amount of bonds authorized to be issued for each such project, are as follows and constitute the Northern Virginia Transportation District Program:

Category 1 projects	Bond amount
Metro Capital Improvements,  including the  Franconia-Springfield  Metrorail Station	\$ 85,600,000
Fairfax County Parkway	\$ 87,000,000
Route 234 Bypass	\$ 73,400,000
Route 7 improvements between  Route 15 and Route 28 in  Loudoun County	\$ 15,000,000
Total	\$261,000,000

Category 2 projects consist of the ~~Route 50/Courthouse Road~~ *Route 234 Bypass/Route 28* interchange improvements in ~~Arlington~~ *Prince William* County, in the amount of ~~\$10,000,000~~ *\$5,000,000*.

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*Category 3 projects* *Bond amount*

*Route 50/Courthouse*

Uncodified Acts of Assembly - 1998

<i>Road interchange</i>	<i>\$10,000,000</i>
<i>Fairfax County Parkway --</i>	
<i>Partially-funded segments</i>	
<i>between Route 1 and Route 7</i>	<i>\$50,000,000</i>
<i>Route 234 Bypass from</i>	
<i>Route 28 to Route 234</i>	<i>\$15,300,000</i>
<i>Route 28/Route 625</i>	
<i>interchange</i>	<i>\$ 7,900,000</i>
<i>Metrorail Capital Improvements</i>	
<i>attributable to the</i>	
<i>City of Alexandria,</i>	
<i>including the King Street</i>	
<i>Metrorail station access</i>	<i>\$ 4,400,000</i>
<i>Metrorail Capital Improvements,</i>	
<i>including new</i>	
<i>rail car purchases</i>	<i>\$13,300,000</i>
<i>Total</i>	<i>\$100,900,000</i>

*The Commonwealth Transportation Board shall only issue the bonds for Category 3 projects in an amount or amounts necessary to expedite or complete the Category 3*

*projects if the following conditions are satisfied: (i) at least two of the jurisdictions participating in the Northern Virginia Transportation District Program have entered into a contract pursuant to § [58.1-815.1](#) and (ii) the governing bodies of at least five of the jurisdictions participating in the Northern Virginia Transportation District Program and comprising a majority of population of the jurisdictions participating in such Program have adopted resolutions endorsing the proposed sale or sales of bonds to support the Category 3 projects. Such contracts and resolutions shall remain in force so long as any debts or obligations for Category 3 projects remain outstanding.*

The work identified as Category 3 4 projects to be funded from the Northern Virginia Transportation District Fund, to the extent there are sums in excess of the amount needed to pay debt service on the Bonds in a given fiscal year, is as follows:

#### Category 3 4 projects

Such projects as may be concurred in by the local jurisdictions participating in the Northern Virginia Transportation District Program, as evidenced by resolutions adopted by an affirmative vote of a majority ~~each~~ of the jurisdictions participating in the Northern Virginia Transportation District Program and subject to such guidelines and conditions as may be promulgated by the Commonwealth Transportation Board.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds. In the event the aggregate principal amount of the issuance, for the projects and amounts authorized by the 1994 amendments to Chapter 391 of the Acts of Assembly of 1993, is less than \$127,000,000, the Commonwealth Transportation Board shall cause each Category 1 project to be shared in the reduced issuance by reducing the proceeds of the Bonds for each of the Category 1 projects on a pro rata basis. ~~For purposes of making such computation, the 1993 issuance of Bonds and the amount of bond proceeds allocated to each Category 1 project in 1993 shall be disregarded.~~

3. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Chapter 135 Income tax; deduction for qualified agricultural contributions.**

An Act to amend and reenact the second enactment of Chapter 39 of the Acts of Assembly of 1989, as amended by the first enactments of Chapters 28 and 541 of the Acts of Assembly of 1993, and the second enactment of Chapter 639 of the Acts of Assembly of 1989, as amended by the second enactments of Chapters 28 and 541 of the Acts of Assembly of 1993, relating to the expiration of the deduction for qualified agricultural contributions for income tax purposes.

[\[H 3\]](#)

Approved March 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 39 of the Acts of Assembly of 1989, as amended by the first enactments of Chapters 28 and 541 of the Acts of Assembly of 1993, is amended and reenacted as follows:
2. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 1989, and that the provisions of this act shall expire for taxable years beginning on and after January 1, ~~1999~~2004.
2. That the second enactment of Chapter 639 of the Acts of Assembly of 1989, as amended by the second enactments of Chapters 28 and 541 of the Acts of Assembly of 1993, is amended and reenacted as follows:
2. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 1989, and that the provisions of this act shall expire for taxable years beginning on and after January 1, ~~1999~~2004.

## **Chapter 185 Property conveyance; Natural Tunnel State Park.**

An Act authorizing the Department of Conservation and Recreation to convey certain property at Natural Tunnel State Park in Scott County and to accept certain property in exchange.

[\[H 976\]](#)

Approved March 30, 1998

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Ann Mae Q. Williams, W.F. Williams and Gary Sheldon Williams, their heirs, successors, and assigns, upon such terms as the Department deems proper, with the approval of the Governor and the Attorney General, parcels of real property in Natural Tunnel State Park in Scott County.*

§ 2. *In consideration for such conveyance, the Department is authorized to accept on behalf of the Commonwealth a conveyance from Ann Mae Q. Williams, W.F. Williams, and Gary Sheldon Williams and others that may be determined to have an interest in certain real property adjacent to Natural Tunnel State Park.*

§ 3. *The exchange of real property shall be approximately acre for acre; however, because this exchange is undertaken in the absence of current surveys of the exchange parcels of real property, any difference in fair market value shall be balanced with a cash payment in the amount of that difference to the party receiving the lesser-valued property.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

## **Chapter 244 Transfer of property from VRS to Science Museum.**

An Act directing the transfer of a rail car and related artifacts from the Virginia Retirement System to The Science Museum of Virginia.

[\[S 59\]](#)

Approved April 7, 1998

Whereas, following its sale of the capital stock of RF&P Corporation on December 3, 1996, the Virginia Retirement System retained ownership of a rail car and related artifacts; and

Whereas, the Richmond, Fredericksburg & Potomac Railroad played a prominent role in the history of the Commonwealth; and

Whereas, the rail car and artifacts have historical value to the Commonwealth; and

Whereas, the rail car and artifacts are not revenue-producing assets; and

Whereas, the Virginia Retirement System is willing to transfer the rail car and artifacts to The Science Museum of Virginia; and

Whereas, The Science Museum of Virginia, which is housed in a historic railway station associated with the Richmond, Fredericksburg & Potomac Railroad, is willing to accept the transfer of such property; and

Whereas, the transfer of the rail car and related artifacts to The Science Museum of Virginia will provide educational benefits for the citizens of the Commonwealth; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That, notwithstanding the provisions of § 2.1-457.2 of the Code of Virginia, the RF&P rail car and related artifacts be, and hereby are, transferred from the Virginia Retirement System to The Science Museum of Virginia. Any expenses associated with the transfer shall be paid in accordance with an agreement between the Virginia Retirement System and The Science Museum of Virginia.*

## **Chapter 296 Charles Hardaway Marks Bridges.**

An Act to designate the Virginia Route 10 *twin bridges* crossing the Appomattox River the "Charles Hardaway Marks *Bridges*."

[\[H 126\]](#)

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 10 twin bridges crossing the Appomattox River in the vicinity of the City of Hopewell are hereby designated the "Charles Hardaway Marks Bridges." The Department of Transportation shall place and maintain appropriate markers indicating the designation of the twin bridges. This designation shall not affect any other designation heretofore or hereafter applied to the twin bridges.-*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 247 Smith Mountain Lake; no-discharge zone for boat sewage.**

An Act to direct the State Water Control Board to petition the Administrator of the United States Environmental Protection Agency to approve the designation of Smith Mountain

Lake as a no-discharge zone for boat sewage.

[\[S 328\]](#)

Approved April 7, 1998

Whereas, Smith Mountain Lake was recently approved as a safe source for public drinking water; and

Whereas, prohibiting the discharge of sewage from boats would improve water quality in Smith Mountain Lake; and

Whereas, Section 312 of the federal Clean Water Act (33 U.S.C. § 1322) provides that a "State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into [any] waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment from all vessels are reasonably available for such water to which such prohibition would apply"; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That the State Water Control Board shall petition the Administrator of the United States Environmental Protection Agency to approve the designation of Smith Mountain Lake as a no-discharge zone for boat sewage. If such approval is granted, the Board shall prohibit the discharge from all vessels of any sewage into Smith Mountain Lake.-*

## **Chapter 248 Lease of Mason Neck State Park.**

An Act authorizing the Department of Conservation and Recreation to lease a portion of Mason Neck State Park in Fairfax County.

[\[S 411\]](#)

Approved April 7, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding the provisions of § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease to the Chesapeake Bay Foundation, Inc., upon terms as the Department deems proper, with the approval of the Governor and the Attorney General, that parcel of land known as the Jammes property, containing 8.8781 acres, more or less, as shown on a boundary*

*survey recorded in the Office of the Clerk of the Circuit Court of Fairfax County, Virginia, in Deed Book 9501, page 985, together with a parcel adjoining the northwest corner of the Jammes property and providing access to Occoquan Bay, both parcels being a portion of Mason Neck State Park in Fairfax County. The terms of the lease shall require the lessee to make substantial renovations to the existing improvements on the Jammes property, and shall provide that the parcels shall be used as the situs of environmental education programs and such other uses as the Department and the lessee determine are consistent with the purposes for which the parcels were acquired by the Commonwealth. The initial term of this lease shall be for thirty years, and the lease shall be renewable at the option of the lessee for like periods upon the same terms and conditions as the initial lease term. Prior to execution, the lease shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Conservation and Natural Resources and the House Appropriations Committee for review.*

## **Chapter 267 Property transfer; Shenandoah Business Incubator and Tech. Center.**

An Act to authorize the Department of Mental Health, Mental Retardation and Substance Abuse Services to convey certain land to the Shenandoah Business Incubator & Technology Center.

[\[H 1312\]](#)

Approved April 7, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding the provisions of § 2.1-505, the Department of Mental Health, Mental Retardation and Substance Abuse Services is hereby authorized to convey, with the approval of the Governor and the Attorney General, the Gore-Cline plot situated west of Interstate 81 and other property of the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Shenandoah Business Incubator & Technology Center. The Shenandoah Business Incubator & Technology Center shall reconvey the Gore-Cline plot situated west of Interstate 81 and other property of the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Mental Health, Mental Retardation and Substance Abuse Services in the*

*event that the Shenandoah Business Incubator & Technology Center relocates its business to another site.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute and deliver such deed and other documents as may be necessary to accomplish such conveyance.*

## **Chapter 304 George Ward Dalton Bridge.**

An Act to designate the U.S. Route 23 bridge at Harvey's Crossing in Lee County the "George Ward Dalton Bridge."

[\[H 734\]](#)

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The U.S. Route 23 bridge at Harvey's Crossing in Lee County is hereby designated the "George Ward Dalton Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 273 Property conveyance; National Guard Armory in Richlands.**

An Act to authorize the Commonwealth to convey certain property to the Town of Richlands.

[\[S 24\]](#)

Approved April 8, 1998

Whereas, the Commonwealth is constructing a National Guard Armory on the campus of the Southwest Virginia Community College in Richlands; and

Whereas, the existing National Guard Armory located in the Town of Richlands will no longer be utilized by the Commonwealth after the completion of the new armory on the campus of Southwest Virginia Community College; and

Whereas, the Town of Richlands is in a position to utilize the building and grounds of the existing armory for various beneficial public purposes; and

Whereas, on April 25, 1996, the Governor's Commission on Conversion of State-Owned Property recommended that the existing National Guard Armory be conveyed to the Town of Richlands upon the completion of the new armory; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That the Commonwealth of Virginia is hereby authorized to convey by gift, with the approval of the Governor and in a form approved by the Attorney General, to the Town of Richlands, the National Guard Armory buildings, excluding the organizational maintenance shop (OMS) and land within the fenced-in area around the OMS, in the Town of Richlands. Such property is identified as all property not currently owned by the Town as shown on the "Plat of Survey of the Richlands National Guard Armory Properties and the adjoining properties of the Town of Richlands, showing various exchanges of Parcels A, B, C, & D," by Andrew W. Cecil, Land Surveyor, dated June 8, 1990, revised June 14, 1991 (recorded in the Clerk's Office of Tazewell County Circuit Court, Virginia in DB 631 PG 858, PB 32 PG 22, and PC 6723), less and except all of Parcel "B", and those portions of the adjacent parcel and Parcel "D" that are within the chain link fence that surrounds the motor pool. The conveyance shall not occur until the construction of a National Guard Armory on the campus of the Southwest Virginia Community College is completed. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish such conveyance. The Town of Richlands shall pay all costs and expenses incurred in the transfer, including but not limited to environmental costs and payments due to the United States under the existing lease of a certain metal building.*

## **Chapter 282 Property lease; Smiley Block Company property.**

An Act authorizing the Department of Conservation and Recreation to lease to Amherst County certain property in Amherst County.

[\[S 240\]](#)

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation,*

*being the contract owner, is hereby authorized to lease to Amherst County, upon terms and conditions the Department deems proper, with the approval of the Governor and the Attorney General, the parcel of real property and appurtenances thereto, known as the Smiley Block Company property, consisting of 32.1 acres, more or less, located adjacent to the James River at State Route 1004 in Amherst County. The lease shall require that the property be maintained and open to public recreational use. If this condition is not met, the lease shall terminate and control shall revert to the Department of Conservation and Recreation.*

§ 2. Notwithstanding the lease term limits under § [10.1-109](#), the initial term of this lease shall be for a term of thirty years and may be renewed for three additional periods of similar length. All lease renewals shall require the approval of the Governor and the Attorney General.

## **Chapter 348 Property of Henrico County in the City of Richmond.**

An Act to repeal Chapter 541 of the Acts of Assembly of 1898 and Chapter 211 of the Acts of Assembly of 1912, relating to property of Henrico County in the City of Richmond.

[\[S 218\]](#)

Approved April 11, 1998

Be it enacted by the General Assembly of Virginia:

1. That Chapter 541 of the Acts of Assembly of 1898 and Chapter 211 of the Acts of Assembly of 1912 are repealed.
2. That an emergency exists and this act is in force on and after January 1, 1998.

## **Chapter 356 Genetic information.**

An Act to repeal the second enactment of Chapter 704 of the Acts of Assembly of 1996, relating to genetic information privacy.

[\[S 372\]](#)

Approved April 11, 1998

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 704 of the Acts of Assembly of 1996 is repealed.

## Chapter 406 General Assembly; first-day introduction bills.

An Act to extend the deadline for the introduction of bills required to be filed by the first calendar day of the 1998 Regular Session of the General Assembly.

[\[H 345\]](#)

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any bill required to be introduced on the first calendar day of the 1998 Regular Session of the General Assembly shall be introduced no later than the second calendar day of such session. Nothing in this section shall limit the introduction of such bills after the second day of session in a manner currently provided for by law.*

2. That an emergency exists and this act is in force retroactively on and after January 14, 1998.

## Chapter 306 Purple Heart Trail.

An Act to amend and reenact § 1 of Chapter 139 of the Acts of Assembly of 1996, relating to the Purple Heart Trail.

[\[H 826\]](#)

Approved April 8, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 139 of the Acts of Assembly of 1996 is amended and reenacted as follows:

*§ 1. The portion of Virginia Route 3 from George Washington's Birthplace National Monument in Westmoreland County, Virginia, to the its junction of Virginia Route 3 with Interstate Route 95 at Fredericksburg, Virginia, and the entire length of Interstate Highway 95 in Virginia, the portion of U.S. Route 1 from its junction with Interstate Route 95 to its junction with Virginia Route 235, Virginia Route 235 from its junction with U.S. Route 1 to George Washington's home and tomb at Mount Vernon, and the portion of Interstate Route 64 from its junction with Interstate Route 95 to the City of Norfolk, where General Douglas MacArthur is entombed, are hereby designated as the Purple Heart Trail, in honor of General George Washington and the combat-wounded veterans awarded the*

Purple Heart Medal. The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route. *This designation shall not affect any other designation heretofore or hereafter applied to these highways or any portions thereof.*

## **Chapter 378 Deeds; requirement for indexing.**

An Act to provide for use of cover sheets on deeds or other instruments by certain circuit court clerks.

[\[H 793\]](#)

Approved April 11, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the clerks of the circuit courts in any county with a population between 39,550 and 42,000 and in any city with a population between 4,000 and 4,500 may request, but shall not require, that any deed or other instrument conveying or relating to an interest in real property be filed with a cover sheet detailing the information contained in the deed or other instrument necessary for the clerk to properly index such instrument. The cover sheet shall be in a form approved by the Supreme Court of Virginia and used in connection with the Financial Management System and Record Indexing System provided to such circuit court clerks by the Supreme Court of Virginia.*

*The cover sheet shall not be included as a page for determining the amount of any applicable filing fees pursuant to subdivision (2) of § 14.1-112, nor shall the cover sheet be construed to convey title to any interest in real property or purport to be a document in the chain of title conveying any interest in real property.*

*§ 2. The provisions of this act shall expire on July 1, 2002.*

## **Chapter 433 Transportation; highway and transportation rights-of-way.**

An Act to permit the lease, sale or exchange of highway rights-of-way for transportation or development purposes to a public college or university foundation and to exempt such projects from the capital appropriations process.

[\[H 925\]](#)

Approved April 12, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in the event the Commonwealth Transportation Commissioner determines that an affiliated university foundation of a public college or university can efficiently, effectively, or economically carry out a transportation or development project on behalf of the Department of Transportation on a highway right-of-way which is owned by the Department, the Commissioner may lease, sell, or otherwise exchange the needed right-of-way to an affiliated university foundation on such terms and conditions as the Commissioner determines to be in the public interest.*

*§ 2. That any such project which is carried out by such an affiliated foundation that is related to the construction, improvement, operation, research or maintenance of highway and transportation facilities and purposes incidental thereto is exempt from the capital appropriations process and requirements of § 2.1-504.2.*

## **Chapter 465 Freya Dalton Bridges.**

An Act to designate the U.S. Route 460 bridges across Virginia Route 67 at Richlands the "Freya Dalton Bridges" and the Route 33 bridges over I-64 in New Kent County the "Farrar and Jeanette Howard Bridges."

[\[S 302\]](#)

Approved April 14, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the U.S. Route 460 bridges across Virginia Route 67 at Richlands are hereby designated the "Freya Dalton Bridges." The Department of Transportation shall place and maintain appropriate markers indicating the designation of these bridges. This designation shall not affect any other designation heretofore or hereafter applied to these bridges.*

*§ 2. That the Route 33 bridges over I-64 in New Kent County are hereby designated the "Farrar and Jeanette Howard Bridges." The Department of Transportation shall place and maintain appropriate markers indicating the designation of these bridges. This des-*

*ignation shall not affect any other designation heretofore or hereafter applied to these bridges.*

## **Chapter 509 Boating; personal watercraft rentals.**

An Act to prohibit the launching of personal watercraft in certain waters.

[\[H 575\]](#)

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation shall have the authority to regulate the launching of personal watercraft to ensure the public safety, consistent with state and federal law, in any city having a population greater than 350,000, from lands abutting the body of water connecting Linkhorn Bay and Broad Bay, commonly known as "The Narrows," located at the end of 64th Street in Seashore State Park.*

*For the purposes of this section, "personal watercraft" means a motorboat less than sixteen feet in length which uses an inboard motor powering a jet pump as its primary motive power and which is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside, the vessel.*

*Notice of any regulations adopted hereunder shall be posted at those locations where personal watercraft may not be launched.*

## **Chapter 548 Chesapeake Bay Bridge and Tunnel Commission.**

An Act to amend and reenact § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954, relating to the appointment and removal of members of the Chesapeake Bay Bridge and Tunnel Commission.

[\[S 335\]](#)

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954 is amended and reenacted as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.--A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. The Commission shall consist of *the following* eleven members, ~~including a member of the State Highway Commission appointed by the Governor for a term of five years and ten members who shall be appointed as follows: One member from each of the counties of Accomack and Northampton and one additional member from either the county of Accomack or the county of Northampton, who shall be appointed by the Judge of the Circuit Courts for the aforesaid counties; one member from the county of Princess Anne or the city of Virginia Beach, who shall be appointed by the Judge of the Circuit Court of the county of Princess Anne; one member from the county of Norfolk or the city of South Norfolk who shall be appointed by the Judge of the Circuit Court of the county of Norfolk; one member from the city of Hampton to be appointed by the Senior Judge in time of service of the Courts of Records of the city of Hampton; and one member from that portion of the consolidated city of Newport News which formerly constituted the city of Warwick; and one member from that portion of the consolidated city of Newport News which formerly constituted the city of Newport News, each of whom shall be appointed by the judges in banc of the Courts of Records of the said consolidated city of Newport News; one member from the city of Norfolk who shall be appointed by the Judge of the Corporation Court of the city of Norfolk; and one member from the city of Portsmouth who shall be appointed by the Judge of The Court of Hustings for the City of Portsmouth: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach.~~ The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed and may be appointed by the respective judges in term time or vacation.

The seven members of the Commission from the counties of Accomack, Northampton and Princess Anne and the cities of Hampton, Warwick, Newport News and Norfolk shall determine by lot the duration of their respective initial terms of office which shall be for one, two, three, four, five, six, and seven years, respectively, from May 14, 1954. The additional member appointed from either the county of Accomack or the county of Northampton, the member appointed from the county of Norfolk or the city of South Norfolk and the member appointed from the city of Portsmouth shall serve for terms expiring

~~on May 14, 1957, May 14, 1958 and May 14, 1959, respectively. Thereafter the appointments shall be for a period of five years, and in the event of a vacancy occurring the court involved shall fill such vacancy for the unexpired term. Any member of the Commission shall be eligible for reappointment.~~

*Any member of the Commission appointed or reappointed on or after July 1, 1998, shall be appointed by the Governor, subject to confirmation by each house of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly.*

The Commission shall select a chairman annually from its membership. Within thirty days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as vice-chairman, ~~and~~. The Commission shall employ a secretary and treasurer (who may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission may be removed from office for cause by the ~~court appointing him~~ Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by ~~§ 34~~ Article II, Section 7 of the Constitution of Virginia, before any judge of any court of record in this State. No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the ~~Highway Commission~~ Commonwealth Transportation Board. Six members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this act. The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected, subject to the approval of the ~~State Highway Commission~~ Commonwealth Transportation Board. ~~Notwithstanding any provisions of this Chapter, the present membership of the Commission, as of March 6, 1956, shall not be enlarged before and until July 1, 1957.~~

## **Chapter 629 Study; child care, abolishes Child Day-Care Council.**

An Act requiring the Board of Social Services, the Department of Social Services, and the Department of Health to study the quality, affordability, and accessibility of licensed

and unlicensed child day care programs in the Commonwealth.

[\[S 595\]](#)

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Social Services, in cooperation with the Department of Social Services, the Health Department, and other state agencies as appropriate, shall study the quality, affordability, and accessibility of licensed and unlicensed child day care programs in the Commonwealth.*

*A. The study shall (i) examine quality of care mechanisms currently in place for child day care programs and providers, including, but not limited to, state and federal statutes and regulations and review by private accrediting bodies; (ii) assess the sufficiency of these mechanisms for ensuring quality and providing parents with a means of having their inquiries and complaints addressed; (iii) examine how the Department of Social Services and the Department of Health coordinate their roles for ensuring quality of child care and child day care in a manner which minimizes duplication of resources; and (iv) identify the appropriate role of the Department of Social Services and any other appropriate state agencies in monitoring the quality, affordability, and accessibility of child day care programs.*

*B. The study also shall consider whether changes in existing law or regulations are warranted with respect to quality, health, and safety standards for all child day care programs.*

*C. The Board of Social Services shall submit an interim report by October 1, 1998, and a final report by October 1, 1999, to the Governor, the Commission on Early Childhood and Child Day Care Programs, and the General Assembly which, in addition to the matters to be reported on as set forth above, (i) recommends the appropriate role of the Commonwealth in monitoring and improving the quality, affordability and accessibility of care in child day care programs; (ii) recommends the Commonwealth's role in providing consumer information on child day care issues; and (iii) assesses the licensing and registration functions for individual and institutional child day care providers currently performed by the Department of Social Services.*

## Chapter 632 Property conveyance; property held by VPI & SU.

An Act to authorize the Commonwealth to lease certain property to the Town of Saltville.

[\[H 879\]](#)

Approved April 15, 1998

Whereas, Virginia Polytechnic Institute and State University (VPI&SU) holds by deeds of gift real property, approximately 64 acres, located off State Highway 91 in Smyth County on the north side of Saltville; and

Whereas, VPI&SU no longer uses this property for a field station; and

Whereas, the Town of Saltville is in a position to utilize the building and grounds of the existing field station for various beneficial public purposes; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That the Commonwealth of Virginia is hereby authorized to lease, with the approval of the Governor and in a form approved by the Attorney General, to the Town of Saltville, certain property held by Virginia Polytechnic Institute and State University, consisting of 64.08 acres of real property with an appraised value of \$64,500 currently in use by the Town of Saltville and the Museum of the Middle Appalachians for educational, historical, cultural, or public purposes. The lease shall require that the property be maintained and used solely for educational, historical, cultural, or public purposes. For a period of twenty years from the enactment of this section, the Town of Saltville may purchase said property from the Commonwealth at the appraised value of \$64,500.*

## Chapter 673 Municipal purpose restrictions on real property.

An Act to clarify municipal or recreational purpose restrictions on real property acquired by the Commonwealth or any locality.

[\[S 707\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any municipal or recreational purpose restriction placed on real property acquired by the Commonwealth or from the Commonwealth by any locality shall be satisfied if the*

*property is used for tourism purposes which benefit the locality's tourism industry.*

## **Chapter 741 Transportation Contract Revenue Bond Act.**

An Act to repeal the first enactment of Chapter 710 of the 1990 Acts of Assembly, relating to the Commonwealth of Virginia Transportation Contract Bond Act of 1990.

[\[S 567\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That the first enactment of Chapter 710 of the 1990 Acts of Assembly is repealed.

## **Chapter 841 Pearl Harbor Memorial Highway.**

An Act to designate Interstate Route 264 and Virginia Route 44 in the Cities of Norfolk and Virginia Beach the "Pearl Harbor Memorial Highway."

[\[H 693\]](#)

Approved April 22, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Interstate Route 264 and Virginia Route 44 in the Cities of Norfolk and Virginia Beach are hereby designated the "Pearl Harbor Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to either of these highways or any portions of them.*

## **Chapter 633 Electric utility industry; schedule.**

An Act to establish a schedule for Virginia's transition to retail competition in the electric utility industry.

[\[H 1172\]](#)

Approved April 15, 1998

Whereas, other states have begun making modifications to their electric utility industries for the ultimate purpose of permitting competition in the retail sale of electricity, and

these regional changes are likely to impact Virginia's electric utilities and their customers irrespective of whether a transition to retail competition is begun in this Commonwealth; and

Whereas, it is in the best interest of the citizens of this Commonwealth that preparations begin for Virginia's transition to a competitive retail electricity market to ensure that (i) all Virginians have access to electricity at reasonable prices and (ii) Virginia's electric utilities are sufficiently prepared to enter and thrive in this new market; and

Whereas, the State Corporation Commission may, pursuant to the provisions of Title 56 of the Code of Virginia, approve and impose requirements on electric utilities doing business in the Commonwealth to implement electric energy programs that are intended to benefit the public health, safety and welfare, including programs the purpose of which are to (i) educate consumers; (ii) ensure that each distributor in the Commonwealth provides access to its retail distribution system to each retail customer in its service territory; (iii) promote electric energy efficiency and conservation, protection of the environment, and research and development; (iv) provide minimum standards of training for employees who operate and maintain the facilities of an independent system operator or a regional power exchange; or (v) educate, retrain, or provide outplacement services for employees of electric utilities whose employment will be directly affected by the implementation of competition for the purchase and sale of electric energy pursuant to this act; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. The State Corporation Commission and those parties involved in electric generating and transmission facilities and the sale of electricity in Virginia shall work together to strive to establish one or more independent system operators and one or more regional power exchanges that serve the public interest in the Commonwealth by January 1, 2001.*

*§ 2. The transition to retail competition and the deregulation of generation facilities, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2002.*

*§ 3. Retail competition, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2004.*

*§ 4. Just and reasonable net stranded costs shall be recoverable and appropriate consumer safeguards related to stranded costs and considering stranded benefits shall be*

*implemented, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission.*

*§ 5. In the implementation of any of the previous sections, the General Assembly and the State Corporation Commission shall ensure reliable electric service at reasonable and just rates to all classes of consumers with due regard to the protection of the environment.*

*§ 6. In implementing the provisions hereof, the General Assembly shall give due regard to the unique regulatory and taxation structures of all electric utilities and power supply cooperatives in Virginia.*

*§ 7. The enactment shall have no effect on any pending litigation at the State Corporation Commission or in any court in the Commonwealth, or on any power or duty of the Commission granted by law or the Constitution of Virginia.*

## **Chapter 663 Traffic signals; photo-enforcement.**

An Act to amend and reenact § [46.2-833.01](#) of the Code of Virginia and to repeal the second enactment of Chapter 492 of the Acts of Assembly of 1995, as amended, relating to traffic light enforcement photo-monitoring programs.

[\[S 315\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That § [46.2-833.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [46.2-833.01](#). Liability for failure to comply with traffic light signals; pilot program in certain localities.

A. The governing body of any city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section "owner" does not mean a vehicle rental or vehicle leasing company. For purposes of this section, "traffic light signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this section.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § [19.2-76.2](#). Notwithstanding the provisions of § [19.2-76](#), a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § [19.2-76.3](#). No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. In any action at law brought by any person or entity as the result of personal injury or death or damage to property, such evidence derived from a photo-monitoring system shall be admissible in the same method prescribed as required in the prosecution of an offense established under this section without the requirements of authentication as otherwise required by law.

I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of vehicles which fail to comply with traffic light signals. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation monitor system or equipment, and all related support services, to include consulting, operations and administration. However, only an employee of the locality may swear to or affirm the certificate required by subsection C.

*J. The provisions of this section shall expire on July 1, 2005.*

2. That the second enactment of Chapter 492 of the Acts of Assembly of 1995, as amended, is repealed.

## **Chapter 678 Workforce Transition Act Corrective Payments.**

An Act directing the Virginia Retirement System to take certain corrective measures with respect to former state employees who retired under the provisions of the Workforce Transition Act.

[\[H 299\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Retirement System shall pay to each affected former employee a sum equal to the amount by which (i) the cumulative amount that the affected former employee would have received from the Virginia Retirement System in monthly retirement benefits from the date of his retirement until July 1, 1998, at the level initially paid by the Virginia Retirement System following his retirement, as adjusted for appropriate cost of living increases, exceeds (ii) the amount that the affected former employee actually received from the Virginia Retirement System in monthly retirement benefits during such period. Such payment shall be made upon the execution by the affected former employee of a release of all claims he may have against the Commonwealth or any of its political subdivisions or their officers, employees, or agents relating to his retirement benefits.*

*The amount of the monthly retirement benefit payments to be paid by the Virginia Retirement System to each affected former employee on and after July 1, 1998, shall be restored to the amount of the affected former employee's monthly retirement benefit initially paid by the Virginia Retirement System following his retirement, as adjusted for appropriate cost of living increases.*

*As used in this act, "affected former employee" means a member of the Virginia Retirement System who retired from employment with the Commonwealth under the provisions of the third enactment of Chapter 811 of the 1995 Acts of Assembly and whose initial monthly retirement benefit, due to a miscalculation by the Commonwealth, exceeds the amount to which such member was entitled.*

## **Chapter 779 Small claims courts.**

An Act to amend and reenact § [16.1-122.1](#) of the Code of Virginia and the second enactment of Chapter 253 of the 1997 Acts of Assembly, relating to small claims divisions in the general district courts.

[\[S 276\]](#)

Approved April 22, 1998

Be it enacted by the General Assembly of Virginia:

1. That § [16.1-122.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [16.1-122.1](#). Small claims court; designated.

~~The~~*On or before July 1, 1999, each general district court in the following jurisdictions may shall establish, using existing facilities, a small claims division to be designated a small claims court:*

- ~~1. Fairfax County;~~
- ~~2. Arlington County;~~
- ~~3. Culpeper County;~~
- ~~4. Stafford County;~~
- ~~5. Lancaster County;~~
- ~~6. Albemarle County; and~~
- ~~7. City of Hopewell.~~

~~Additionally, the governing body of any other county or city may adopt a resolution seeking to establish within the general district court in its locality a small claims division, which shall be designated a small claims court. In the event that two localities share a general district court, a small claims division shall not be established unless the governing bodies in both localities adopt such resolution.~~

~~A small claims court shall not be created in localities requesting such a court unless the General Assembly adopts an act specifically authorizing creation of a small claims division for the locality, or the localities which share a general district court. *Such courts shall not have jurisdiction over suits against the Commonwealth under the Virginia Tort Claims Act (§ [8.01-195](#) et seq.) or suits against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities.*~~

2. That the second enactment of Chapter 253 of the 1997 Acts of Assembly is amended and reenacted as follows:

2. That any small claims court created prior to July 1, ~~1997~~ 1999, shall continue in effect.

## **Chapter 713 November elections for Towns of Dayton and Mount Crawford.**

An Act to require certain town mayors and council members to be elected at the time of the November general election.

[\[H 496\]](#)

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Election of mayors and council members for certain towns.*

*A. The qualified voters of the Towns of Dayton and Mount Crawford shall each elect a mayor, if provided for by charter, and a council, which shall be the governing body thereof, for the terms provided for by their charters. Notwithstanding the provisions of § [24.2-222](#) or any other provision of law, general or special, any election of a mayor or council members for such a town shall take place on the Tuesday after the first Monday in November of an even-numbered year, and the persons so elected shall enter upon the duties of their offices on the January 1 succeeding their elections and remain in office until their successors have qualified.*

*B. In such towns:*

*1. Any mayor or council member elected in 1994 for a four-year term, or in 1996 for a two-year term, shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 1998 and, notwithstanding any charter provision to the contrary, shall take office on the January 1 following his election.*

*2. Any mayor or council member elected in 1996 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 2000 and, notwithstanding any charter provision to the contrary, shall take office on the January 1 following his election.*

*C. Notwithstanding the provisions of § [24.2-503](#), candidates for town mayor or council subject to the provisions of this act shall file their written statements of qualification and economic interests pursuant to §§ [24.2-501](#) and [24.2-502](#) not later than 7:00 p.m. on the second Tuesday in June.*

*D. Any county voting precinct established pursuant to § [24.2-307](#) which includes residents of such a town shall be wholly contained within the boundaries of the town. No such voting precinct shall include both such a town or portion thereof and county territory located outside the boundaries of the town.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall be effective only for the 1998 elections for the affected towns. Elections in the affected towns on and after January 1, 1999, notwithstanding the provisions of § 1 of this act, shall be conducted in May in accordance with general law, and the term of any mayor or council member elected in November 1998 shall expire on June 30 following the May election of his successor.

## Chapter 809 Chamberlin Hotel.

An Act to give the consent of the Commonwealth to the extension of the lease for the operation of a certain hotel at Fort Monroe.

[\[S 718\]](#)

Approved April 22, 1998

Whereas, pursuant to an act of the General Assembly passed March 1, 1821, David Campbell, Governor of the Commonwealth, conveyed to the United States certain lands and shoals at Old Point Comfort, Virginia, upon certain terms and conditions; and Whereas, the deed provided, "That the United States shall use the said . . . land for the purpose of fortification and national defense, and no other, and if the United States at any time abandon the said lands and shoals or appropriate to any other purposes than those herein mentioned, then this conveyance to be void, and the said lands and shoal to revert and revest in the Commonwealth of Virginia"; and

Whereas, for many years under a grant from the Secretary of War of the United States, made pursuant to a joint resolution of the Congress of the United States, and with the consent of the Commonwealth in an act of the 1887 General Assembly, later reaffirmed by a 1922 act, a hotel known as the Chamberlin Hotel has been maintained on the United States government reservation at Fort Monroe, Virginia; and

Whereas, certain portions of the existing structure have been used for such business or professional office space as deemed appropriate by the operator of such hotel, as well as for hotel purposes, and such action has been with the consent of the Commonwealth; and

Whereas, in 1983, the United States would not permit the use of the site for business or professional office space for purposes not necessarily related to the fortification and other objects of national defense, until the consent of the Commonwealth was obtained, and such consent was given pursuant to Chapter 246 of the 1983 Acts of Assembly; and Whereas, the United States has proposed to enter into a new lease of the Chamberlin Hotel with a new private lessee, the term thereof to end December 31, 2037, but the United States will not approve the lease until the consent of the Commonwealth is obtained; and

Whereas, the term of the proposed lease will extend beyond the original 100-year period addressed by the 1887 and 1922 Acts of Assembly; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§1. The consent of the Commonwealth is hereby given to such individuals or company, and their successors and assigns, as may be granted the privilege by the United States to maintain and operate the hotel presently known as the Chamberlin Hotel at Fort Monroe, Virginia, to lease, sublease or use such structure for hotel, business or professional office space as deemed appropriate by the operator of the hotel holding the privilege from the United States for a term up to and including December 31, 2037, hereby abridging and suspending for the period of such term, the provision of the deed from the Commonwealth to the United States by which such site would revert and revest in the Commonwealth.-*

## **Chapter 893 Regional juvenile detention commissions.**

An Act to amend and reenact the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactments of Chapters 642 and 752 of the Acts of Assembly of 1997, relating to the regional juvenile detention commissions.

[\[H 670\]](#)

Approved May 19, 1998

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 642 of the Acts of Assembly of 1997, is amended and reenacted as follows:
2. That the provisions of this act shall apply only to (i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, (iii) the Rappahannock Juvenile Detention Commission which serves portions of the Fifteenth and Sixteenth Judicial Districts, and (iv) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts, (v) *the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District*, (vi) *the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District*, and (vii) *the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts.*

2. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 752 of the Acts of Assembly of 1997, is amended and reenacted as follows:

2. That the provisions of this act shall apply only to *(i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, and (iii) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts, (iv) the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District, (v) the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District, and (vi) the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts.*

# Uncodified Acts of Assembly - 1999

## Chapter 14 Opinions of the Attorney General.

An Act to amend and reenact § 2.1-118 of the Code of Virginia, relating to opinions of Attorney General.

[\[H 1645\]](#)

Approved February 26, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-118 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-118. Official opinions of Attorney General.

The Attorney General shall give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, *city or town* attorney in those ~~counties~~ *localities* in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; *or* the head of a state department, division, bureau, institution or board. Except in cases where such opinion is requested by the Governor or a member of the General Assembly, the Attorney General shall have no authority to render an official opinion unless the question dealt with is directly related to the discharge of the duties of the official requesting ~~same; the opinion provided further, that~~. Any opinion request to the Attorney General; by an attorney for the Commonwealth or county, *city or town* attorney shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions.

## Chapter 19 Nurse practitioners' prescriptive authority; supervisory ratios.

An Act to repeal the second enactment of Chapter 506 of the Acts of Assembly of 1995, relating to supervisory ratios for nurse practitioners with prescriptive authority.

[\[S 744\]](#)

Approved March 4, 1999

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 506 of the Acts of Assembly of 1995 is repealed.

## **Chapter 22 Award of Virginia military medals.**

An Act to require that Virginia military medals be made in the United States.

[\[H 1442\]](#)

Approved March 4, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia military medals and decorations shall be made in the United States. Existing stocks of Virginia military medals and decorations which are of foreign origin may be consumed without violating the provisions of this act. All Virginia military medals and decorations shall have the words "Made in the USA" stamped on the reverse side. This act shall not limit the country of origin of United States military medals and decorations that are presented to members of the Virginia National Guard.*

## **Chapter 23 Income tax; voluntary contribution to Community Policing Fund.**

An Act to amend and reenact the third enactment of Chapter 637 of the Acts of Assembly of 1994, relating to voluntary contributions to the Community Policing Fund.

[\[H 1491\]](#)

Approved March 4, 1999

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 637 of the Acts of Assembly of 1994 is amended and reenacted as follows:
3. That the provisions of this act shall be effective for taxable years beginning on and after January 1, 1994, and the provisions of this act shall expire for all taxable years beginning after December 31, 1999.

## **Chapter 42 J. Kenneth Robinson Parkway.**

An Act to designate Virginia Route 37 in Frederick County the "Congressman J. Kenneth Robinson Parkway."

[\[S 729\]](#)

Approved March 5, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 37 in Frederick County is hereby designated the "Congressman J. Kenneth Robinson Parkway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 49 Lord Fairfax Highway.**

An Act to designate U.S. Route 340 in Clarke County the "Lord Fairfax Highway."

[\[H 1839\]](#)

Approved March 5, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. U.S. Route 340 in Clarke County is hereby designated the "Lord Fairfax Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 206 New Year's Day 2000.**

An Act to honor and commemorate New Year's Day 2000.

[\[H 2153\]](#)

Approved March 17, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, to honor and commemorate the New Year's Day holiday authorized by § 2.1-*

*21, the offices of the Commonwealth of Virginia shall be closed for the transaction of all business on Monday, January 3, 2000. Unless provided otherwise by the Governor pursuant to § 2.1-21, such offices shall be open for business on Friday, December 31, 1999.-*

## **Chapter 501 Gifted Education Consortium.**

An Act to establish the Virginia Gifted Education Consortium.

[\[S 1200\]](#)

Approved March 27, 1999

Whereas, the federal Gifted and Talented Children's Act, P.L. 95-561, as amended, and state law and regulations governing gifted education in Virginia require the early identification of gifted students and also require that an appropriate and differentiated instructional program be provided such students; and

Whereas, there are many concerns and needs in gifted education, such as adequate funding, the program's governing structure, appropriate measures and tools used to identify gifted and talented students, professional staff development, equity with other educational programs, and diversity among students, teachers, and staff; and

Whereas, representatives of school divisions and professional associations in gifted education, parents, teachers, and students expressed to the Joint Subcommittee Studying the Educational Needs of Certain Underserved Students concerns regarding these issues and the necessity for improved inter-division collaboration, cooperation, and communication to address these issues collegially and to discuss matters of mutual interest; and

Whereas, the joint subcommittee believes that essential improvements in gifted education can be made, and problems are resolved best when persons of a common mission and purpose are allowed and encouraged to deliberate and explore their interests together; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. Virginia Gifted Education Consortium established; members; duties; convening of consortium by Superintendent of Public Instruction; staff support.*

*A. With such funds as may be appropriated for this purpose, there is hereby established the Virginia Gifted Education Consortium to facilitate collaboration, cooperation, and communication among school divisions to address issues of mutual concern regarding*

*gifted education. The consortium shall be composed of no more than twenty-six citizens, who shall serve on a voluntary basis, representative of participating school divisions, institutions of higher education, private schools, local gifted advisory boards, governor's schools, local gifted education programs, parents, educational research, professional organizations and associations for the gifted, and advocates for gifted education. Membership of the consortium shall consist of the following: three representatives of participating local school divisions; two representatives of institutions of higher education; one representative of the Virginia Council on Private Education; two representatives of professional organizations and associations for the gifted; two professionals conducting research related to gifted and talented students and staff development; three licensed teachers, one of whom shall be an early childhood or elementary school teacher and one of whom shall be a secondary school teacher; two school administrators, one of whom shall be an elementary school administrator; two guidance counselors, one of whom shall be a secondary school guidance counselor assigned to a gifted education program or a regional academic year governor's school; four parents, one of whom shall be the parent of a gifted or talented elementary school student, one of whom shall be the parent of a gifted or talented secondary school student, one of whom shall be the parent of a special-needs gifted or talented student, and one of whom shall be the parent of a gifted or talented minority student traditionally unidentified for gifted education programs; three representatives of local gifted advisory committees; and two representatives each of the summer residential governor's schools and the regional academic year governor's schools.*

*Such volunteer representatives shall be selected from among nominations by teachers, administrators, parents, professional organizations and associations for the gifted, local gifted advisory committees, counselors, institutions of higher education, and other advocates of gifted education to the division superintendent of the local school division. Upon receipt of such nominations, the division superintendent shall submit no more than ten recommendations and the qualifications of such persons to the Superintendent of Public Instruction, who shall select twenty-six volunteer representatives, in accordance with this section. The Superintendent shall make such selections in a manner to ensure geographic and demographic representation.*

*B. The consortium shall:*

- 1. Encourage the early identification of gifted and talented students;*
- 2. Promote networking and the sharing of best practices among educators and school divisions;*

3. *Monitor gifted education programs to ensure the delivery of an appropriate and differentiated instructional program that is in compliance with federal and state laws and regulations governing gifted education;*
4. *Observe gifted education programs to ensure appropriate levels of qualified professional staff and adequate funding to maintain facilities and a high-quality gifted education program;*
5. *Monitor the effect of the Standards of Learning and the Standards of Accreditation on the statutory requirement for the early identification of gifted students and the delivery of an appropriate and differentiated instructional program;*
6. *Address the educational and support needs of all gifted students under federal law, particularly the needs of minority, poor, and special-needs students and those who demonstrate exceptional artistic, mechanical, technological, and other recognized abilities, to the same extent as the needs of students with exceptional cognitive abilities who are traditionally identified for gifted education programs;*
7. *Encourage, promote, and support full inclusion in gifted education programs to increase the representation of special-needs students and of racially, culturally, and ethnically diverse students, teachers, counselors, and administrators in such programs;*
8. *Encourage parental involvement in and generate community support for gifted education programs;*
9. *Develop and engage in joint ventures and research projects designed to address mutual problems shared by participating school divisions, and assist in the implementation of best practices, when appropriate;*
10. *Advocate for the needs of gifted and talented students, and the programs which serve them; and*
11. *Propose such changes as may be needed to ensure program quality, effectiveness, and diversity.*

*C. For the purpose of convening the consortium, the Superintendent of Public Instruction shall issue a call for volunteer representatives to serve on the consortium, as provided in subsection A of this section. Upon the selection of the volunteer representatives, the Superintendent shall convene the initial meeting of the consortium, preside over the election of a chairman, vice-chairman, and secretary for the consortium, and determine a meeting schedule for the consortium. The Superintendent shall designate staff of the Department of Education to observe the consortium's proceedings.*

2. That this act shall expire on July 1, 2001.

## **Chapter 538 Route 58 Corridor Development and No. Va. Transp. District.**

An Act to amend and reenact §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia; to amend and reenact § 2 of the first enactment of Chapter 8 of the Acts of Assembly of the Second Special Session of 1989; and to amend and reenact § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994 and by Chapters 740 and 761 of the Acts of Assembly of 1998, relating to the U.S. Route 58 Commonwealth of Virginia Transportation Revenue Bond Act of 1989, the U.S. Route 58 Corridor Development Program, the issuance of bonds to finance the cost of such program, and amendments thereto relating to increasing the principal amount of bonds authorized to be issued to \$704,300,000 and designating the projects qualifying for the increase in such financing; and further relating to the Northern Virginia Transportation District Program, the issuance of bonds to finance the costs of such program, the Northern Virginia Transportation District Fund, the use of such fund to pay debt service; the amendments thereto relating to increasing the principal amount of bonds authorized to be issued to \$471,200,000 and redesignating the projects qualifying for such financing and the amounts allocated to each such project.

[\[H 2088\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia are amended and reenacted as follows:

§ [33.1-221.1:3](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in Northern Virginia which shall be known as the Northern Virginia Transportation District Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station and new rail

car purchases, Route 7 improvements in Loudoun County ~~between Route 15 and Route 28,~~ and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, and Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, *Metrorail capital improvements attributable to Arlington County, including Ballston Station improvements, Route 15 safety improvements in Loudoun County, Route 1/Route 123 interchange improvements in Prince William County, Lee Highway improvements in the City of Fairfax, Route 123 improvements in Fairfax County, Telegraph Road improvements in Fairfax County, Route 1/Route 234 interchange improvements in Prince William County, Potomac-Rappahannock Transportation Commission bus replacement program, and Dulles Corridor Enhanced Transit program.*

B. Allocations to this Program from the Northern Virginia Transportation District Fund established by § [58.1-815.1](#) shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality of life in Virginia.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in § [33.1-268](#) (2) (s).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.

E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available

revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [58.1-815.1](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under §§ [58.1-802](#) B and [58.1-814](#). The Fund shall also include any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including but not limited to, any funds distributed pursuant to §§ [33.1-23.3](#), [33.1-23.4](#) or § [33.1-23.5:1](#), which may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly from time to time and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2, 3 or 4 project or projects may be funded.

B. Allocations from this Fund may be paid (i) to any authority, locality or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program which consists of the following: the Fairfax County Parkway, Route 234 Bypass, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station and new rail car purchases, Route 7 improvements in Loudoun County ~~between Route 15 and Route 28, the~~ *and Fairfax County*, Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, ~~and~~ Metrorail capital improvements attributable to the City of Alexandria, including the King Street Metrorail station access, *Metrorail capital improvements attributable to Arlington County, including Ballston Station improvements, Route 15 safety improvements in Loudoun County, Route 1/Route 123 interchange improvements in Prince William County, Lee Highway improvements in the City of Fairfax, Route 123 improvements*

*in Fairfax County, Telegraph Road improvements in Fairfax County, Route 1/Route 234 interchange improvements in Prince William County, Potomac-Rappahannock Transportation Commission bus replacement program, and Dulles Corridor Enhanced Transit program* and (ii) for Category 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

2. That § 2 of the first enactment of Chapter 8 of the Acts of Assembly of the Second Special Session of 1989 is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia, at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$600,000,000~~ \$704,300,000 to finance the cost of the project plus an amount for the issuance costs, reserve funds, and other financing expenses. The proceeds of such bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all costs incurred or to be incurred for the construction of an adequate, modern, safe, and efficient highway system, generally along Virginia's southern boundary and which comprises the U.S. Route 58 Corridor Development Program as established in § [33.1-221.1:2](#), consisting of the environmental and engineering studies, rights-of-way acquisition, construction and related improvements (the Project).

*Of the \$104.3 million increase in bond issuance authorized by the 1999 Session of the General Assembly, \$82 million shall be issued for portions of the Project as follows:*

<i>Portion of the Project</i>	<i>Bond amount</i>
<i>Ben Hur to Pennington Gap in Lee County</i>	<i>\$ 9,800,000</i>
<i>Pennington Gap to Dryden in Lee County</i>	<i>\$35,600,000</i>

<i>Anticipated shortfall on the Danville Bypass, Clarksville Bypass, Stuart Bypass, and completion of a gap west of Jonesville in Lee County</i>	<i>\$35,100,000</i>
<i>Taylor's Valley in Washington County</i>	<i>\$ 1,500,000</i>
<i>Total</i>	<i>\$82,000,000</i>

*The remaining balance of the bond issuance in the amount of \$22.3 million, together with any bond issuance not necessary to complete the above projects, shall be issued for right-of-way acquisition from the Town of Stuart, in Patrick County along the Route 58 corridor to its intersection with Interstate 77 in Carroll County.*

Such revenue bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to such bonds. The Treasury Board's duties shall include the approval of the terms and structure of the bonds.

3. That § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994 and by Chapters 740 and 761 of the Acts of Assembly of 1998, is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Contract Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$366,900,000~~ *471,200,000* to finance the cost of the projects plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the "Bonds"). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Northern Virginia Transportation District Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1,

consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the "projects"). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The projects shall be classified as Category 1, Category 2, Category 3, and Category 4 projects, each category being subject to different preconditions. Bonds to finance the cost of Category 1 and Category 3 projects may be issued by the Commonwealth Transportation Board. Bonds to finance the cost of Category 2 projects may be issued by the Commonwealth Transportation Board only if the aggregate principal amount of ~~\$361,900,000~~ 466,200,000 in bonds has been issued to finance the cost of Category 1 and Category 3 projects. Category 4 projects shall not be financed through the issuance of bonds; however, after all Bonds authorized have been issued, then to the extent the Northern Virginia Transportation District Fund contains amounts in excess of the amount needed to pay annual debt service on such Bonds in a particular fiscal year, such excess amounts may be expended to pay the cost of the work identified as Category 4 projects.

The projects, and the amount of bonds authorized to be issued for each such project, are as follows and constitute the Northern Virginia Transportation District Program:

Category 1 projects	Bond amount
Metro Capital Improvements,	
including the	
Franconia-Springfield	
Metrorail Station	\$ 85,600,000
Fairfax County Parkway	\$ 87,000,000
Route 234 Bypass	\$ 73,400,000
Route 7 improvements between	

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Route 15 and Route 28 in	
Loudoun County	\$ 15,000,000
Total	\$261,000,000

Category 2 projects consist of the Route 234 Bypass/Route 28 interchange improvements in Prince William County, in the amount of \$5,000,000.

Category 3 projects	Bond amount
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Route 50/Courthouse

Road interchange	\$10,000,000
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Fairfax County Parkway --

Partially-funded segments

between Route 1 and Route 7	\$50,000,000
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Route 234 Bypass from

Route 28 to Route 234	\$15,300,000
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Route 28/Route 625

interchange	\$ 7,900,000
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Metrorail Capital Improvements

attributable to the

City of Alexandria,

including the King Street

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Metrorail station access	\$ <del>4,400,000</del>	8,600,000
Metrorail Capital Improvements,		
including new		
rail car purchases	\$ <del>13,300,000</del>	29,300,000
Route 15 Safety Improvements	Leesburg Town Line	to
Potomac River Interchange	\$ 10,100,000	Route 1/Route 123
City of Fairfax	\$ 8,200,000	Lee Highway Improvements
ing Occoquan River	\$ 3,100,000	Route 123 Widen-
27,000,000 Dulles Corridor	Enhanced Transit Program	
\$ 6,000,000	Route 7 Improvements-	Loudoun County Line
to Reston Parkway	\$ 10,000,000	Route 7 Improve-
ments- Reston Parkway	to Dulles Toll Road	\$
3,000,000 Telegraph Road Improvements-	S. Kings Highway	
to Beulah St.	\$ 5,000,000	Route 1/Route
234 Interchange	\$ 4,000,000	Potomac-Rappahannock
Transportation Commission	Bus Replacement Program	
\$ 1,500,000	Metrorail Capital Improvements	attributable
to Arlington County, including	Ballston Station improve-	
ments	\$ 6,200,000	
Total	\$ <del>100,900,000</del>	205,200,000

The Commonwealth Transportation Board shall only issue the bonds for Category 3 projects in an amount or amounts necessary to expedite or complete the Category 3 projects if the following conditions are satisfied: (i) at least two of the jurisdictions participating in the Northern Virginia Transportation District Program have entered into a contract pursuant to § [58.1-815.1](#) and (ii) the governing bodies of at least five of the jurisdictions participating in the Northern Virginia Transportation District Program and comprising a majority of population of the jurisdictions participating in such Program have adopted resolutions endorsing the proposed sale or sales of bonds to support the

Category 3 projects. Such contracts and resolutions shall remain in force so long as any debts or obligations for Category 3 projects remain outstanding.

The work identified as Category 4 projects to be funded from the Northern Virginia Transportation District Fund, to the extent there are sums in excess of the amount needed to pay debt service on the Bonds in a given fiscal year, is as follows:

#### Category 4 projects

Such projects as may be concurred in by the local jurisdictions participating in the Northern Virginia Transportation District Program, as evidenced by resolutions adopted by an affirmative vote of each of the jurisdictions participating in the Northern Virginia Transportation District Program and subject to such guidelines and conditions as may be promulgated by the Commonwealth Transportation Board.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds. In the event the aggregate principal amount of the issuance, for the projects and amounts authorized by the 1994 amendments to Chapter 391 of the Acts of Assembly of 1993, is less than \$127,000,000, the Commonwealth Transportation Board shall cause each Category 1 project to be shared in the reduced issuance by reducing the proceeds of the Bonds for each of the Category 1 projects on a pro rata basis.

4. That if any part of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remainder of the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

## **Chapter 704 Freedom of Information Act; electronic communication meetings.**

An Act to permit certain meetings via electronic communication means.

[\[S 1026\]](#)

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That, in addition to the provisions of § 2.1-343.1, (i) any public body, as defined in § 2.1-341, (a) in the legislative branch of state government or (b) responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty-Three (1998), or (ii) the State Board for Community Colleges established in § [23-215](#), shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 2. "Electronic communication means" means any combined audio and visual communication method which consists of, pertains to, is based on, is operated by, or otherwise involves the control of electrons or other charge carriers to exchange, send, receive, or in any way transmit the public business in a meeting.

§ 3. "Emergency" means an unforeseen circumstance that renders the notice required by § 6 impossible or impracticable and that requires immediate action.

§ 4. "Meeting" means the meetings, including work sessions, when sitting as a body or entity or informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any entity listed in § 1. "Meeting" shall not mean any regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia.

§ 5. For purposes of determining the presence of three members or establishing a quorum, every location where a member of the public body or Board is physically present to discuss or transact the public business through any electronic communication means in a meeting shall be (i) in Virginia and (ii) open and accessible to the public. After the presence of three members or a quorum is established, members of the public body or Board who are not physically present (i) in Virginia or (ii) at a meeting location which is open and accessible to the public, may participate in the discussion of and vote on any matter authorizing the transaction of any public business.

§ 6. Except in an emergency, notice, including the time, date, place, and general purpose of the electronic communication meeting, shall be provided no less than seven days before the meeting in a manner reasonably calculated under the circumstances to apprise the public of the meeting information.

§ 7. In an emergency, notice, including the time, date, place, and general purpose of the meeting, shall be provided contemporaneously with the notice provided to members of

*the Board or of the public body conducting the meeting in a manner reasonably calculated under the circumstances to apprise the public of the meeting information.*

*§ 8. Notice for electronic communication meetings continued more than seven days after the meeting date shall be in the same manner as required by § 6. Notice for electronic communication meetings continued less than seven days from the meeting date to (i) address an emergency or (ii) conclude the agenda of the electronic communication meeting, shall be made during the meeting prior to adjournment and shall include the date, time, place, and general purpose of the continued meeting. The basis for the emergency shall be stated during the meeting prior to adjournment and included in the minutes of the meeting, if minutes are required by § 2.1-343.*

*§ 9. At the time of the meeting, the public shall be provided an agenda and copies of any materials intended for distribution to members of the public body or Board which have been made available to staff in sufficient time for duplication and forwarding to all location sites where public access will be provided. If the meeting includes an opportunity for public comment, all persons attending the meeting at any of the meeting locations where a member of the public body or Board is physically present in Virginia at a location which is open and accessible to the public shall be afforded an opportunity to address the public body or Board. Any interruption in the electronic communication of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.*

*§ 10. Votes taken during any meeting conducted through electronic communication means pursuant to this act shall be recorded by name in roll-call fashion and included in the minutes of the meeting, if minutes are required by § 2.1-343.*

*§ 11. Any public body or the Board, when conducting an electronic communication meeting pursuant to this act, shall make an audio/visual recording of the meeting. The recording shall be preserved by the public body or the Board for a period of three years from the date of the meeting and shall be available to the public for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.1-340 et seq.).*

*§ 12. It shall be a violation of this act for any entity listed in § 1, or any members of such entities, to use the provisions of this act to violate the Virginia Freedom of Information Act (§ 2.1-340 et seq.) to discuss or act upon any matters over which such entities have supervision, control, jurisdiction, authority, or advisory powers.*

*§ 13. By October 15, 2000, public bodies in the legislative branch of state government which conduct electronic communication meetings pursuant to this act shall file with the Joint Rules Committee, as defined in § [51.1-124.3](#), a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types*

*of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.*

§ 14. *By October 15, 2000, public bodies responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty-Three (1998), which conduct electronic communication meetings pursuant to this act shall file with the Secretary of Commerce and Trade or the Secretary of Technology, respectively, a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.*

§ 15. *By October 15, 2000, the State Board for Community Colleges established in § [23-215](#) shall file with the Secretary of Education a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall expire on July 1, 2000.

## **Chapter 916 Local telecommunications services.**

An Act to amend and reenact § [15.2-1500](#) of the Code of Virginia; to amend the Code of Virginia by adding in Article 5 of Chapter 15 of Title 56 sections numbered [56-484.12](#), [56-484.13](#) and [56-484.14](#); and to repeal the second enactment of Chapter 906 of the Acts of Assembly of 1998, relating to local telecommunications services.

[\[H 2277\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-1500](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 15 of Title 56 sections numbered [56-484.12](#), [56-484.13](#) and [56-484.14](#) as follows:

§ [15.2-1500](#). Organization of local government.

A. Every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.

B. Notwithstanding any other provision of law, general or special, no locality shall establish any department, office, board, commission, agency or other governmental division or entity which has authority to offer telecommunications equipment, infrastructure, other than pole or tower attachments including antennas or conduit occupancy, or services, other than intragovernmental radio dispatch or paging systems shared by adjoining localities, for sale or lease to any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities, so long as any charges for such telecommunications equipment, infrastructure and services do not exceed the cost to the providing locality of providing such equipment, infrastructure or services. However, any town which is located adjacent to Exit 17 on Interstate 81 and which offered telecommunications services to the public on January 1, 1998, is hereby authorized to continue to offer such telecommunications services, but shall not acquire by eminent domain the facilities or other property of any telephone company or cable operator. Any locality may sell any telecommunications infrastructure, including related equipment, which such locality had constructed prior to September 1, 1998, and such locality may receive from the purchaser or purchasers, as full or partial consideration for the sale of such infrastructure, communications services to be used solely for internal use of the locality. Any locality which sells such infrastructure, including related equipment, may, at its option, exclude the incumbent local exchange carrier from the bid or other sale process.

C. *Notwithstanding the provisions of subsection B, a locality, electric commission or board, industrial development authority, or economic development authority, may lease dark fiber pursuant to § [56-484.12](#). For purposes of this section, "dark fiber" means fiber optic cable which is not lighted by lasers or other electronic equipment. The price for such lease may include reasonable provisions for the recovery of the cost of the network and installation of additional fiber and related facilities to complete the lessor's network but shall not be related to the revenue or profit of the lessee. The lessor may recover costs of constructing such leased network and any extensions or improvements thereto; however, such lessor may not profit from the leasing of such facilities. The lease may*

*require the lessee to make additional investments in the lessee's facilities based on such factors as the number of customers, market share, the lessee's revenue or the lessee's profit. Any such extension or improvements constructed by a lessee shall remain the property of the lessee; however, the lessee may be required to provide dedicated use to the lessor for the lessor's own internal purposes for the life of the fiber. The locality, electric commission or board, industrial development authority, or economic development authority, shall not be involved in the promotion or marketing of the lessee as the provider of the services.*

*§ [56-484.12](#). Leases by localities, electric commission or board, industrial development authorities, or economic development authorities of dark fiber.*

*Notwithstanding the provisions of § [15.2-1500](#), a county, city, town, electric commission or board, industrial development authority, or economic development authority may lease on nondiscriminatory terms, for a term not to exceed ten years, dark fiber, as that term is defined in subsection C of § [15.2-1500](#), to one or more certificated local exchange telephone companies and to not-for-profit educational schools and institutions, hospitals, health clinics and medical facilities for use in serving their not-for-profit purposes. Any such lease must specify the qualifying telecommunications service to be offered by the lessee and the geographic area in which that service will be offered. For purposes of this section, a "qualifying telecommunications service" is a telecommunications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application to be offered by the lessee which is not otherwise generally and competitively available in the geographic area in which the service will be offered by an entity other than an entity leasing from the county, city, town, electric commission or board, industrial development authority, or economic development authority. Such lessee shall not be prohibited from offering authorized telecommunications services in addition to the qualifying telecommunications service over the leased facilities. No such lease shall be effective unless, prior to entering into such lease: (i) the proposed lessee petitions the State Corporation Commission to approve such lease of the dark fiber and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the lease or fails to approve or disapprove the lease within sixty days after notice. The sixty-day period may be extended by Commission order for a period not to exceed an additional sixty days. The lease shall be deemed approved if the Commission fails to act within sixty days after notice or any extended period ordered by the Commission.*

*§ [56-484.13](#). Factors for approval.*

*The State Corporation Commission shall find that it is in the public interest to approve the lease of dark fiber as specified in § [56-484.12](#) unless it shall be demonstrated to the Commission and found that, within the geographic area to be served by the lease: (i) the lease will not promote the provision of competitive communications service within the geographic area; (ii) the lease will not enhance economic development; (iii) the qualifying telecommunications service specified in its lease as provided for in § [56-484.12](#) is readily and generally available from three or more nonaffiliated certificated local exchange companies, not including any lessee; (iv) the lease is not in compliance with the requirements of § [56-484.12](#); or (v) the lease will not benefit consumers. The factor stated in clause (iii) shall not apply to leases of dark fiber filed for approval within five years of the Commission's approval of the first lease of dark fiber by that county, city, town, electric commission or board, industrial development authority, or economic development authority.*

*§ [56-484.14](#). Availability of service by lessee.*

*Any lessee which has a lease approved by the Commission shall continue to offer and make generally and competitively available the qualifying telecommunications service specified in its lease as provided for in § [56-484.12](#). Lease approval may be revoked by the Commission upon a finding that the requirements of this section are not being met.*

2. That the second enactment of Chapter 906 of the Acts of Assembly of 1998 is repealed.

## **Chapter 43 Regional juvenile detention commissions.**

An Act to amend and reenact the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 642 of the Acts of Assembly of 1997 and the first enactment of Chapter 893 of the Acts of Assembly of 1998, and as amended by the second enactment of Chapter 752 of the Acts of Assembly of 1997 and the second enactment of Chapter 893 of the Acts of Assembly of 1998, relating to the regional juvenile detention commissions.

[\[S 896\]](#)

Approved March 5, 1999

Be it enacted by the General Assembly of Virginia:

**1. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 642 of the Acts of Assembly of 1997**

**and the first enactment of Chapter 893 of the Acts of Assembly of 1998,  
is amended and reenacted  
as follows:**

2. That the provisions of this act shall apply only to (i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, (iii) the Rappahannock Juvenile Detention Commission which serves portions of the Fifteenth and Sixteenth Judicial Districts, (iv) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts, (v) the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District, (vi) the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District, ~~and~~ (vii) the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts, *and (viii) the Crater Youth Care Commission which serves the Sixth and Eleventh Judicial Districts.*

2. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 752 of the Acts of Assembly of 1997 and the second enactment of Chapter 893 of the Acts of Assembly of 1998, is amended and reenacted as follows:

2. That the provisions of this act shall apply only to (i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, (iii) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts, (iv) the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District, (v) the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District, ~~and~~ (vi) the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts, *and (vii) the Crater Youth Care Commission which serves the Sixth and Eleventh Judicial Districts.*

3. That an emergency exists and this act is in force from its passage.

## **Chapter 50 Regional juvenile detention commissions.**

An Act to amend and reenact the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 642 of the Acts of

Assembly of 1997 and the first enactment of Chapter 893 of the Acts of Assembly of 1998, and as amended by the second enactment of Chapter 752 of the Acts of Assembly of 1997 and the second enactment of Chapter 893 of the Acts of Assembly of 1998, relating to the regional juvenile detention commissions.

[\[H 1842\]](#)

Approved March 5, 1999

Be it enacted by the General Assembly of Virginia:

**1. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 642 of the Acts of Assembly of 1997 and the first enactment of Chapter 893 of the Acts of Assembly of 1998, is amended and reenacted as follows:**

2. That the provisions of this act shall apply only to (i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, (iii) the Rappahannock Juvenile Detention Commission which serves portions of the Fifteenth and Sixteenth Judicial Districts, (iv) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth Judicial Districts, (v) the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District, (vi) the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District, ~~and~~ (vii) the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts, *and (viii) the Crater Youth Care Commission which serves the Sixth and Eleventh Judicial Districts.*

2. That the second enactment of Chapter 833 of the Acts of Assembly of 1993, as amended by the second enactment of Chapter 752 of the Acts of Assembly of 1997 and the second enactment of Chapter 893 of the Acts of Assembly of 1998, is amended and reenacted as follows:

2. That the provisions of this act shall apply only to (i) the Middle Peninsula Juvenile Detention Commission which serves the Ninth and the Fifteenth Judicial Districts, (ii) the W. W. Moore, Jr., Regional Juvenile Detention Commission which serves portions of the Tenth, Twenty-first, and Twenty-second Judicial Districts, (iii) the James River Juvenile Detention Commission which serves parts of the Eleventh, Fourteenth, and Sixteenth

Judicial Districts, (iv) the Blue Ridge Juvenile Detention Commission which serves parts of the Sixteenth Judicial District, (v) the Highlands Juvenile Detention Commission which serves the Twenty-eighth Judicial District, and (vi) the Roanoke Valley Detention Commission which serves parts of the Twenty-second, Twenty-third, and Twenty-fifth Judicial Districts, and (vii) the Crater Youth Care Commission which serves the Sixth and Eleventh Judicial Districts.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 89 Biennial election of Giles County supervisors; initial terms.**

An Act to provide for the initial terms of biennially elected supervisors in Giles County.

[\[H 1692\]](#)

Approved March 15, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Biennial election of county supervisors in Giles County; initial terms.*

*In the event the board of supervisors of Giles County shall provide by ordinance for the election of supervisors biennially for staggered four-year terms pursuant to § [24.2-219](#) of the Code of Virginia, the board also may provide by ordinance, notwithstanding the provisions of subsection B of § [24.2-219](#), that the initial terms of supervisors elected at the next general election for supervisors shall be as follows: (i) supervisors elected from election districts shall be elected for an initial term of four years and (ii) supervisors elected from the county at large shall be elected for an initial term of two years. Thereafter, all supervisors shall be elected for terms of four years.*

*The provisions of this section shall be applicable to members of the county school board pursuant to § [24.2-223](#) of the Code of Virginia.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 158 Corporate income tax; apportionment.**

An Act to amend and reenact the first and second enactments of Chapter 644 of the Acts of Assembly of 1998, relating to the apportionment of taxable income of a corporation.

[\[S 1076\]](#)

Approved March 17, 1999

Be it enacted by the General Assembly of Virginia:

1. That the first and second enactments of Chapter 644 of the Acts of Assembly of 1998 are amended and reenacted as follows:

1. That § [58.1-408](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-408](#). What income apportioned and how.

The Virginia taxable income of any corporation, except those subject to the provisions of §§ [58.1-417](#), [58.1-418](#), [58.1-419](#), or § [58.1-420](#), excluding income allocable under § [58.1-407](#), shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus *twice* the sales factor, and the denominator of which is ~~three, reduced by the number of factors, if any, having no denominator~~ *four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.*

2. That the provisions of this act are effective for taxable years beginning on and after January 1, 2000, *unless one or more of the events listed in subsection C of § [58.1-3524](#) has occurred prior to such date. If any one of these events occur before January 1, 2000, this act shall not become effective for taxable years beginning on and after January 1, 2000, but shall instead become effective for taxable years beginning on and after January 1 of the first year thereafter when none of the events listed in subsection C of § [58.1-3524](#) have occurred during the immediately preceding calendar year.*

## **Chapter 280 Clyde Bowling Bridge.**

An Act to designate the Virginia Route 102 bridge at Falls Mills in Tazewell County the "Clyde Bowling *Bridge*."

[\[S 746\]](#)

Approved March 22, 1999

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *The Virginia Route 102 bridge at Falls Mills in Tazewell County is hereby designated the "Clyde Bowling Bridge." The Department of Transportation shall place and*

*maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

### **Chapter 309 Ann Goode Cooper Highway.**

An Act to designate a portion of Virginia Route 689 in Scott County the “Ann Goode Cooper Highway.”

[\[H 1888\]](#)

Approved March 22, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 689 in Scott County is hereby designated the “Ann Goode Cooper Highway.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

### **Chapter 313 Unemployment compensation; tax rates for new employers.**

An Act to repeal the third enactment of Chapter 323 of the 1995 Acts of Assembly, as amended by Chapter 298 of the 1997 Acts of Assembly, relating to unemployment compensation; tax rates for new employers.

[\[H 2130\]](#)

Approved March 22, 1999

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 323 of the 1995 Acts of Assembly, as amended by Chapter 298 of the 1997 Acts of Assembly, is repealed.

### **Chapter 214 Revenue bonds; Southampton Reception and Classification Center.**

An Act to amend and reenact the sixth enactment of Chapter 835 of the 1996 Acts of Assembly, relating to the adult and juvenile correctional projects.

[\[H 2409\]](#)

Approved March 17, 1999

Be it enacted by the General Assembly of Virginia:

1. That the sixth enactment of Chapter 835 of the 1996 Acts of Assembly is amended and reenacted as follows:

6. § 1. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to undertake projects consisting of the construction, improvement, and furnishing of adult and juvenile correctional facilities and the acquisition of appurtenant land as follows:

Amount	Facility	Principal
		of Project
	Southampton Reception and	<del>\$5,100,000</del>
	Classification Center: Renovation	\$259,210
	Close Custody Juvenile Correctional Facility	
	(Culpeper County)	\$30,430,000

§ 2. That the Virginia Public Building Authority is also authorized to exercise any and all powers granted to it by law in connection therewith, including the power to lease such projects to the Commonwealth and to finance the cost thereof by the issuance of revenue bonds not to exceed the principal amount set forth plus amounts needed to fund issuance costs, reserve funds, and other financing expenses.

## **Chapter 218 Permanent easement in James River.**

An Act authorizing the Marine Resources Commission to convey a permanent easement to certain subaqueous land in the James River to the United States Forest Service.

[\[H 2590\]](#)

Approved March 17, 1999

Whereas, the James River is a navigable waterway and the land under the waters of the James River is held by the Commonwealth under § [28.2-1200](#); and

Whereas, the Appalachian Trail Conference of Harpers Ferry, West Virginia, holds title to five abandoned stone bridge piers within the limits of the James River, said piers being an abandoned railway bridge at Snowden, Virginia, in the Counties of Amherst and Bedford; and

Whereas, the current crossing of the Appalachian National Scenic Trail at that location is on a heavily used highway bridge, providing an unsafe route for pedestrians; and

Whereas, the Appalachian Trail Conference proposed to transfer its interests in these bridge piers, and a footbridge to be constructed upon them, to the United States for administration by the U.S. Department of Agriculture Forest Service; and

Whereas, the U.S. Forest Service wants to administer the real and personal property interest involving the former bridge structure that is located over and under the James River for the purpose of providing and maintaining a new, permanent, safe and protected pedestrian bridge for use as a part of the Appalachian National Scenic Trail; and

Whereas, before accepting these bridge piers, the United States must assure that acceptable title interests are conveyed to protect the investment of federal funds in long-term maintenance and construction of the piers and the new bridge; and

Whereas, in order to expend funds for this purpose, the United States, by statute, must have the right to use the land for the estimated life of or need for the structure; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That the Marine Resources Commission is hereby authorized to convey to the United States Forest Service and its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor and the Attorney General, shall deem proper, a permanent easement and right-of-way in and to subaqueous lands in the James River in the Counties of Amherst and Bedford for purposes of construction, maintenance, and use of a bridge. The easement and right-of-way shall be for a fifty-foot strip along the piers totaling approximately 0.76 acres, more or less, as generally depicted for Tract z-697 on a plat dated June 4, 1998, survey by Ralph M. Bowmaster, U.S. Department of Agriculture Forest Service.*

*§ 2. The deed of easement shall be conditioned upon requirements that the grantee and its successors in interest continue to provide and maintain a safe and protected ped-*

*estrian bridge. If the easement ceases to be used as provided for under this act, the easement shall revert to the Commonwealth.*

*§ 3. The deed conveying the easement shall be in a form approved by the Attorney General.*

*§ 4. A copy of this act, together with the referenced plat, shall be recorded by the authorized representative of the Secretary of Agriculture in the land records of the Counties of Amherst and Bedford.*

## **Chapter 316 Sheriffs and deputies in Buchanan County.**

An Act to repeal Chapter 261 of the 1938 Acts of Assembly, as amended, requiring sheriffs and their deputies in Buchanan County to wear uniforms or some form of insignia while in the performance of their duties.

[\[H 2171\]](#)

Approved March 22, 1999

Be it enacted by the General Assembly of Virginia:

1. That Chapter 261 of the 1938 Acts of Assembly, as amended, is repealed.

## **Chapter 328 Highway signs for travelers.**

An Act to require the Virginia Department of Transportation to proceed expeditiously with the development of a program to provide for certain highway directional signing.

[\[H 2652\]](#)

Approved March 22, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Department of Transportation shall proceed expeditiously with the development and implementation of a program that will provide for the erection and maintenance, at appropriate locations, within highway rights-of-way, of signs listing the names of and providing directions to those facilities that are of specific interest to tourists and other travelers on Virginia's system of primary highways.*

## **Chapter 347 Water and Waste Authorities Act.**

An Act to provide for certain condemnation powers in certain counties.

[\[S 739\]](#)

Approved March 24, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any contrary provisions of § [15.2-5114](#), upon a two-thirds vote of the governing body of any county with a population between 45,700 and 45,800 in which an authority created pursuant to Chapter 51 (§ [15.2-5100](#) et seq.) of Title 15.2 proposes to exercise its power of eminent domain by condemning land on which a designated historic landmark, building, structure, district, object or site is located, the governing body may prohibit the authority from exercising such power, provided that such vote occurs within ninety days of the authority's offer of purchase to the landowner.*

2. That the provisions of this act shall expire on July 1, 2004.

## **Chapter 363 Cover sheets on deeds.**

An Act to amend the Code of Virginia by adding a section numbered [17.1-227.1](#) and to repeal Chapter 378 of the Acts of Assembly of 1998, relating to indexing by tax map reference number; use of cover sheets on deeds or other instruments by certain circuit court clerks.

[\[H 1452\]](#)

Approved March 24, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [17.1-227.1](#) as follows:

*§ [17.1-227.1](#). Use of cover sheets on deeds or other instruments by certain circuit court clerks.*

*The clerk of the circuit court in any (i) county with a population between 7,000 and 7,500, (ii) county with a population between 39,500 and 42,000, (iii) county with a population between 10,250 and 10,400, and (iv) city with a population between 4,000 and 4,500 may request, but shall not require, that any deed or other instrument conveying or relating to an interest in real property be filed with a cover sheet detailing the information contained in the deed or other instrument necessary for the clerk to properly index such instrument. The cover sheet shall be in a form approved by the Supreme Court of*

*Virginia and used in connection with the Financial Management System and Record Indexing System provided to such circuit court clerks by the Supreme Court of Virginia. The cover sheet shall not be included as a page for determining the amount of any applicable filing fees pursuant to subdivision A 2 of § [17.1-275](#), nor shall the cover sheet be construed to convey title to any interest in real property or purport to be a document in the chain of title conveying any interest in real property.*

*The provisions of this section shall expire on July 1, 2002.*

2. That Chapter 378 of the Acts of Assembly of 1998 is repealed.

## **Chapter 420 Union Mill Road.**

An Act to designate a portion of Union Mill Road in Fairfax County as a scenic highway and Virginia byway.

[\[H 2666\]](#)

Approved March 25, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, that portion of Union Mill Road in Fairfax County between Compton Road and Braddock Road is hereby designated a scenic highway and Virginia byway.*

## **Chapter 504 School board salaries in Newport News City.**

An Act relating to increasing salaries of school board members in certain jurisdictions.

[\[S 1237\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any provisions of § [22.1-32](#) to the contrary, the school board of a city having a population greater than 165,000 but less than 195,000 and a school board of a city having a population greater than 261,229 but not less than 393,069 for which an increase in the maximum salary for school board members was authorized in § [22.1-32](#) in 1998 may establish a salary increase to become effective on and after July 1, 1999.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 369 Courts of record; use of cover sheets.**

An Act to amend the Code of Virginia by adding a section numbered [17.1-227.1](#) and to repeal Chapter 378 of the Acts of Assembly of 1998, relating to indexing by tax map reference number; use of cover sheets on deeds or other instruments by certain circuit court clerks.

[\[H 1834\]](#)

Approved March 24, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [17.1-227.1](#) as follows:

*§ [17.1-227.1](#). Use of cover sheets on deeds or other instruments by certain circuit court clerks.*

*The clerk of the circuit court in any (i) county with a population between 7,000 and 7,500, (ii) county with a population between 39,500 and 42,000, (iii) county with a population between 10,250 and 10,400, and (iv) city with a population between 4,000 and 4,500 may request, but shall not require, that any deed or other instrument conveying or relating to an interest in real property be filed with a cover sheet detailing the information contained in the deed or other instrument necessary for the clerk to properly index such instrument. The cover sheet shall be in a form approved by the Supreme Court of Virginia and used in connection with the Financial Management System and Record Indexing System provided to such circuit court clerks by the Supreme Court of Virginia.*

*The cover sheet shall not be included as a page for determining the amount of any applicable filing fees pursuant to subdivision A 2 of § [17.1-275](#), nor shall the cover sheet be construed to convey title to any interest in real property or purport to be a document in the chain of title conveying any interest in real property.*

*The provisions of this section shall expire on July 1, 2002.*

2. That Chapter 378 of the Acts of Assembly of 1998 is repealed.

## **Chapter 380 Alcoholic beverage licenses.**

An Act to require the Alcoholic Beverage Control Board to adopt regulations implementing the provisions of Chapters 549 and 563 of the 1995 Acts of Assembly and

Chapter 40 of the 1997 Acts of Assembly.

[\[H 2248\]](#)

Approved March 24, 1999

Whereas, Chapters 549 and 563 of the 1995 Acts of Assembly required the Alcoholic Beverage Control Board to designate, by regulation, the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation, including: (i) establishment of a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension, and (ii) provision for the licensee receiving notice of a hearing on an alleged violation being advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing; and

Whereas, Chapter 40 of the 1997 Acts of Assembly required the Alcoholic Beverage Control Board to promulgate regulations requiring retail licensees to file an appeal from any hearing decision rendered by a hearing officer within thirty days of the date the notice of the decision is sent; and

Whereas, the regulations required by Chapters 549 and 563 of the 1995 Acts of Assembly and those required by Chapter 40 of the 1997 Acts of Assembly have not been adopted; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. The Alcoholic Beverage Control Board shall promulgate emergency regulations to implement the provisions of Chapters 549 and 563 of the 1995 Acts of Assembly and Chapter 40 of the 1997 Acts of Assembly which regulations shall be effective July 1, 1999.*

*§ 2. The Alcoholic Beverage Control Board shall adopt final regulations to implement the provisions of Chapters 549 and 563 of the 1995 Acts of Assembly and Chapter 40 of the 1997 Acts of Assembly on or before June 30, 2000.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 539 Clyde Bowling Bridge and Jessica J. Cheney Memorial Bridge.**

An Act to designate the Virginia Route 102 bridge at Falls Mills in Tazewell County the “Clyde Bowling Bridge” and to designate the Virginia Route 610 bridge over Interstate Route 95 in Stafford County the “Jessica J. Cheney Memorial Bridge.”

[\[H 2095\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 102 bridge at Falls Mills in Tazewell County is hereby designated the “Clyde Bowling Bridge.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

*§ 2. The Virginia Route 610 bridge over Interstate Route 95 in Stafford County is hereby designated the “Jessica J. Cheney Memorial Bridge.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 467 Property exchange in Pedlar Hills.**

An Act authorizing the Department of Conservation and Recreation to convey certain property at Pedlar Hills in Montgomery County and to accept certain property in exchange.

[\[S 736\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Daniel Lee Reed and Gana Wells Reed, their heirs,*

*successors, and assigns, upon such terms as the Department deems proper, with the approval of the Governor and Attorney General, a certain parcel of real property of 1.86 acres, more or less, located in Pedlar Hills in Montgomery County, Virginia.*

*§ 2. In consideration for such, the Department is authorized to accept on behalf of the Commonwealth a conveyance from Daniel Lee Reed and Gana Wells Reed and others of a right-of-way of 2,500 feet in length and 15 feet in width, more or less, extending from Virginia Route 635 to Pedlar Hills.*

*§ 3. The properties exchanged shall be of approximately equal value; however, because this exchange is undertaken in the absence of current surveys of the exchanged parcels of real property, any difference in fair market value shall be balanced with a cash payment in the amount of that difference to the party receiving the lesser-valued property.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

## **Chapter 556 Robert S. Hornsby Memorial Bridge.**

An Act to designate the Virginia Route 199 bridge across Longhill Road, adjacent to the Mews, in James City County the "Robert S. Hornsby Memorial Bridge."

[\[H 2450\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 199 bridge across Longhill Road, adjacent to the Mews, in James City County is hereby designated the "Robert S. Hornsby Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 557 Indoor air quality in public schools.**

An Act establishing a task force to develop recommendations relating to indoor air quality in public schools.

[\[H 2478\]](#)

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Indoor air quality task force established; members; duties; report.*

*A. The Department of Housing and Community Development shall establish a task force to identify existing guidelines and standards for indoor air quality and Uniform Statewide Building Code requirements for heating, air conditioning, and ventilation systems for schools. The task force shall consist of twelve members as follows: two members of the House of Delegates and three citizens, one each representing the Virginia Association of School Boards, the Virginia Association of Counties, and the Virginia Education Association, to be appointed by the Speaker of the House; one member of the Senate and two citizens, one each representing the Virginia Education Association and the Virginia Chamber of Commerce, to be appointed by the Senate Committee on Privileges and Elections; and one licensed architect or engineer actively engaged in the practice of school design and construction and one representative each of the Departments of Housing and Community Development, Education, and Health, to be appointed by the Governor.*

*B. The task force shall develop recommendations regarding indoor air quality in public schools and shall report such recommendations to the House Committees on Education and on Appropriations, and the Senate Committees on Education and Health and on Finance by December 1, 1999.*

## **Chapter 803 Health; cancer registry.**

An Act to require a study of the cancer registry.

[\[S 942\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Cancer registry to be studied.*

*The Joint Commission on Health Care shall study the cancer registry, including an analysis of the exchange of patient-identifying information pursuant to reciprocal data-sharing agreements with other cancer registries and confidentiality protections for patient data. In its study, the Joint Commission shall examine the potential for inappropriate disclosure of patient data as a result of such data exchange, whether the registry should be*

*required to obtain the patient's consent, and any appropriate penalties for breach of confidentiality.*

## **Chapter 865 Speed limit in Town of Vienna.**

An Act to authorize certain towns to adopt an ordinance prohibiting speeding in residence districts; penalty.

[\[H 2039\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing body of any town with a population between 14,000 and 15,000 may by ordinance (i) prohibit the operation of a motor vehicle at a speed of twenty miles an hour or more in excess of the applicable maximum speed limit in a residence district and (ii) provide that any person who violates the prohibition shall be subject to a mandatory civil penalty of \$100, not subject to suspension.*

## **Chapter 619 Benefits of State employees transferred to local health departments.**

An Act to amend and reenact § 1 of Chapter 639 of the 1995 Acts of Assembly, relating to operation of local health departments by certain cities.

[\[S 843\]](#)

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 639 of the 1995 Acts of Assembly is amended and reenacted as follows:

§ 1. Option of certain cities to operate local health departments under contract with the State Board of Health.

Notwithstanding any other provision of law to the contrary, general or special, the governing body of any city having a population between 200,000 and 250,000 may enter into a contract with the State Board of Health to provide local health services in that city.

The governing body may provide such health services either through a separate local

department or through another organizational arrangement. The governing body shall not eliminate any service required by law or reduce the level of service below that required by law. In addition, the local governing body shall not eliminate or reduce the level of any service currently delivered in connection with the Virginia Medicaid Program.

Any contract executed between the city and the Board shall set forth the rights and responsibilities of the local governing body for the delivery of health services and shall require that the governing body, with the concurrence of the State Health Commissioner, appoint the local health director of health services in accordance with local procedures, who shall be employed full-time as an employee of the governing body and shall be responsible for directing all state mandated public health programs. All employees of the local health department operated by the governing body of the city shall be employees of the governing body.

The local governing body shall maintain and submit such financial and statistical records as may be required by the State Board of Health.

The city shall be the sole owner of all equipment and supplies, including all equipment and supplies used by the local health department at the time of execution of the contract, which were or are purchased for providing public health services regardless of the source of the funds for such purchases.

The local governing body shall operate the local health department, pursuant to the terms of the contract, within local appropriations and any state funds which may be made available to it, pursuant to the appropriations act. State funds for the operation of health services and facilities shall continue to be allocated to any city which has elected to provide health services by contract pursuant to this section as if such services were provided in a city without such a contract.

Notwithstanding any other provision of law to the contrary, any person who is transferred from state to local employment in accordance with a contractor authorized by this section, and who is a member of the Virginia Retirement System at the time of the transfer, shall continue to be a member of the Virginia Retirement System during the period of local employment. Any such transferred employee shall remain a member of the Virginia Retirement System, *and be eligible for retirement health benefits*, under the same terms and conditions as would apply if the transferred employee had remained a state employee, so long as the employee is employed with a local health department pursuant to a contract under this section or returns to state employment. For purposes of any employment of the transferred employee as a state employee after local employment, the

membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System.

For any employee who is transferred to local employment in accordance with a contract authorized by this section, that employee's membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System. The local governing body shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 of Title 51.1 of the Code of Virginia, as amended.

The power to contract conferred by this section shall not be deemed to confer any additional authority for any such city providing local health services to impose fees for local health services.

### **Chapter 931 Fire suppression devices at Hampton University.**

An Act relating to fire suppression devices in certain colleges and universities.

[\[H 2571\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That a private institution located in Hampton Roads shall be required to comply with the provisions of § [36-99.3](#) for an eight-story residence hall which is twenty-eight years old and has a square footage of 60,843 on January 1, 2000.*

### **Chapter 1033 Regulating mooring and anchoring.**

An Act to authorize the City of Hampton to regulate the mooring and anchoring of vessels.

[\[H 2220\]](#)

Approved May 7, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the City of Hampton may by ordinance enact rules and conditions for persons to anchor and moor vessels, as defined in § [29.1-700](#), on the waters of the City of*

*Hampton in order to prevent blight and to promote tourism and economic development. Such ordinance shall not impose a fee or charge to moor or anchor any vessel.*

## **Chapter 699 I-64 weighing station.**

An Act to require the relocation of a certain weighing station.

[\[S 956\]](#)

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation, in consultation with the Department of State Police, the County of Henrico, and other affected jurisdictions, shall relocate the vehicle weighing station located on Interstate Route 64 in Henrico County east of the City of Richmond to another location on Interstate Route 64. In selecting a site for the relocation of such weighing station, the Department shall, among other factors, consider the desirability of (i) minimizing the bypassing of the facility through the use of alternative routes over local streets, (ii) providing sufficient space off the traveled lanes of Interstate Route 64 for the queuing of vehicles waiting to be weighed, and (iii) providing space for installation of an inspection pit for use in conjunction with motor carrier inspections of vehicles waiting to be weighed. The Department of Transportation shall forthwith initiate planning for the relocation of the aforementioned facility and shall commence and complete construction of the relocated facility as soon as practicable, consistent with the aforementioned consultations with the Department of State Police and affected jurisdictions, availability of funds for such project, providing an opportunity for receiving and considering public comment on the project, and the requirements of state and federal law applicable to such construction projects.*

## **Chapter 790 Referendum on consolidation of Page County high schools.**

An Act to provide for an advisory referendum in Page County on the future of the County's high schools.

[\[H 2489\]](#)

Approved March 28, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The officials conducting the November 2, 1999, election in Page County shall conduct an advisory referendum on that date to poll the voters on their preference for the future of the County's high schools.*

*The ballot shall contain substantially the following options and information:*

*"Please vote for the option that you support to address school construction needs in Page County. Vote for only one option.*

*Option 1. Build a centrally located consolidated high school and convert the two existing high schools to middle schools.*

*Option 2. Build two new high schools and convert the two existing high schools to middle schools.*

*Option 3. Retain the present system."*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified, all as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the county at least once in the period forty-five to sixty days before the election.*

*The results of the referendum shall be advisory only.*

## **Chapter 802 Assessments of real property in Arlington County.**

An Act to amend and reenact § 4 of Chapter 230 of the Acts of Assembly of 1950, as amended by Chapter 211 of the Acts of Assembly of 1973, relating to assessments of real property in certain counties.

[\[S 938\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 4 of Chapter 230 of the Acts of Assembly of 1950, as amended by Chapter 211 of the Acts of Assembly of 1973, is amended and reenacted as follows:

§ 4. When such assessment has finally been established, the amount thereof, a brief description of the property assessed, and the name of the owner of record thereof, shall

be certified by the governing body to the treasurer of the county, who shall collect the same and be accountable therefor, as in the case of other county taxes; except, that the governing body may provide for the postponement of the payment of such assessment by property owners meeting certain conditions until the sale of the property or the death of the last eligible owner. Eligibility for postponement shall be subject to the following conditions:

- (1) The head of the household shall not be less than sixty-five years of age;
- (2) The total combined income of the owner, his spouse, and relatives living in the household from all sources during the year preceding the year in which the assessment is made shall not exceed seventy-five hundred dollars; provided, that the governing body may specify lower income figures;
- (3) The net combined financial worth, including equitable interests, as of the thirty-first day of December of the year immediately preceding the year in which the assessment is made shall not exceed twenty thousand dollars; provided, that the governing body may specify lower net worth figures. Upon default in the payment of such amount, or any installment thereof, the land shall not be sold as in the case of general land taxes which have become delinquent, but in lieu thereof the treasurer may institute, in his own name, appropriate proceedings to enforce the payment thereof. From the date that the assessment has been certified to the treasurer, such amount shall be a lien upon the property thereby affected, which lien shall have priority over all other liens except that of county taxes regularly assessed. ~~The treasurer shall maintain in his office, a firmly bound book, or books, wherein he shall cause to be recorded, immediately upon receipt of the certificate thereof, the name of the owner of each parcel of land against which such an assessment has been levied, a brief description of the land affected thereby, and the amount of the assessment thereon. He shall, likewise, record in such book any payment of, or on account of, the assessment, immediately upon receipt thereof; and upon the written request of any person, which request shall designate the parcel of land and the name of the owner thereof, the treasurer shall issue his certificate showing the amount of principal and interest then unpaid on the assessment against such parcel of land.~~

## **Chapter 813 Nursing homes.**

An Act requiring the Joint Commission on Health Care to study nursing home licensure regulations and centers of excellence in nursing homes.

[\[S 1172\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Study of nursing home licensure regulations and centers of excellence in nursing homes.*

*A. The Joint Commission on Health Care shall (i) study the adequacy of current Virginia regulations for licensure of nursing homes and the advisability of utilizing "deemed status" for nationally accredited nursing homes with the assistance of the Department of Health and (ii) examine the concept of centers of excellence in long-term care in cooperation with the Secretary of Health and Human Resources.*

*B. The Joint Commission shall examine the Commonwealth's nursing home licensure regulations to determine: (i) means for making such regulations more outcome oriented and focused on continuous quality improvement, (ii) opportunities for gathering additional resident and family input as part of the licensure process for nursing homes, (iii) the advisability of accepting national accreditation as evidence of compliance with state licensure standards, and (iv) other states' laws regarding deemed status for state licensure of nursing homes.*

*C. The Joint Commission shall examine the concept of centers of excellence with regard to long-term care reimbursement, specialized care programs, best management practices, and other issues as appropriate in cooperation with the Secretary of Health and Human Resources.*

*D. The Joint Commission shall submit its report to the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions prior to October 1, 1999.*

## **Chapter 859 Voluntary disclosure & exchange of Y2K readiness info.**

An Act to promote the voluntary disclosure and free exchange of Year 2000 readiness information.

[\[H 1671\]](#)

Approved March 29, 1999

Whereas, at least thousands and possibly millions of information technology computer systems, software programs, and semiconductors may not be capable of recognizing certain dates after December 31, 1999; may read dates in the Year 2000 and thereafter as if

those dates represent the year 1900; or may otherwise fail to accurately process those dates; and

Whereas, this situation, known colloquially and collectively as “the Year 2000 problem,” could incapacitate systems that are essential to public safety, economic health, and the delivery of electricity and water, medical care, and numerous other essential goods and services in the Commonwealth of Virginia, the United States, and the world; and

Whereas, reprogramming or replacing affected systems before the Year 2000 problem incapacitates such essential systems is a matter of state, national, and global interest; and

Whereas, the prompt, candid, and thorough disclosure and exchange of information related to the Year 2000 problem would greatly enhance the ability of the public and private sectors to improve their Year 2000 readiness; and

Whereas, improving Year 2000 readiness is a matter of state, national, and global importance and a vital factor in minimizing Year 2000-related disruptions to the health, safety, welfare, and economic well-being of the citizens, businesses, and governments of the Commonwealth of Virginia, the United States, and the world; and

Whereas, massive efforts are underway in the public and private sectors to timely and adequately solve the Year 2000 problem; prepare “mission critical” information technology computer systems, software programs, and semiconductors to recognize the Year 2000; and minimize the risks associated with a Year 2000 failure; and

Whereas, these massive efforts have been impeded because of concern about the potential for legal liability associated with the disclosure and exchange of Year 2000 readiness information; and

Whereas, facilitating the voluntary dissemination and free exchange of Year 2000 readiness information, solutions, best practices, and test results between and among the public and private sectors without undue concern about legal liability is crucial to the ability of the public and private sectors to timely and adequately solve the Year 2000 problem; prepare “mission critical” information technology computer systems, software programs, and semiconductors to recognize the Year 2000; and minimize the risks associated with a Year 2000 failure; and

Whereas, the purpose of this act is to serve the state, national, and global interest in promoting the voluntary dissemination and free exchange of Year 2000 readiness information shared in good faith; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Definitions.*

*For purposes of this act:*

*"Disclosure" and "discloses" means disseminating or providing information in good faith related to the Year 2000 problem or a Year 2000 failure without any expectation of or right to remuneration or fees therefor.*

*"Information" means any projection, estimate, planning document, objective, timetable, best practice, test plan, test date, or test result intended to timely and adequately solve the Year 2000 problem; prepare "mission critical" information technology computer systems, software programs, and semiconductors to recognize the Year 2000; or minimize the risks associated with a Year 2000 failure, which is clearly marked as such on the face of the information.*

*"Person" means the same as defined in § [1-13.19](#) of the Code of Virginia.*

*"Year 2000 problem" or "Year 2000 failure" means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including, without limitation, computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capabilities of the person's technology systems. Such complications may include the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations; an ambiguous interpretation of the term or field "00"; the failure to recognize 2000 as a leap year; algorithms that use "99" or "00" to activate another function; or the use of any other applications, software, or hardware that are date-sensitive.*

*§ 2. "Safe harbor" from legal liability.*

*Notwithstanding any other provision of law, any person who discloses information regarding the Year 2000 problem or a Year 2000 failure shall not be liable for damages in any action brought against that person regarding such Year 2000 problem or Year 2000 failure for any injury caused by, arising out of, or relating to, the use of the information disclosed, except as provided in § 3. This act shall not apply in any action for personal injury or death.*

*§ 3. Exceptions.*

*The provisions of § 2 shall not apply if the claimant proves to the trier of fact by a preponderance of the evidence that:*

*1. The information disclosed was sold, exchanged, or provided for compensation by any person, or*

2. Such information (i) was material and false, inaccurate, or misleading and (ii) was disclosed (a) with the knowledge that the information was false, inaccurate, or misleading; (b) without a statement to the claimant that the disclosure was based on information supplied by another person if the information was a republication of, or otherwise a repetition of, information from such other person or made with the knowledge that the information was false, inaccurate, or misleading; or (c) with gross negligence in the determination of the truth or accuracy of the information or in the determination of whether the information was misleading.

§ 4. Act not limiting.

Nothing in this act shall be deemed to affect any other remedy available to a person against another person with respect to information disclosed about the Year 2000 problem or a Year 2000 failure.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 912 Medical care facilities certificate of public need.**

An Act to authorize application for certain certificate of public need for an increase in nursing home beds.

[\[H 2080\]](#)

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Certain medical care facilities certificate of public need.*

Notwithstanding the provisions of § [32.1-102.3:2](#), or any standards promulgated by the Board of Health as regulations pursuant thereto, for the approval and issuance by the Commissioner of Requests for Proposals, the Commissioner (i) shall approve and issue a Request for Application for an increase in the nursing home bed supply for any planning district which would have met the requirements for determining need in compliance with the Board's regulations but for an increase in nursing home bed supply which was authorized by the Commissioner pursuant to the provisions of § [32.1-102.3:2](#), as such law existed prior to the effective date of Chapter 901 of the 1996 Acts of Assembly, when such beds have not yet been licensed and (ii) may approve, authorize and accept applications for any certificate of public need for any project which would result in an increase in the number of nursing home or nursing facility beds in such planning district.

# Uncodified Acts of Assembly - 2000

## Chapter 3 Oyster grounds.

An Act to remove a certain area in the waters of the Eastern Branch of the Elizabeth River from the natural oyster rocks, beds and shoals embraced within the Baylor Survey.

[\[S 219\]](#)

Approved February 15, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That a portion of Public Ground Number 11, located in the Eastern Branch of the Elizabeth River and previously set aside in Norfolk County but now being in the City of Norfolk, shall no longer be a part of the natural oyster rocks, beds, and shoals of the waters of this Commonwealth and shall henceforth be assignable to any person for lawful private usage. The portion to be removed is described as follows:*

*Beginning at a point in the southwest corner of the survey of Public Ground Number 11 noted as 76, then proceeding along the western boundary line, 76-4B, in a northeasterly direction approximately 730 feet to a point 4B, then southeasterly along the northern boundary line, 4B-3B, approximately 650 feet to a point 3B, then southwesterly along a line from point 3B to the point of beginning, 76, for a total area of approximately 5.28 acres.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 57 Korean War Veterans Memorial Highway.

An Act to designate the entire length of Interstate Route 295 the “Korean War Veterans Memorial Highway.”

[\[S 322\]](#)

Approved March 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the entire length of Interstate Route 295 is hereby designated the “Korean War*

*Veterans Memorial Highway.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 62 Colvin Run Road; designated a scenic highway.**

An Act to designate Colvin Run Road in Fairfax County a scenic highway and Virginia byway.

[\[H 60\]](#)

Approved March 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, Colvin Run Road in Fairfax County is hereby designated a scenic highway and Virginia byway.*

## **Chapter 113 Awards service handgun to widow of Troy D. Ashe.**

An Act to award a service handgun to the widow of Trooper Troy D. Ashe.

[\[H 183\]](#)

Approved March 17, 2000

Whereas, Trooper Troy D. Ashe served the Commonwealth of Virginia as a Deputy Sheriff in Middlesex County from November 1991 until July 31, 1993; and

Whereas, Trooper Ashe served the Commonwealth as a Marine Patrol Officer with the Virginia Marine Resources Commission from August 1, 1993, until November 30, 1995; and

Whereas, Trooper Ashe served the Commonwealth as a Trooper with the Virginia Department of State Police from December 1, 1995, until April 15, 1999; and

Whereas, Trooper Ashe received numerous commendations during his law enforcement career; and

Whereas, Trooper Ashe was killed in an accident on April 15, 1999; and

Whereas, it is fitting and appropriate that Trooper Troy D. Ashe's exceptional service to the Commonwealth be recognized by the General Assembly; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. That Jennifer M. Ashe, the widow of Trooper Troy D. Ashe, be, and hereby is, vested*

*with title to, and authorized to possess and retain as her own, Trooper Troy D. Ashe's service handgun, which he used as a member of the Virginia Department of State Police. This transfer is made as a visible and express token of the appreciation of the General Assembly for the professionalism, devotion, and dedication of Trooper Troy D. Ashe.-*

## **Chapter 220 Higher Educational Institutions Bond Act of 2000; created.**

An Act to authorize the issuance of bonds, in an amount up to \$131,763,100 plus issuance costs, reserve funds, and other financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapters 473 and 734 of the Acts of Assembly of 1998.

[\[H 31\]](#)

Approved April 2, 2000

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of

the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia.

**Be it enacted by the General Assembly of Virginia:**

**1.**

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2000."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$131,763,100 plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Code</i>	<i>Debt</i>	<i>Project Name</i>
<i>University</i>			
<i>of Virginia</i>	<i>16385</i>	<i>\$4,800,000</i>	<i>Monroe Lane</i>
<i>Student</i>			
			<i>Residence</i>
<i>Hall</i>			
<i>Virginia Polytechnic</i>			
<i>Institute and</i>			

Uncodified Acts of Assembly - 2000

<i>State University Dormitory</i>	<i>14303</i>	<i>1,078,900</i>	<i>Major Repairs  and Dining</i>
<i>Virginia Polytechnic Institute and State University</i>	<i>14815</i>	<i>5,991,700</i>	<i>Parking Aux- iliary  Projects</i>
<i>The College of William and Mary</i>	<i>16340</i>	<i>5,000,000</i>	<i>Renovate Dorm- itories</i>
<i>Virginia Commonwealth University</i>	<i>16405</i>	<i>15,346,000</i>	<i>Academic Cam- pus Housing</i>
<i>Virginia Commonwealth University</i>	<i>16402</i>	<i>14,506,000</i>	<i>MCV Campus Housing</i>
<i>Virginia Commonwealth University</i>	<i>16338</i>	<i>6,365,000</i>	<i>Gladding Res- idence Hall  Addition</i>

Uncodified Acts of Assembly - 2000

<i>George Mason</i>			
<i>University</i>	<i>16352</i>	<i>25,530,000</i>	<i>Housing Building V</i>
<i>George Mason</i>			
<i>University</i>	<i>15533</i>	<i>3,400,000</i>	<i>Housing Renovations</i>
<i>Christopher Newport</i>			
<i>University</i>	<i>16418</i>	<i>23,551,000</i>	<i>Residence Hall</i>
<i>Virginia Community</i>			
<i>College System</i>	<i>16216</i>	<i>635,500</i>	<i>Mt. Empire Parking</i>
<i>James Madison</i>			
<i>University</i>	<i>16395</i>	<i>8,259,000</i>	<i>Bluestone Dormitories,</i>
			<i>Phase II</i>
<i>Mary Washington</i>			
<i>College</i>	<i>16422</i>	<i>2,300,000</i>	<i>Residence Hall HVAC,</i>
			<i>Phase II</i>
<i>Mary Washington</i>			

Uncodified Acts of Assembly - 2000

College Hall	16348	2,000,000	Residence  Renovation
Mary Washington  College Hall HVAC	15980	1,500,000	Residence
Mary Washington  College Hall	16096	5,000,000	Seacobeck Din- ing Hall
Virginia State  University Hall Addition	16419	6,500,000	Residence
TOTAL		\$131,763,100	

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.** *Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the*

*consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds [Bond Anticipation Notes], Series ...."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer*

*before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of the bonds or BANs from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the payment of the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Authorized investments.*

*Pending the application of the proceeds of bonds and BANs to the purpose for which they have been authorized and the application of the net revenues and other sums set aside for the payment of bonds and BANs, all or any portion of such funds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such funds, and the interest thereon and any profit realized from such investments shall be credited to such funds, and any losses shall be deducted therefrom.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the*

*Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest on and any premium on the bonds or BANs to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company,*

*within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (b) or (c), as the case may be, of the Constitution of Virginia.*

§ 13. Severability.

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapters 473 and 734 of the Acts of Assembly of 1998 are repealed; however, such repeal shall not operate to invalidate, alter the security or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 236 UVA's College at Wise; receipt of certain property.**

An Act to authorize the receipt by the University of Virginia's College at Wise of certain parcels of real property.

[\[H 1133\]](#)

Approved April 2, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding any law to the contrary, the University of Virginia's College at Wise is hereby authorized to receive from Appalachian Regional Healthcare, Inc., with the approval of the Governor and in a form approved by the Attorney General, certain real property, with appurtenances, known as the Wise Hospital property, consisting of 25.97 acres, more or less, and 14.577 acres, more or less, lying within the corporate limits of the Town of Wise.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to execute and receive such deed or other documents as may be necessary to accomplish the conveyance.*

## **Chapter 244 Higher Educational Institutions Bond Act of 2000; created.**

An Act to authorize the issuance of bonds, in an amount up to \$131,763,100 plus issuance costs, reserve funds, and other financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof; and to repeal Chapters 473 and 734 of the Acts of Assembly of 1998.

### [\[S 31\]](#)

Approved April 2, 2000

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia.

**Be it enacted by the General Assembly of Virginia:**

1.

§ 1. *Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2000."*

§ 2. *Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$131,763,100 plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Code</i>	<i>Debt</i>	<i>Project Name</i>
<i>University</i>			
<i>of Virginia</i>	<i>16385</i>	<i>\$4,800,000</i>	<i>Monroe Lane</i>
<i>Student</i>			<i>Residence</i>
<i>Hall</i>			
<i>Virginia Polytechnic</i>			
<i>Institute and</i>			
<i>State University</i>	<i>14303</i>	<i>1,078,900</i>	<i>Major Repairs</i>
<i>Dormitory</i>			

*and Dining*

*Virginia Polytechnic*

*Institute and State*

*University*                      14815                      5,991,700      *Parking Aux-  
iliary*

*Projects*

*College of William*

*and Mary*                      16340                      5,000,000      *Renovate Dorm-  
itories*

*Virginia Commonwealth*

*University*                      16405                      15,346,000      *Academic Cam-  
pus Housing*

*Virginia Commonwealth*

*University*                      16402                      14,506,000      *MCV Campus  
Housing*

*Virginia Commonwealth*

*University*                      16338                      6,365,000      *Gladding Res-  
idence Hall*

*Addition*

*George Mason*

Uncodified Acts of Assembly - 2000

*University* 16352 25,530,000 *Housing Building V*

*George Mason*

*University* 15533 3,400,000 *Housing Renovations*

*Christopher Newport*

*University* 16418 23,551,000 *Residence Hall*

*Virginia Community*

*College System* 16216 635,500 *Mt. Empire Parking*

*James Madison*

*University* 16395 8,259,000 *Bluestone Dormitories,*

*Phase II*

*Mary Washington*

*College* 16422 2,300,000 *Residence Hall HVAC,*

*Phase II*

*Mary Washington*

Uncodified Acts of Assembly - 2000

College Hall	16348	2,000,000	Residence  Renovation
Mary Washington  College Hall HVAC	15980	1,500,000	Residence
Mary Washington  College Hall	16096	5,000,000	Seacobeck Din- ing Hall
Virginia State  University Hall Addition	16419	6,500,000	Residence
TOTAL		\$131,763,100	

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.** *Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the*

*consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds [Bond Anticipation Notes], Series ...."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer*

*before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of the bonds or BANs from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the payment of the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Authorized investments.*

*Pending the application of the proceeds of bonds and BANs to the purpose for which they have been authorized and the application of the net revenues and other sums set aside for the payment of bonds and BANs, all or any portion of such funds may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds. Such investments shall be deemed at all times to be a part of such funds, and the interest thereon and any profit realized from such investments shall be credited to such funds, and any losses shall be deducted therefrom.*

*§9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the*

*Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest on and any premium on the bonds or BANs to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company,*

*within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (b) or (c), as the case may be, of the Constitution of Virginia.*

§ 13. Severability.

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapters 473 and 734 of the Acts of Assembly of 1998 are repealed; however, such repeal shall not operate to invalidate, alter the security or prohibit the refunding of bonds heretofore issued pursuant to such act.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 619 Special tax district in counties containing a town school division.**

An Act appropriating certain state and local tax revenues to the school division of the County of Westmoreland and the school division of the Town of Colonial Beach pursuant to an agreement between the County of Westmoreland and the Town of Colonial Beach.

[\[S 483\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Supervisors of the County of Westmoreland (the Board) may establish a special tax district to pay all or any portion of the county's expenditures for operating the county school division. The boundaries of the tax district shall be the same as the geographical area of the county school division and shall exclude the area of the Town of Colonial Beach. If the Board elects to establish such a special tax district, its appropriations of funds for the county's share of expenditures for the county school division shall be governed by this act and the provisions of §§ [22.1-113](#) and [22.1-114](#) shall not be applicable.*

*§ 2. The Board may levy and collect taxes upon any taxable property in such special tax district, including real estate, tangible personal property, merchants' capital, and*

*machinery and tools, and may appropriate to the county school division such property taxes, including any penalties and interest thereon and any fund balance from the preceding fiscal year consisting of such taxes, penalties and interest. The Town of Colonial Beach shall pay for its share of expenditures to operate the town school division from town property taxes and other local, state, and federal revenues received by the town. The county and the town shall identify the sources of all revenues appropriated to their respective school divisions.*

*§ 3. The Board may also appropriate to the county school division all or any portion of the revenue derived from (i) those local or state taxes which are collected in part within the town but are allocated between the county and the town by state law or (ii) those non-property taxes that the county collects exclusively from sources outside the town. Such taxes include, but shall not be limited to: (i) the local sales tax authorized by § [58.1-605](#), (ii) the motor vehicle license tax authorized by § [46.2-752](#), (iii) wine taxes authorized by § [4.1-235](#), (iv) the net profits from the Alcoholic Beverage Control System authorized by § [4.1-117](#), (v) cable franchise fees authorized by § [15.2-2108](#), (vi) manufactured home titling taxes authorized by § [58.1-2402](#), (vii) automobile rental taxes authorized by § [58.1-2402](#), (viii) rolling stock taxes authorized by § [58.1-2652](#), (ix) bank stock taxes authorized by § [58.1-1204](#), and (x) interest or other investment earnings derived from the revenues specified in § 2 and this section, which investment earnings shall be separately accounted for by the county.*

*§ 4. The Board may also appropriate to the county school division all or any portion of the state or local recordation taxes received by the county, as authorized by §§ [58.1-801](#) and [58.1-3800](#), if the county pays to the town a pro rata share of such recordation taxes derived from real estate transactions that occur within the town.*

*The pro rata share shall be determined by multiplying the recordation taxes collected within the town by a fraction that equals the total recordation taxes appropriated to the county school division divided by the total recordation taxes derived by the county from real estate transactions that occur outside the town. The clerk of the circuit court for the county shall compile and furnish the necessary information to the governing body of the county to enable it to comply with this provision. The Board shall pay such sum to the town no later than forty-five days after receipt of such taxes by the county treasurer from the clerk of the circuit court.*

*§ 5. The Board may also appropriate to the county school division all or any portion of the state payments to reimburse the county for personal property taxes pursuant to the Personal Property Tax Relief Act of 1998 (§ [58.1-3523](#) et seq.) if the county pays to the town a pro rata share of these state payments received by the county that are attributable*

*to qualifying vehicles assessed for taxation within the town. The pro rata share shall be determined by multiplying the state reimbursement payments received by the county based on qualifying vehicles within the town by a fraction that equals the total state reimbursement payments appropriated to the county school division divided by the total state reimbursement payments received by the county from qualifying vehicles assessed for taxation outside the town. The Board shall pay such sum to the town no later than forty-five days after receipt of such payments by the county treasurer from the Commonwealth.*

*§ 6. Notwithstanding any other provision of law, if the Board establishes such a special tax district, the amount of the payments pursuant to § [58.1-3526](#) of the Personal Property Tax Relief Act of 1998, which are made by the Commonwealth to the treasurer of the town, shall be computed as follows:*

*The amount of the payments to the town treasurer specified in subdivisions B 2 through B 5 of § [58.1-3524](#) shall be based upon a "reimbursable amount" calculated by using (i) the effective tax rate on tangible personal property in effect in the town as of July 1, 1997, or August 1, 1997, whichever is greater, plus (ii) an effective tax rate equal to the difference between the county's effective tax rate on tangible personal property as of July 1, 1997, or August 1, 1997, whichever is greater, and the county's effective tax rate on tangible personal property within the town for the applicable tax year.*

*For example, if the county's effective tax rate for tangible personal property on July 1, 1997, and August 1, 1997, was \$2.50, the town's effective tax rate on the same dates was \$2.00; and, if the county's effective tax rate on tangible personal property within the town was \$1.30 during the 2000 tax year, the first tax year in which the Board may create a special tax district for the support of the county school division, then the effective tax rate applicable to the town would be \$2.00 plus \$1.20, or a total of \$3.20 for purposes of computing the "reimbursable amount" under § [58.1-3524](#). If the town issues tangible personal property tax bills for qualifying vehicles within the town, in addition to any tangible personal property tax bills issued by the county for such vehicles, the amounts to be paid to the town treasurer shall be shown as a deduction on the face of the town's tangible personal property tax bills for qualifying vehicles in the town, which amounts are to be paid by the Commonwealth in accordance with § [58.1-3526](#).*

*Notwithstanding any other provision of law, for purposes of calculating the payments to the county treasurer specified in subdivisions B 2 through B 5 of § [58.1-3524](#), the "reimbursable amount" for qualifying vehicles in the town shall be based on the lower of the county's effective tax rate on tangible personal property within the town for the applicable tax year or the county's effective tax rate on July 1, 1997, or August 1, 1997, (whichever is greater). For example, if the county's effective tax rate for tangible personal property*

*within the town was \$1.30 during the 2000 tax year, the first tax year in which the Board may create a special tax district for the support of the county school division, and the county's effective tax rate for tangible personal property was \$2.50 on July 1, 1997, and August 1, 1997, then the effective tax rate used to compute the "reimbursable amount" under § [58.1-3524](#) would be \$1.30 for qualifying vehicles in the town. The amounts to be paid to the county treasurer shall be shown as a deduction on the face of the county's tangible personal property tax bills for qualifying vehicles in the town, which amounts are to be paid by the Commonwealth in accordance with § [58.1-3526](#).*

*The provisions of this section shall not be effective in any tax year when the combined amount to be paid to the county and the town for such year as calculated pursuant to the Personal Property Tax Relief Act of 1998 (§ [58.1-3523](#) et seq.) is less than the combined amount to be paid to the county and the town for such year as calculated under this section. In any such tax year, the amount to be paid to the county and the town shall be determined in accordance with the relevant provisions of the Personal Property Tax Relief Act of 1998.*

*§ 7. If the Board appropriates to the county school division any other taxes, fees, or other sources of revenues that are collected within both the county and the town or are attributable to persons, property, transactions or activities within both the county and the town, the county shall pay to the town a sum calculated as follows: the total amount of such other revenues appropriated to the county school division shall be multiplied by a fraction equal to the total taxable property assessments in the town divided by the total taxable property assessments in the county as a whole, including the town. The revenues subject to this requirement would include, for example, property taxes collected by the county in both the county and the town, but would exclude, for example, a gift to the county or a state grant for school construction distributed to the county on the basis of school-age population in the county excluding the town. The Board shall pay such sum to the town no later than forty-five days after such revenues have been transferred to the county school division.*

*§ 8. In the event of a dispute regarding the application of this act, either the county or the town may initiate an arbitration proceeding. The arbitration panel shall consist of three members, including one person not associated with the county but selected by the county, one person not associated with the town but selected by the town, and the Auditor of Public Accounts for the Commonwealth of Virginia or his designee. The director of the Weldon Cooper Center for Public Service shall make an advisory recommendation from its staff as to the member to be selected by the town. The decision of a majority of the arbitration panel shall be binding on the county and the town.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 691 Natural Gas Consumption Tax created.**

An Act to amend and reenact §§ [56-235.8](#), [58.1-400.2](#), [58.1-403](#), [58.1-440.1](#), [58.1-504](#), [58.1-2626](#) as it shall become effective, [58.1-2627.1](#), [58.1-2660](#) as it shall become effective, [58.1-3731](#) and [58.1-3814](#) of the Code of Virginia; to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 29.1, consisting of sections numbered [58.1-2904](#) through [58.1-2907](#); and to repeal the third enactment of Chapter 494 of the 1999 Acts of Assembly, relating to natural gas customers.

[\[S 185\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ [56-235.8](#), [58.1-400.2](#), [58.1-403](#), [58.1-440.1](#), [58.1-504](#), [58.1-2626](#) as it shall become effective, [58.1-2627.1](#), [58.1-2660](#) as it shall become effective, [58.1-3731](#) and [58.1-3814](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 29.1, consisting of sections numbered [58.1-2904](#) through [58.1-2907](#), as follows:

§ [56-235.8](#). Retail supply choice for natural gas customers.

A. Notwithstanding any provision of law to the contrary, each public utility authorized to furnish natural gas service in Virginia (gas utility) is authorized to offer to all of ~~its~~ *the gas utility's* customers not eligible for transportation service under tariffs in effect on the effective date of this section, direct access to gas suppliers (retail supply choice) by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The provisions of this section shall not apply to any retail supply choice pilot program in effect on July 1, 1999. The Commission shall accept such a plan for filing within thirty days of filing if it contains, at a minimum:

1. A schedule for implementing retail supply choice for all of its customers;
2. Tariff revisions, including proposed unbundled rates for firm and interruptible service (which may utilize a cost allocation and rate design formulated to recover the gas utility's nongas fixed costs on a nonvolumetric basis) and terms and conditions of service designed to provide nondiscriminatory open access over its transportation system, comparable to the transportation service provided by the gas utility to itself, to allow competitive suppliers to sell natural gas directly to the gas utility's customers. Any proposed

unbundling rates shall include an explanation of the methodology used to develop the rates and a calculation of revenues, by customer class, thereby produced;

3. ~~A Nonbypassable, competitively neutral mechanism~~ *annual surcharges* for the gas utility to *properly allocate and recover from its firm service customers not eligible for non-pilot transportation service under tariffs in effect on the effective date of this section*, its nonmitigable costs ~~prudently incurred to support its merchant obligation and to~~

~~facilitate~~ *associated with the provision of retail supply choice*, including ~~reasonable prudently incurred~~ contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate and intrastate pipeline and storage capacity contracts, less revenues generated ~~with~~ *by* mitigating such contract obligations, whether by off-system sales, capacity release, pipeline supplier refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating the public on retail supply choice and redesigning its facilities, operations and systems to permit retail supply choice;

4. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice customers and allocate the gas utility's gas costs so that ~~the retail supply choice~~ *one class of customers* ~~are~~ *is* not subsidized by ~~nonretail choice~~ *another class of customers*;

5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity *in a manner that assures that one class of customers is not subsidized by another class of customers, provided that nothing contained herein shall deny the gas utility the right to request Commission approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas to firm service customers on its system, including provisions requiring gas suppliers to accept assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service to its customers*;

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established by the Commission; and

7. Any other requirement established by Commission rule or regulation.

The Commission may, by rule or regulation, impose such additional filing requirements as it deems necessary in the public interest. The Commission may also require a gas utility to continue to serve as a gas supplier to its customers after the gas utility's plan

becomes effective and under such terms and conditions as are necessary to protect the public interest.

B. *After the Commission has accepted a filing as provided in subsection A, the Commission shall review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for public hearing, that the plan would:*

1. Adversely affect the *quality, safety, or reliability* of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;
2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § [56-235.2](#) or that are in excess of levels approved by the Commission under § [56-235.6](#), as the case may be;
3. Adversely affect the gas utility's customers not participating in the retail supply choice plan; ~~or~~
4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class (provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not necessarily constitute unreasonable discrimination); *or*
5. *Not be in the public interest.*

*The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an additional period not to exceed sixty days. The retail supply choice plan shall be deemed approved if the Commission fails to act within 120 days or any extended period ordered by the Commission.* The Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection regardless of whether it has promulgated rules and regulations pursuant to subsection A. The Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not be placed into effect before July 1, 2000.

C. *The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan, which shall comply with subsection A, shall include such other details in the plan as the Commission may require, and does not cause the effects set forth in subsection B, or the Commission may, on its own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements of subsection A and does not cause the effects set forth in subsection B. The Commission may approve any plans under this subsection after notice to all affected parties and an opportunity for hearing.*

~~C.D.~~ Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably

likely to cause, the effects set forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

~~D.E.~~ If, upon application of at least twenty-five percent of retail supply choice customers or of 500 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the marketplace for retail supply choice customer is not reasonably competitive or results in rates unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission renders such a determination upon its own motion, then the Commission may, after notice, and opportunity for hearing, terminate the gas utility's retail supply choice program and provide for an orderly return of the retail choice customers to the gas utility's traditional retail natural gas sales service. In such event, the gas utility shall be given the opportunity to acquire, under reasonable and competitive terms and conditions and within a reasonable time period, such upstream transportation and storage capacity as is necessary for it to provide traditional retail natural gas sales service to former retail supply choice customers.

~~E.F.~~ Licensure of gas suppliers.

1. No person, other than a gas utility, shall engage in the business of selling natural gas to the residential and small commercial customers of a gas utility that has an approved plan implementing retail supply choice unless such person (for the purpose of this section, gas supplier) holds a license issued by the Commission. An application for a gas supplier license must be made to the Commission in writing, be verified by oath or affirmation and be in such form and contain such information as the Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall require a gas supplier to demonstrate that it has the means to provide natural gas to essential human needs customers. A gas supplier license shall be issued to any qualified applicant within forty-five days of the date of filing such application, authorizing in whole or in part the service covered by the application, unless the Commission determines otherwise for good cause shown. A person holding such a license shall not be considered a "public service corporation," "public service company" or a "public utility" and shall not be subject to regulation as such; however, nothing contained herein shall be construed to affect the liability of such a person for any license tax levied pursuant to Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 of Title 58.1. No license issued under this chapter shall be transferred without prior Commission approval ~~as being finding that such transfer is~~ not inconsistent with the public interest. If the Commission determines, after notice and opportunity for public hearing, that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules, regulations or orders, the Commission may *enjoin, fine, or punish any such failure pursuant to the Commission's*

*authority under this statute and under Title 12.1 of the Code of Virginia. The Commission may also suspend or revoke the gas supplier's license or take such other action as is necessary to protect the public interest.*

2. The Commission shall establish rules and regulations for the implementation of this subsection, provided that:

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

b. The Commission's rules and regulations shall permit an affiliate of the gas utility to be licensed as a gas supplier and to participate in the gas utility's retail supply choice program under the same terms and conditions as gas suppliers not affiliated with the gas utility.

3. The Commission shall also have the authority to issue rules and regulations governing the marketing practices of gas suppliers.

~~F.G.~~ Retail customers' private right of action; marketing practices.

1. No gas supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing or marketing gas service.

2. Any person who suffers loss (i) as the result of *fraudulent* marketing practices, including telemarketing practices, engaged in by any gas supplier providing any service made competitive under this section, or of any violation of rules and regulations issued by the Commission pursuant to subdivision ~~E F~~ 3, or (ii) as the result of any violation of subdivision ~~F~~ 1 *of this subsection*, shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater. Notwithstanding any other provisions of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs.

3. The Attorney General, the attorney for the Commonwealth or the attorney for the city, county or town may cause an action to be brought in the appropriate circuit court for relief of violations referenced in subdivision ~~F~~ 2 *of this subsection*.

4. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person or governmental agency initiating an action pursuant to this section may be awarded reasonable attorney's fees and court costs.

5. Any action pursuant to this ~~section~~ *subsection* shall be commenced *by persons other than the Commission* within two years after its accrual. The cause of action shall accrue

as provided in § [8.01-230](#). However, if the Commission initiates proceedings, or any other governmental agency files suit for violations under this section, the time during which such proceeding or governmental suit and all appeals therefrom are pending shall not be counted as any part of the period within which an action under this section shall be brought.

6. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of *this* subsection-F, provided; that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subdivision 1 of this subsection was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

*H. Authorized public utilities shall file with the Commission tariff revisions reflecting the net effect of the elimination of taxes pursuant to subsection B of § [58.1-2904](#) and the addition of state income taxes pursuant to § [58.1-400](#). Such tariffs shall be effective for service rendered on and after January 1, 2001, and shall be filed at least forty-five days prior to the effective date. Such filing shall not constitute a rate increase for the purposes of § [56-235.4](#).*

*I. Consumer education.*

*1. The Commission shall develop a consumer education program designed to provide the following information to retail customers concerning retail supply choice for natural gas customers:*

*a. Opportunities and options in choosing natural gas suppliers;*

*b. Marketing and billing information gas suppliers will be required to furnish retail customers;*

*c. Retail customers' rights and obligations concerning the purchase of natural gas and related services; and*

*d. Such other information as the Commission may deem necessary and appropriate and in the public interest.*

*2. The consumer education program authorized herein may be conducted in conjunction with the program provided for in § [56-592](#).*

*3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § [56-235.8](#) and to enjoin or punish any violations thereof pursuant to its authority under § [56-235.8](#), this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.*

*4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in subsection A, shall enclose the following information in all billing statements for retail natural gas service:*

*a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ [58.1-2626](#), [58.1-2660](#), and [58.1-3731](#) which is included in the customer's bill until such tax is no longer imposed; and*

*b. For all such billing statements, a statement which reads as follows shall be included: "Beginning January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will be replaced by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts tax has always been included in the rate charged for natural gas. Now, this tax is being separately stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent of the amount charged to consumers. The new state and local consumption tax will be charged at an approximate rate of \$0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced, the tax you pay may actually be higher in your locality. This statement is being provided for your information."*

*§ [58.1-400.2](#). Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers.*

*A. Any electric supplier, pipeline distribution company, gas utility, or gas supplier that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of*

the Internal Revenue Code of 1986, as amended, shall be subject to the tax levied pursuant to § [58.1-400](#).

B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § [58.1-400](#) on all modified net income derived from nonmember sales. *Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall also be subject to the provisions under subsection E.*

C. The following words and terms; when used in this section; shall have the following meanings:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing electric service.

"Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant to ~~Article 10 (§ [58.1-400](#) et seq.) of this chapter~~ *this article*.

*"Gas supplier" means any person licensed by the State Corporation Commission to engage in the business of selling natural gas.*

*"Gas utility" has the same meaning as provided in § [56-235.8](#).*

"Members" means those customers of a cooperative who receive allocations of patronage capital from a cooperative.

"Modified net income" means all revenue of a cooperative from the sale of electricity within the Commonwealth with the following subtractions:

1. Revenue attributable to sales of electric power to its members.
2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined by allocating the amount of such expenses between sales of electricity to members and sales of electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric supplier.

"Nonmember" means those customers which are not members.

"Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses determined according to generally accepted accounting principles.

*"Pipeline distribution company" has the same meaning as provided in § [58.1-2600](#).*

D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of this section. This section shall apply to taxable years beginning on and after January 1, 2001.

*E. 1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall be required to*

*file an income tax return as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's taxable year pursuant to § [58.1-440](#) A.*

*2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if the gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting period, and § [58.1-440](#) B and the regulations thereunder.*

§ [58.1-403](#). Additional modifications to determine Virginia taxable income for certain corporations.

In addition to the modifications set forth in § [58.1-402](#) for determining Virginia taxable income for corporations generally, the adjustments set forth in subdivision 1 shall be made to the federal taxable income for savings institutions and as set forth in subdivisions 2 and 3 for railway companies and, as set forth in subdivisions 6 and 7 for telecommunications companies, and as set forth in subdivisions 8 and 9 for gas suppliers, pipeline distribution companies and gas utilities.

1. There shall be added the deduction allowed for bad debts. The percentage which would have been used in determining the bad debt deduction under the Internal Revenue Code of 1954, as in effect immediately prior to the enactment of the Tax Reform Act of 1986 (Public Law 99-514), shall then be applied to federal taxable income as adjusted under the provisions of § [58.1-402](#) and the amount so determined subtracted therefrom.

2. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1978.

3. Where such railway company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1978, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1979, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss carryover in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

4., 5. [Repealed.]

6. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1988.

7. Where such telecommunications company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1988, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1989, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

*8. There shall be added to federal taxable income any amount that was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 2000.*

*9. Where such gas supplier, pipeline distribution company or gas utility would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 2000, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 2001, there shall be added to federal taxable income any amount that was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount that could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.*

§ [58.1-440.1](#). Accounting-deferred taxes.

In the case of a *pipeline distribution company, a gas utility, a gas supplier* or an electric supplier, as defined in § [58.1-400.2](#), that was subject to the tax imposed under § [58.1-2626](#) with respect to its gross receipts received during the year commencing January 1, 2000, and that on or after January 1, 2001, becomes subject to the corporate income tax pursuant to Article 10 (§ [58.1-400](#) et seq.) of this chapter, net income shall be computed by taking into account the following adjustments:

In addition to the deductions for depreciation, amortization, or other cost recovery currently allowed by this Code, there shall be allowed deductions for the amortization of the

Virginia tax basis of assets that are recoverable for financial accounting and/or income tax purposes placed in service prior to the adjustment date. For purposes of this section, (i) "Virginia tax basis" means the aggregate adjusted book basis less the aggregate adjusted tax basis of such assets as recorded on the company's books of accounts as of the last day of the tax year immediately preceding the adjustment date and (ii) "adjustment date" means the first day of the tax year in which such *pipeline distribution company, gas utility, gas supplier or electric supplier* becomes subject to the tax imposed by § [58.1-400.2](#) A. The amortization of the Virginia tax basis shall be computed using the straight-line method over a period of thirty years, beginning on the adjustment date. Gain or loss on the disposition or retirement of any such asset shall be computed using its adjusted federal tax basis, and the amortization of the Virginia tax basis shall continue thereafter without adjustment. The Department of Taxation shall promulgate regulations describing a reasonable method of allocating the Virginia tax basis in the event that a portion of the ~~electric power supplier's~~ *operations of a pipeline distribution company, gas utility, gas supplier or electric supplier* are separated, spun-off, transferred to a separate company or otherwise disaggregated. *For gas suppliers, pipeline distribution companies or gas utilities which are required to file an income tax return for a short taxable year pursuant to subsection E of § [58.1-400.2](#), a portion of the amortized Virginia tax basis will be disallowed based on the proration in computing Virginia taxable income. Such portion will be recovered as a deduction in the first taxable year after which this deduction is no longer applicable.*

*For rate-making and accounting purposes, the State Corporation Commission shall not require a pipeline distribution company or gas utility to amortize these deferred taxes over a period other than the thirty-year period prescribed herein, nor shall the State Corporation Commission require the treatment of accelerated depreciation different from that allowed for federal income taxes.*

§ [58.1-504](#). Failure to pay estimated income tax.

A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § [58.1-15](#), upon the amount of the underpayment (determined under subsection B) for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year or, if no return was filed, ninety percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The fifteenth day of the fourth month following the close of the taxable year.
2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

D. Notwithstanding the provisions of subsections A, B and C, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of twelve months.
2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.
3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:
  - a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,
  - b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,
  - c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and
  - d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this subdivision, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in subdivision D 3; and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in subsection A.

E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

G. *Pipeline distribution companies as defined in § [58.1-2600](#) and gas utilities, gas suppliers and electric suppliers as defined in § [58.1-400.2](#) that become subject to taxation under this chapter and prior thereto paid the annual license tax based on gross receipts, shall make estimated tax payments during the first year, or short taxable year under subsection E of § [58.1-400.2](#), they are so subject, and notwithstanding subsection D, any excesses described in subsection B shall constitute an underpayment for such year.*

§ [58.1-2626](#). (Effective January 1, 2002) Annual state license tax on companies furnishing water, heat, light or power.

A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of gas or steam, except (i) a pipeline transmission company taxed pursuant to § [58.1-2627.1](#) or, (ii) *a pipeline distribution company as defined in § [58.1-2600](#) and a gas utility and a gas supplier as defined in § [58.1-400.2](#), or (iii) an electric supplier as defined in § [58.1-400.2](#)*, shall, for the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an annual license tax equal to two percent of its gross receipts, actually received, from all sources.

B. The state license tax provided in subsection A shall be (i) in lieu of all other state license or franchise taxes on such corporation and (ii) in lieu of any tax upon the shares of stock issued by it.

C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes, motor vehicle fuel taxes, fees required by § [13.1-775.1](#) or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies.

D. Nothing herein contained shall annul or interfere with any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys by such corporations.

§ [58.1-2627.1](#). Taxation of pipeline companies.

~~A. Every pipeline distribution company, as defined in § [58.1-2600](#), shall, for the privilege of doing business within the Commonwealth, pay to the Commission an annual license tax set forth in § [58.1-2626](#) on its gross receipts derived from sales in Virginia. Every pipeline transmission company shall pay to the Department on its allocated and apportioned net taxable income, in lieu of a license tax, the tax levied pursuant to Chapter 3 (§~~

[58.1-300](#) et seq.) (State Income Tax) of this title. There shall be deducted from such allocated and apportioned net income an amount equal to the percentage that gross profit (operating revenues less cost of purchased gas) derived from sales in this Commonwealth for consumption by the purchaser of natural or manufactured gas is of the total gross profit in the Commonwealth of the taxpayer.

B. The annual report of such company required pursuant to § [58.1-2628](#) shall be made to the Department, on forms prepared and furnished by the Department, if the company is a pipeline transmission company or to the Commission if a pipeline distribution company. The Department shall assess the value of the property of each pipeline transmission company and the Commission shall assess the value of the property of each pipeline distribution company. The applicable county, city, town and magisterial district property levies shall attach thereto. The powers and duties granted to the Commission by §§ [58.1-2633](#) B and C and [58.1-2634](#) shall apply mutatis mutandis to the Department.

C. A company liable for the license tax under subsection A shall not be liable for the tax imposed by Chapter 28 (§ [58.1-2814](#) et seq.) of this title.

D. When a company qualifies as both a pipeline transmission company and a pipeline distribution company, it shall for property tax valuation purposes be considered a pipeline distribution company.

§ [58.1-2660](#). (Effective January 1, 2002) Special revenue tax; levy.

In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of § [58.1-2664](#), a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, by means of gas or steam, except for electric suppliers, *gas utilities*, and *gas suppliers* as defined in § [58.1-400.2](#) and *pipeline distribution companies* as defined in § [58.1-2600](#);
2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;
3. Telephone companies whose gross receipts from business done within the Commonwealth exceed \$50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;
4. The Virginia Pilots' Association;
5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § [58.1-2661](#); and

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than forty miles measured one way between their place of work, school or recreation and their place of abode.

*CHAPTER 29.1.*

*NATURAL GAS CONSUMPTION TAX.*

*§ [58.1-2904](#). Imposition of tax.*

*A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ [58.1-3812](#) et seq.) of Chapter 38 of this title, a tax on the consumers of natural gas in the Commonwealth based on volume of gas at standard pressure and temperature in units of 100 cubic feet (CCF) delivered by the pipeline distribution company or gas utility and used per month. Each consumer of natural gas in the Commonwealth shall pay tax on the consumption of all natural gas consumed per month not in excess of 500 CCF at the following rates: (i) state consumption tax rate of \$0.0135 per CCF, (ii) local consumption tax rate of \$0.004 per CCF, and (iii) a special regulatory tax rate of up to \$0.002 per CCF.*

*B. The tax rates set forth in subsection A are in lieu of and replace the state gross receipts tax pursuant to § [58.1-2626](#), the special regulatory revenue tax pursuant to § [58.1-2660](#), and the local license tax pursuant to § [58.1-3731](#) levied on corporations furnishing heat, light or power by means of natural gas.*

*C. The tax of consumers under this section shall not be imposed on consumers served by a gas utility owned or operated by a municipality.*

*D. The tax authorized by this chapter shall not apply to use by divisions or agencies of federal, state and local governments.*

*§ [58.1-2905](#). Collection and remittance of tax.*

*A. A pipeline distribution company or gas utility shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such company, the tax shall constitute a debt of the consumer to the Commonwealth. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the Commonwealth, the pipeline distribution company or gas utility shall notify the Commission of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a pipeline distribution company or gas utility, including the tax imposed by the Commonwealth, the pipeline distribution company or gas utility shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount*

collected between the charge for gas service and the tax and (ii) remit the tax portion to the Commission. After the consumer pays the tax to the pipeline distribution company or gas utility, the taxes shall be deemed to be held in trust by such pipeline distribution company or gas utility until remitted to the Commission.

B. A pipeline distribution company or gas utility shall remit monthly to the Commission the amount of tax paid during the preceding month by the pipeline distribution company's consumers, except for the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the natural gas was consumed and shall be based on such locality's license fee rate which it imposed.

C. The natural gas consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the natural gas consumption tax that related to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the appropriate localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on natural gas sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § [58.1-3731](#). Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. The portion of the natural gas consumption tax relating to the local license tax replaces and precludes localities from imposing a license tax in accordance with § [58.1-3731](#) and the business, professional, occupation and license tax in accordance with Chapter 37 (§ [58.1-3700](#) et seq.) of this title on gas suppliers subsequent to December 31, 2000, except as provided in subsection D.

§ [58.1-2906](#). Natural gas consumption tax relating to the special regulatory tax; notification of changes.

A. The Commission may in the performance of its function and duty in levying the natural gas utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § [58.1-2904](#) as is unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify all pipeline distribution companies and gas utilities collecting the tax on consumers of natural gas of any change in the natural gas consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

§ [58.1-2907](#). Use of natural gas consumption tax relating to special regulatory tax.

The natural gas consumption tax relating to the special regulatory tax paid into the treasury under this chapter shall be deposited into a special fund used only by the

*Commission for the purpose of making appraisals, assessments and collections against natural gas suppliers and public service corporations furnishing heat, light and power by means of natural gas and for the further purposes of the Commission in investigating and inspecting the properties or the services of such natural gas suppliers and public service corporations, and for the supervision and administration of all laws relative to such natural gas suppliers and public service corporations, whenever the same shall be deemed necessary by the Commission.*

§ [58.1-3731](#). Certain public service corporations; rate limitation.

Every county, city or town is hereby authorized to impose a license tax, in addition to any tax levied under Chapter 26 (§ [58.1-2600](#) et seq.) of this title, on (i) telephone and telegraph companies; (ii) water companies; and (iii) heat, light and power companies (except electric suppliers, *gas utilities and gas suppliers* as defined in § [58.1-400.2](#) and *pipeline distribution companies* as defined in § [58.1-2600](#)) at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation. After December 31, 2000, the license tax authorized by this section shall not be imposed on *pipeline distribution companies* as defined in § [58.1-2600](#) or on *gas suppliers, gas utilities* or electric suppliers (as defined in § [58.1-400.2](#)), except as provided in § [58.1-2901](#) D.

§ [58.1-3814](#). Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ [58.1-2600](#) et seq.) of this title, which tax shall not be imposed at a rate in excess of twenty percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of fifteen dollars per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until sixty days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to

impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ [58.1-2600](#) et seq.) of this title, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety agency as defined in § [58.1-3813](#).

Any city with a population of not less than 27,000 and not more than 28,500 may provide an exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4 (§ [58.1-3650](#) et seq.) of Chapter 36 of this title.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to utility sales of products used as motor vehicle fuels.

F. For taxable years beginning on and after January 1, 2001, any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § [58.1-400.2](#) which shall not be imposed at a rate in excess of \$.015 ([1-1/2](#) cent) per kWh billed monthly to consumers of electricity and shall not be applicable to any kilowatt hours billed in excess of 200 kWh per month for residential customers. In any county, city or town that imposes a consumer utility tax immediately prior to January 1, 2001, (i) on residential customers at a higher rate than the maximum rate on residential customers under this section because the rate of consumer utility tax it imposed on July 1, 1972, exceeded the limits specified in subsection A or (ii) on other consumers not subject to the maximum rate set by this section, the service provider shall convert the dollar amount

rate to a kWh rate of tax based on the monthly tax that is being collected immediately prior to January 1, 2001. However, nothing in this section shall be construed to prohibit or limit any county, city or town, after completion of the transition period on January 1, 2004, from imposing a consumer utility tax on nonresidential customers (as converted to a per kWh rate basis) in any amounts authorized by this section immediately prior to July 1, 1999. The service provider shall bill the tax to all users to whom it delivers electricity; and shall remit such tax to the appropriate locality in accordance with § [58.1-2901](#). The provisions of this subsection shall be applicable without the necessity of the locality amending or reenacting its existing ordinance imposing such tax.

Subsection B shall apply to any tax on the consumers of electricity enacted or amended pursuant to this section, except that the notice provided therein shall be given to the registered agent of the service provider that is required to collect the tax.

*G. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § [58.1-2905](#). Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to three dollars per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial*

*maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on non-residential customers up to the amount authorized by subsection A.*

*On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through H of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.*

*G.H. Until the consumer pays the tax to such ~~service provider~~ gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the ~~service provider~~ gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the ~~service provider~~ gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such ~~service provider~~ gas utility or pipeline distribution company until remitted to the localities.*

*I. For purposes of this section:*

*"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.*

*"Gas utility" has the same meaning as provided in § [56-235.8](#).*

*"Pipeline distribution company" has the same meaning as provided in § [58.1-2600](#).*

2. That the amendments to §§ [58.1-3731](#) and [58.1-3814](#) shall take effect on January 1, 2001, and the amendments to §§ [58.1-2626](#) and [58.1-2660](#) as they shall become effective and § [58.1-2627.1](#) shall take effect on January 1, 2002.

3. That the third enactment of Chapter 494 of the 1999 Acts of Assembly is repealed.

## Chapter 152 Town of Altavista; election of council.

An Act to require certain town mayors and council members to be elected at the time of the November general election.

[\[S 580\]](#)

Approved March 23, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Election of mayor and council for certain towns:-*

*A. The qualified voters of each town of the Commonwealth whose 1990 population was over 3,680 but less than 3,700 shall elect a mayor, if provided for by charter, and a council, which shall be the governing body thereof, for the terms provided for by charter. Notwithstanding the provisions of § [24.2-222](#) or any other provision of law, general or special, any election of mayor or council members of such a town shall take place on the Tuesday after the first Monday in November of an even-numbered year, and the persons so elected shall enter upon the duties of their offices on the January 1 succeeding their election and remain in office until their successors have qualified.*

*B. In any such town:*

*1. Any mayor or council member elected in 1996 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 2000 and, notwithstanding any charter provision to the contrary, shall take office on the January 1 following his election.*

*2. Any mayor or council member elected in 1998 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 2002 and, notwithstanding any charter provision to the contrary, shall take office on January 1 following his election.*

*C. Notwithstanding the provisions of § [24.2-503](#), candidates for town mayor or council subject to the provisions of this act shall file their written statements of financial interests and qualification pursuant to §§ [24.2-501](#) and [24.2-502](#) not later than 7:30 p.m. on the second Tuesday in June.*

*D. Any county voting precinct established pursuant to § [24.2-307](#) that includes residents of such a town shall be wholly contained within the boundaries of the town. No such voting precinct shall include both such a town or portion thereof and county territory located outside the boundaries of the town.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 238 Chesapeake Bay Bridge and Tunnel Commission.**

An Act to amend and reenact § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954, relating to the Chesapeake Bay Bridge and Tunnel Commission.

[\[H 1300\]](#)

Approved April 2, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954 is amended and reenacted as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.--A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. The Commission shall consist of the following eleven members: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach. The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed.

Any member of the Commission appointed or reappointed on or after July 1, 1998, shall be appointed by the Governor, subject to confirmation by each house of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly.

The Commission shall select a chairman annually from its membership. Within thirty days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as vice-chairman. The Commission shall employ a secretary and treasurer (who

may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, *clerk, or deputy clerk* of any court of record; *judge of a district court in this State the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission*. No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the Commonwealth Transportation Board. Six members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this act. The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected, subject to the approval of the Commonwealth Transportation Board.

## **Chapter 263 Lease of Smith Mountain Lake.**

An Act authorizing the Department of Conservation and Recreation to lease certain property on Smith Mountain Lake in Franklin County.

[\[H 1095\]](#)

Approved April 2, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease to Franklin County, upon terms and conditions the Department deems proper, with the approval of the Governor and the Attorney General, a certain parcel of land located on Smith Mountain Lake in Franklin County containing thirty-seven acres, more or less. The lease shall require that the property be developed, maintained, and kept open for public recreational use; if this condition is not satisfied, the lease shall terminate and control of the property shall revert to the Department of Conservation and Recreation.*

*§ 2. Notwithstanding the lease term limits under § [10.1-109](#), the initial term of this lease shall be for a term of thirty years and may be renewed for three additional periods of*

*similar length. All lease renewals shall require the approval of the Governor and the Attorney General.*

## **Chapter 370 Transportation Commissioner; eminent domain.**

An Act relating to the exercise of the power of eminent domain by the Commonwealth Transportation Commissioner; designation of interstate highway interchanges by the Commonwealth Transportation Board.

[\[S 110\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any provision of Article 7 (§ [33.1-89](#) et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia, the Commonwealth Transportation Commissioner shall not exercise the power of eminent domain to acquire any portion of the property of an existing commercial establishment or any interest therein if the sole purpose of such acquisition is to control or limit access to commercial establishments located within 300 feet of any segment of the interstate highway system, except to the extent necessary to meet minimum federal requirements in order for the Commonwealth to be eligible to receive federal funds for interstate highway construction.*

*At those interstate highway interchange locations where the value of land, buildings, and improvements within 300 feet of an interstate ramp terminal has a fair market value of \$1 million or more, the Commonwealth Transportation Board shall designate those interchanges as "urban," provided such designation does not conflict with any federal statute or regulation.*

2. That the provisions of this act shall become effective on July 1, 2001, unless, prior to that date, the Virginia Department of Transportation receives notice from the federal government that the provisions of this act will reduce or jeopardize federal funding of interstate highway construction in the Commonwealth.

## **Chapter 371 Property exchange; Pocahontas State Park.**

An Act authorizing the Department of Conservation and Recreation to convey certain property in Pocahontas State Park in Chesterfield County and to accept certain property in exchange.

[\[S 161\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1

*. § 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Woodland Pond, upon such terms as the Department deems proper with the approval of the National Park Service, Governor and Attorney General, a certain parcel of real property containing approximately one acre on the south-east boundary of Pocahontas State Park in Chesterfield County.*

*§ 2. In consideration for such conveyance, the Department is authorized to accept on behalf of the Commonwealth a conveyance from Woodland Pond of real property, located on the aforesaid boundary of approximately equal acreage and of equal or greater economic and recreational value.*

*§ 3. The exchange of real property shall be for due consideration as determined by the Department and Woodland Pond.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

## **Chapter 372 Noxious weeds; Purple Loosestrife.**

An Act to declare the Purple Loosestrife a noxious weed.

[\[S 162\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the plant taxon Purple Loosestrife (*Lythrum salicaria* and *Lythrum virgatum* and all of their hybrids and cultivars) is hereby declared a noxious weed. The Board of Agriculture and Consumer Services and the Commissioner of the Department of Agriculture and Consumer Services shall perform those duties and powers provided for under the provisions of §§ 3.1-296.12 and 3.1-296.16 through 3.1-296.21 of the Noxious Weed Law (§ 3.1-296.11 et. seq.) to regulate Purple Loosestrife as a noxious weed.*

## **Chapter 377 Vietnam Veterans Memorial Bridge & Powhatan Beaty Memorial Bridge.**

An Act to designate the Interstate Route 895 (Pocahontas Parkway) bridge over the James River the "Vietnam Veterans Memorial Bridge" and to designate the Virginia Route 5 bridge over Interstate Route 895 (Pocahontas Parkway) the "Powhatan Beaty Memorial Bridge."

[\[S 288\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate Route 895 (Pocahontas Parkway) bridge over the James River is hereby designated the "Vietnam Veterans Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

*§ 2. The Virginia Route 5 bridge over Interstate Route 895 (Pocahontas Parkway) is hereby designated the "Powhatan Beaty Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

## **Chapter 386 Rappahannock River Basin Commission.**

An Act to repeal the second enactment of Chapter 553 of the 1998 Acts of Assembly, relating to the Rappahannock River Basin Commission.

[\[S 459\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 553 of the 1998 Acts of Assembly is repealed.

## **Chapter 411 Conveyance of Waller Road Depot.**

An Act to authorize the conveyance of a portion of the Waller Road Depot of the Virginia National Guard.

[\[H 621\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding any law to the contrary, the Department of Military Affairs is hereby authorized to convey to Linwood S. Raikes, upon terms and conditions the Department of Military Affairs deems proper, with the approval of the Governor and in a form approved by the Attorney General, a fifty-foot portion of the parcel of real property known as the Waller Road Depot held by the Department of Military Affairs, consisting of 0.38 acres, more or less, located on Waller Road in Henrico County. The proceeds from the conveyance of this real property shall be paid directly to the Department of Military Affairs.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute and deliver such deed or other documents as may be necessary to accomplish the conveyance.*

## **Chapter 416 Open-space lands in Virginia Beach.**

An Act to allow a city with a population of 350,000 or more to sell an interest in open-space land without substituting another interest in land, provided that certain conditions are met.

[\[H 738\]](#)

Approved April 4, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That a city with a population of 350,000 or more that adopted an agricultural purchase of development rights program prior to July 1, 1998, may, at the request of the owner of the fee of any land protected by an open-space easement or other interest in land purchased by the city, sell such interest to the fee owner for the current full market value of the interest without complying with the requirement of subsection A of § [10.1-1704](#) of the Code of Virginia of substituting other real property for the land converted or diverted, if (i) the conversion or diversion is determined by the city council to be essential*

*to the orderly development and growth of the locality and in accordance with the city's current comprehensive plan, (ii) the city determines by ordinance that the open-space land converted or diverted is no longer needed for open-space purposes and that substitution of other real property is not feasible, and (iii) no state or federal funds were used in connection with the city's acquisition of such interest.*

## **Chapter 488 Kathleen K. Seefeldt Parkway.**

An Act to designate a certain highway in Prince William County the "Kathleen K. Seefeldt Parkway."

[\[S 362\]](#)

Approved April 5, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Prince William County Parkway (Virginia Route 3000) is hereby designated the "Kathleen K. Seefeldt Parkway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 501 Individual income tax withholding.**

An Act to amend and reenact the second enactment of Chapter 289 of the 1989 Acts of Assembly, as amended and reenacted by Chapter 888 of the 1990 Acts of Assembly, and Chapters 385 and 401 of the 1992 Acts of Assembly, and Chapters 139 and 147 of the 1994 Acts of Assembly, and Chapters 375 and 458 of the 1996 Acts of Assembly, and Chapter 464 of the 1998 Acts of Assembly, relating to withholding of Virginia individual income tax.

[\[S 46\]](#)

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 289 of the 1989 Acts of Assembly, as amended and reenacted by Chapter 888 of the 1990 Acts of Assembly, and Chapters 385 and 401 of the 1992 Acts of Assembly, and Chapters 139 and 147 of the 1994 Acts

of Assembly, and Chapters 375 and 458 of the 1996 Acts of Assembly, and Chapter 464 of the 1998 Acts of Assembly, is amended and reenacted as follows:

2. That the provisions of this act shall become effective on January 1, ~~2004~~ 2003.

### **Chapter 457 Blue Ridge Hospital; conveyance.**

An Act to authorize conveyance of certain property held by the Rector and Visitors of the University of Virginia.

[\[H 1539\]](#)

Approved April 4, 2000

Whereas, the Rector and Visitors of the University of Virginia hold certain real property constituting approximately 142 acres and several buildings located at the southeast intersection of Route 20 and Interstate 64, and 17 acres located at the northwest intersection of Route 20 and Interstate 64; and

Whereas, the property is commonly known as the Blue Ridge Hospital Property (the Property); and

Whereas, the Property was conveyed to the Rector and Visitors of the University of Virginia by the Virginia Department of Health in 1978 and was used until recently as a mental health and rehabilitation hospital; and

Whereas, all medical activities have ceased at the Property, several buildings are vacant and dilapidated, and the only remaining use of the Property is a day care facility that will be closed by June 30, 2000; and

Whereas, the Property has significant economic value due to its location adjacent to Interstate 64; and

Whereas, the Property has significant historical and environmental value due to its location at the base of Monticello Mountain, the home of Thomas Jefferson; and

Whereas, the University of Virginia wishes to convey the Property to its affiliated real estate foundation, the University of Virginia Real Estate Foundation, in order to develop the Property into a research park that will support the educational and research missions of the University of Virginia while preserving the natural beauty of Monticello Mountain; and

Whereas, the Thomas Jefferson Memorial Foundation wishes to lease approximately 32 acres of the Property in order to construct and operate a visitors center for tourists visiting Monticello; and

Whereas, disposition of the Property and plans for its future development and use should be addressed in a manner that respects the Property's unique historical and environmental significance, and considers its economic potential for the University of Virginia and the Commonwealth; and

Whereas, disposition of the Property should not be subject to the Commonwealth's surplus property rules and regulations; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Notwithstanding any law to the contrary, the Governor may authorize conveyance of the property held by the Rector and Visitors of the University of Virginia known as Blue Ridge Hospital on such terms and conditions approved by the Governor and in a manner that respects the historical and environmental significance of Monticello Mountain.*

## **Chapter 518 Health insurance for faculty employees.**

An Act to designate eligibility of certain employees in the Virginia Sickness and Disability Program.

[\[H 143\]](#)

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any employee eligible to participate in the Virginia Sickness and Disability Program under the provisions of subsection C of § [51.1-1103](#) between the periods of January 1, 1999, and December 31, 1999, who moved directly from a nonfaculty position within the same institution, shall not be deemed an eligible employee, if the employee requests such in writing.*

## **Chapter 672 Illegal signs and other illegal advertising on highways.**

An Act to repeal the second enactment of Chapter 835 of the Acts of Assembly of 1998 and the second enactment of Chapter 195 of the Acts of Assembly of 1999, relating to agreements between the Commonwealth Transportation Commissioner and local authorities for removal of certain signs and other advertising.

[\[H 642\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 835 of the Acts of Assembly of 1998 and the second enactment of Chapter 195 of the Acts of Assembly of 1999 are repealed.

### **Chapter 673 Local volunteers for property and zoning inspections.**

An Act to allow volunteer property maintenance and zoning inspectors in certain cities.

[\[H 736\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any city with a population greater than 390,000 may provide that the agency charged with the enforcement of local ordinances adopted pursuant to §§ [15.2-901](#), [15.2-903](#), [15.2-904](#), [15.2-905](#) and [15.2-908](#) or city charter relating to the external maintenance of property or local zoning ordinances relating to motor vehicles or trailers as defined in § [46.2-100](#) may utilize supervised trained and qualified volunteers to issue notices of noncompliance with such ordinances. Such volunteers shall have any and all immunity provided to an employee of the locality doing an identical job.*

### **Chapter 572 DMHMRSAS conveyance of property.**

An Act authorizing the Department of Mental Health, Mental Retardation and Substance Abuse Services to convey certain rights-of-way to Amherst County.

[\[S 778\]](#)

Approved April 7, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding any law to the contrary, the Department of Mental Health, Mental Retardation and Substance Abuse Services is hereby authorized to (i) enter into an annual agreement with Amherst County, upon terms and conditions the Department deems proper and until such time as the property is sold or converted to another use by*

*the Commonwealth, with the approval of the Governor and in a form approved by the Attorney General, which agreement shall provide for the use by Amherst County of a fifty-foot right-of-way on property owned by the Department of Mental Health, Mental Retardation and Substance Abuse Services and referred to as tax map parcel 160-A-69, beginning at the intersection with State Route 334 and the private road leading to the county sewer pump station and following said private road in a southeasterly direction to its point of intersection with property described in Deed Book 486, page 364, and (ii) convey a one hundred-foot right-of-way running along the James River, beginning at the northwest corner of the property owned by the Department of Mental Health, Mental Retardation and Substance Abuse Services and referred to as tax map parcel 160-A-69, and continuing southeasterly to the end of said property.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute and deliver such deed, agreement or other documents as may be necessary to accomplish the requirements of § 1 of this act.*

## **Chapter 679 Eula W. Radcliffe Memorial Highway.**

An Act to designate U.S. Route 60 in James City County and York County the “Eula W. Radcliffe Memorial Highway.”

[\[H 1087\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The entire length of U.S. Route 60 in James City County and York County, from the Williamsburg City line to the Newport News City line, is hereby designated the “Eula W. Radcliffe Memorial Highway.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 705 Chesapeake Bay Bridge and Tunnel Commission.**

An Act to amend and reenact § 6, as amended, of Chapter 693 of the 1954 Acts of Assembly, relating to the Chesapeake Bay Bridge and Tunnel Commission.

[\[S 689\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 6, as amended, of Chapter 693 of the 1954 Acts of Assembly is amended and reenacted as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.--A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. The Commission shall consist of the following eleven members: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach. The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed.

Any member of the Commission appointed or reappointed on or after July 1, 1998, shall be appointed by the Governor, subject to confirmation by each house of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly.

The Commission shall select a chairman annually from its membership. Within thirty days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as vice-chairman. The Commission shall employ a secretary and treasurer (who may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, *clerk, or deputy clerk* of any court of record; *judge of a district court in this State the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission.* No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the Commonwealth Transportation Board. Six

members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this act. The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected, subject to the approval of the Commonwealth Transportation Board.

## **Chapter 751 Building Code; farm buildings and structures.**

An Act to amend and reenact § [36-99](#) of the Code of Virginia and to repeal the second enactment of Chapter 755 of the Acts of Assembly of 1998, relating to the Uniform Statewide Building Code; farm buildings and structures.

[\[H 1088\]](#)

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1. That § [36-99](#) of the Code of Virginia is amended and reenacted as follows:

§ [36-99](#). Provisions of Code.

A. The Building Code shall prescribe building regulations to be complied with in the construction of buildings and structures, and the equipment therein as defined in § [36-97](#), and shall prescribe regulations to insure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, *except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § [35.1-1](#) and licensed as*

*such by the Board of Health pursuant to Chapter 2 (§ [35.1-11](#) et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.*

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

2. That the second enactment of Chapter 755 of the Acts of Assembly of 1998 is repealed.

## **Chapter 859 Certificate of public need.**

An Act to authorize the amendment of certain certificate of public need.

[\[S 596\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain certificate of public need authorized.*

*A. Notwithstanding the provisions of subdivision 10 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue, until June 30, 2003, to admit persons, other than residents of the cooperative units, to its nursing facility beds when such facility (i) is operated by an association described in § [55-458](#), (ii) was created in connection with a real estate cooperative, (iii) offers its residents a level of nursing services consistent with the definition of continuing care in Chapter 49 (§ [38.2-4900](#)) of Title 38.2, and (iv) was issued a certificate of public need prior to October 3, 1995.-*

*B. Further, notwithstanding the provisions of § [32.1-102.3:2](#), as currently in effect, or the provisions of any Request For Applications (RFAs) issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#) designating any planning district as authorized to*

*respond to any RFA, the Commissioner of Health shall authorize and accept an application and may issue a certificate of public need for an increase of sixty beds in which nursing facility or extended care services are to be provided when (i) such application is filed by an existing sixty-bed facility located in Giles County within Planning District 4, (ii) such existing nursing facility currently has a high occupancy rate, (iii) such existing nursing facility is located in a highly rural jurisdiction with mountainous terrain, and (iv) the new nursing facility beds are to be dedicated to the provisions of skilled nursing, hospice services and care of persons with Alzheimer's and related diseases.*

## **Chapter 966 Diagrammatic signs on I-95.**

An Act to require the Virginia Department of Transportation to install certain diagrammatic signs.

[\[H 872\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Department of Transportation shall forthwith remove the following directional signs at the following locations and replace them with diagrammatic signs as indicated: (i) on Interstate Route 95 southbound at exit 84, the sign directing traffic to Miami and (ii) on Interstate Route 95 northbound at exit 46, the sign directing traffic to New York. As the result of these changes, all long-distance travelers on Interstate Route 95 will be shown diagrammatically their options of traveling either around the Richmond-Petersburg metropolitan area on Interstate Route 295 or directly through the area on Interstate Route 95.*

## **Chapter 868 Certificate of public need.**

An Act to authorize the amendment of certain certificate of public need.

[\[H 739\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision 10 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds for three years from the date of issuance of a certificate of occupancy for the second mid-rise residential unit building associated with such facility or June 30, 2003, whichever is the first to occur, when such facility (i) is operated by an association described in § [55-458](#); (ii) was created in connection with a real estate cooperative; (iii) offers its residents a level of nursing services consistent with the definition of continuing care in Chapter 49 (§ [38.2-4900](#)) of Title 38.2; and (iv) was issued a certificate of public need prior to October 3, 1995.-*

## **Chapter 886 Primary schedule in 2001.**

An Act to authorize the State Board of Elections to reschedule the June 12, 2001, primary for certain offices.

[\[H 1536\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The provisions of this act shall apply to the November 6, 2001, elections for members of the House of Delegates of Virginia, for constitutional officers, for members of county governing bodies, and for members of county school boards.*

*§ 2. The State Board of Elections shall be authorized to reschedule the June 12, 2001, primary date for these offices to any Tuesday after June 12, 2001, and not later than September 11, 2001, if it appears that the necessary 2001 reapportionment or redistricting will not be completed, and preclearance from the appropriate United States authority under § 5 of the United States Voting Rights Act of 1965 will not be received, in time for those primaries to be held on June 12, 2001.*

*§ 3. The new primary date set by the State Board of Elections shall not be less than thirty days after the Board votes, in open meeting, to set such new date. The State Board of Elections may vote, no later than May 12, 2001, to postpone the June 12, 2001, primary for these offices without deciding a new date. Any meeting called for the purpose of*

*postponing the primary date or setting a new primary date may not be called with less than seven days' notice to the public and the interested parties. The State Board of Elections shall, at the same time that it sets the new primary date, approve a revised schedule of filing dates for such primary and specify which previously filed documents shall continue to be acceptable despite their referencing the June 12, 2001, primary date.*

*§ 4. If the primary is held later than August 1, 2001, ballots for the November 2001 election shall be printed on or before Friday, October 5, 2001, or as soon thereafter as practicable, notwithstanding § [24.2-612](#).*

2. That the provisions of this act shall expire on January 1, 2002.

## **Chapter 1024 Civil commitment of sexually violent predators.**

An Act to amend and reenact the third enactments of Chapters 946 and 985 of the Acts of Assembly of 1999, relating to civil commitment of sexually violent predators.

[\[S 261\]](#)

Approved April 19, 2000

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 946 of the Acts of Assembly of 1999 is amended and reenacted as follows:

3. That the effective date of this act is ~~January~~ July 1, 2001.

2. That the third enactment of Chapter 985 of the Acts of Assembly of 1999 is amended and reenacted as follows:

3. That the effective date of this act is ~~January~~ July 1, 2001.

## **Chapter 1062 Town of Irvington; council elections.**

An Act to provide for four-year council terms and staggered elections for the Town of Irvington.

[\[H 1535\]](#)

Approved April 19, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any contrary provision of law, general or special, the town council*

*of any town with a population between 450 and 550 that is located in a county with a population between 10,700 and 10,900 shall consist of six council members and a mayor, all elected for terms of four years. In order to transition to staggered terms, beginning with the town elections to be held in May 2000, the mayor and the three candidates for council receiving the highest number of votes shall be elected for terms of four years. The three candidates for council receiving the next highest number of votes in the May 2000 election shall be elected for terms of two years. Thereafter, the mayor and all six members of council shall serve for terms of four years.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 904 Examination of certain infant testing.**

An Act to direct the Commissioner of Health to examine the efficacy of certain testing.

[\[S 699\]](#)

Approved April 9, 2000

Whereas, congenital adrenal hyperplasia (CAH) is a developmental disorder that is difficult to diagnose; and

Whereas, the symptoms of congenital adrenal hyperplasia are gradual, but can rapidly result in the death of a newborn child; and

Whereas, death can be prevented by replacing the substance that the children do not produce; and

Whereas, there is a simple test for this condition that could result in saving the lives of many children; and

Whereas, however, some issues relating to false positive test results among premature infants must be resolved; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Commissioner directed to examine the efficacy of certain testing.*

*The Commissioner of Health shall examine the issues, costs, and benefits of testing newborns for congenital adrenal hyperplasia (CAH) and shall make recommendations to the 2001 General Assembly concerning the requiring of such testing of infants. In conducting this examination, the Commissioner shall consult with pediatricians and other experts and the parents of affected children.*

## Chapter 908 Primary schedule in 2001.

An Act to authorize the State Board of Elections to reschedule the June 12, 2001, primary for certain offices.

[\[S 773\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The provisions of this act shall apply to the November 6, 2001, elections for members of the House of Delegates of Virginia, for constitutional officers, for members of county governing bodies, and for members of county school boards.*

*§ 2. The State Board of Elections shall be authorized to reschedule the June 12, 2001, primary date for these offices to any Tuesday after June 12, 2001, and not later than September 11, 2001, if it appears that the necessary 2001 reapportionment or redistricting will not be completed, and preclearance from the appropriate United States authority under § 5 of the United States Voting Rights Act of 1965 will not be received, in time for those primaries to be held on June 12, 2001.*

*§ 3. The new primary date set by the State Board of Elections shall not be less than thirty days after the Board votes, in open meeting, to set such new date. The State Board of Elections may vote, no later than May 12, 2001, to postpone the June 12, 2001, primary for these offices without deciding a new date. Any meeting called for the purpose of postponing the primary date or setting a new primary date may not be called with less than seven-days notice to the public and the interested parties. The State Board of Elections shall, at the same time that it sets the new primary date, approve a revised schedule of filing dates for such primary and specify which previously filed documents shall continue to be acceptable despite their referencing the June 12, 2001, primary date.*

*§ 4. If the primary is held later than August 1, 2001, ballots for the November 2001 election shall be printed on or before Friday, October 5, 2001, or as soon thereafter as practicable, notwithstanding [§ 24.2-612](#).*

2. That the provisions of this act shall expire on January 1, 2002.

## **Chapter 909 Meetings of board of visitors of the University of Virginia.**

An Act to amend and reenact the second enactment of Chapter 777 of the Acts of Assembly of 1998, relating to meetings of the board of visitors of the University of Virginia.

[\[H 26\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 777 of the Acts of Assembly of 1998 is amended and reenacted as follows:
2. That the provisions of this act shall expire on July 1, ~~2000~~ 2002. From July 1, 1998, to July 1, ~~2000~~ 2002, the Board of Visitors of the University of Virginia shall record the date and name of each board or committee meeting held pursuant to this chapter and, for each meeting, record the name of each board member who participates by video or telephone. The Board of Visitors also shall record any complaints about telephonic or video participation at meetings expressed by board members, members of the public, or members of the media. No later than January 1, ~~2000~~ 2002, the Board shall provide the Secretary of Education and the General Assembly a written report containing the information required to be recorded as well as a narrative summary of the positive and negative experiences of employing telephonic and video meetings.

## **Chapter 910 Freedom of Information Act (FOIA); electronic communication meetings.**

An Act to amend and reenact §§ 1, 13, 14 and 15 of the first enactment and to amend and reenact the third enactment of Chapter 704 of the 1999 Acts of Assembly, relating to the Freedom of Information Act; electronic communication meetings.

[\[H 54\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 13, 14 and 15 of the first enactment of Chapter 704 of the 1999 Acts of Assembly are amended and reenacted as follows:

§ 1. That, ~~in addition to~~ *in lieu of* the provisions of § 2.1-343.1, (i) any public body, as defined in § 2.1-341, (a) in the legislative branch of state government or (b) responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to § 2.1-51.46, or (ii) the State Board for Community Colleges established in § [23-215](#), shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 13. By ~~October 15, 2000~~ *April 15, 2001*, public bodies in the legislative branch of state government which conduct electronic communication meetings pursuant to this act shall file with the Joint Rules Committee, as defined in § [51.1-124.3](#), a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 14. By ~~October 15, 2000~~ *April 15, 2001*, public bodies responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to § 2.1-51.46, which conduct electronic communication meetings pursuant to this act shall file with the Secretary of Commerce and Trade or the Secretary of Technology, respectively, a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 15. By ~~October 15, 2000~~ *April 15, 2001*, the State Board for Community Colleges established in § [23-215](#) shall file with the Secretary of Education a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

2. That the third enactment of Chapter 704 of the 1999 Acts of the Assembly is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2000~~ *2002*.

## Chapter 912 Certificate of public need.

An Act to authorize the amendment of certain certificate of public need.

[\[H 326\]](#)

Approved April 9, 2000

Whereas, the Commonwealth had a moratorium on new nursing home or extended care facilities for an extended period in the 1980s and 1990s; and

Whereas, a number of exceptions to this moratorium were approved for application submission by the General Assembly; and

Whereas, as a condition of some application submission exceptions, the law required restrictions on admissions of Medicaid recipients and, in the case of continuing care providers, of private pay patients; and

Whereas, in continuing care communities, the early contract holders are almost always admitted to ambulatory environments; and

Whereas, in modern times, many senior citizens are in good physical condition and health; therefore, the contract holders frequently do not need nursing home care until many years after entering the continuing care community; and

Whereas, prior to filling the nursing home with contract holders, the operation of nursing home units in continuing care communities may only be feasible if other private pay patients may be admitted to the nursing home; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision 6 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 for an increase in beds in which nursing facility or extended care services are provided to allow such continuing care provider to continue, until the continuing care contract holders constitute ninety percent of the occupancy for such facility or July 1, 2004, whichever is the first to occur, to admit patients, other than continuing care contract holders, with whom the facility has an agreement with the individual responsible for the patient for private payment of the costs upon the following conditions being met: (i) the continuing care community is established for the care of retired military personnel and*

*their families and (ii) the facility's bond requires that the nursing home unit maintain a ninety percent occupancy rate.-*

## **Chapter 940 Speed limits in residential districts in Falls Church City.**

An Act to amend and reenact Chapter 865 of the Acts of Assembly of 1999, relating to authority of certain localities to adopt ordinances prohibiting speeding in residence districts; penalty.

[\[S 107\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That Chapter 865 of the Acts of Assembly of 1999 is amended and reenacted as follows:

§ 1. The governing body of any town with a population between 14,000 and 15,000 may by ordinance (i) prohibit the operation of a motor vehicle at a speed of twenty miles ~~an~~per hour or more in excess of the applicable maximum speed limit in a residence district and (ii) provide that any person who violates the prohibition shall be subject to a mandatory civil penalty of \$100, not subject to suspension.

§ 2. *The governing body of any city with a population between 9,000 and 11,000 may by ordinance (i) prohibit the operation of a motor vehicle at a speed of fifteen miles per hour or more in excess of the applicable maximum speed limit in a residence district, as defined in § [46.2-100](#) of the Code of Virginia, when indicated by appropriately placed signs displaying the maximum speed limit and the penalty for violations and (ii) provide that any person who violates the prohibition shall be subject to a civil penalty of \$100, in addition to other penalty provided by law.*

## **Chapter 957 Speed limits in residential districts in Falls Church City.**

An Act to amend and reenact Chapter 865 of the Acts of Assembly of 1999, relating to the authority of certain localities to adopt ordinances prohibiting speeding in residence districts; penalty.

[\[H 379\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That Chapter 865 of the Acts of Assembly of 1999 is amended and reenacted as follows:

§ 1. The governing body of any town with a population between 14,000 and 15,000 may by ordinance (i) prohibit the operation of a motor vehicle at a speed of twenty miles ~~an~~*per* hour or more in excess of the applicable maximum speed limit in a residence district and (ii) provide that any person who violates the prohibition shall be subject to a mandatory civil penalty of \$100, not subject to suspension.

§ 2. *The governing body of any city with a population between 9,000 and 11,000 may by ordinance (i) prohibit the operation of a motor vehicle at a speed of fifteen miles per hour or more in excess of the applicable maximum speed limit in a residence district, as defined in § [46.2-100](#) of the Code of Virginia, when indicated by appropriately placed signs displaying the maximum speed limit and the penalty for violations, and (ii) provide that any person who violates the prohibition shall be subject to a civil penalty of \$100, in addition to other penalty provided by law.*

## **Chapter 983 Freedom of Information Act (FOIA); electronic communication meetings.**

An Act to amend and reenact §§ 1, 13, 14 and 15 of the first enactment and to amend and reenact the third enactment of Chapter 704 of the 1999 Acts of Assembly, relating to the Freedom of Information Act; electronic communication meetings.

[\[S 242\]](#)

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 13, 14 and 15 of the first enactment of Chapter 704 of the 1999 Acts of Assembly are amended and reenacted as follows:

§ 1. That, in ~~addition to~~ *lieu of* the provisions of § 2.1-343.1, (i) any public body, as defined in § 2.1-341, (a) in the legislative branch of state government or (b) responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to ~~Executive Order Nine~~

(1998), as amended by Executive Order Thirty-Three (1998) § 2.1-51.46, or (ii) the State Board for Community Colleges established in § [23-215](#), shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 13. By ~~October 15, 2000~~ *April 15, 2001*, public bodies in the legislative branch of state government which conduct electronic communication meetings pursuant to this act shall file with the Joint Rules Committee, as defined in § [51.1-124.3](#), a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 14. By ~~October 15, 2000~~ *April 15, 2001*, public bodies responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § 2.1-51.40 or the Secretary of Technology pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty-Three (1998) § 2.1-51.46, which conduct electronic communication meetings pursuant to this act shall file with the Secretary of Commerce and Trade or the Secretary of Technology, respectively, a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 15. By ~~October 15, 2000~~ *April 15, 2001*, the State Board for Community Colleges established in § [23-215](#) shall file with the Secretary of Education a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

2. That the third enactment of Chapter 704 of the 1999 Acts of the Assembly is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2000~~2002.

## **Chapter 1033 Indoor air quality task force.**

An Act to amend and reenact § 1 of Chapter 557 of the Acts of Assembly of 1999, relating to indoor air quality task force.

[\[S 682\]](#)

Approved April 19, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 557 of the Acts of Assembly of 1999 is amended and reenacted as follows:

§ 1. Indoor air quality task force established; members; duties; report.

A. The Department of Housing and Community Development shall establish a task force to identify existing guidelines and standards for indoor air quality and Uniform Statewide Building Code requirements for heating, air conditioning, and ventilation systems for schools. The task force shall consist of ~~twelve~~ *sixteen* members as follows: ~~two~~ *four* members of the House of Delegates *to be appointed by the Speaker of the House, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates*, and three citizens, one each representing the Virginia Association of School Boards, the Virginia Association of Counties, and the Virginia Education Association, to be appointed by the Speaker of the House; ~~one member~~ *two members* of the Senate and two citizens, one each representing the Virginia Education Association and the Virginia Chamber of Commerce, to be appointed by the Senate Committee on Privileges and Elections; and *one school administrator*, one licensed architect or engineer actively engaged in the practice of school design and construction and one representative each of the Departments of Housing and Community Development, Education, and Health, to be appointed by the Governor.

B. The task force shall develop recommendations regarding indoor air quality in public schools and shall report such recommendations to the House Committees on Education and on Appropriations, and the Senate Committees on Education and Health and on Finance by December 1, ~~1999~~ *2000*.

# Uncodified Acts of Assembly - 2001

## **Chapter 88 ABC; amphitheater mixed beverage license.**

An Act to repeal the second enactments of Chapters 1036 and 1051 of the Acts of Assembly of 2000, relating to annual mixed beverage amphitheater licenses.

[\[S 970\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1. That the second enactments of Chapters 1036 and 1051 of the Acts of Assembly of 2000 are repealed.

## **Chapter 96 ABC; amphitheater mixed beverage license.**

An Act to repeal the second enactments of Chapters 1036 and 1051 of the Acts of Assembly of 2000, relating to annual mixed beverage amphitheater licenses.

[\[H 1701\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1. That the second enactments of Chapters 1036 and 1051 of the Acts of Assembly of 2000 are repealed.

## **Chapter 139 Terry L. Griffith Memorial Highway.**

An Act to designate the U.S. Route 460 bypass in the Town of Christiansburg the "Terry L. Griffith Memorial Highway."

[\[H 1743\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The U.S. Route 460 bypass in the Town of Christiansburg is hereby designated the*

*“Terry L. Griffith Memorial Highway.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 146 Everett H. Hogge Memorial Highway.**

An Act to designate the entire length of Harpersville Road in the City of Newport News between U.S. Route 60 and U.S. Route 17 the “Everett H. Hogge Memorial Highway.”

[\[H 1923\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The entire length of Harpersville Road in the City of Newport News between U.S. Route 60 and U.S. Route 17 is hereby designated the “Everett H. Hogge Memorial Highway.” The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 152 Private detectives.**

An Act to repeal Chapter 738 of the 1970 Acts of Assembly, authorizing certain counties having a population of more than 5,000 persons per square mile to regulate private detectives through a licensing procedure.

[\[H 2104\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1. That Chapter 738 of the 1970 Acts of Assembly is repealed.

## **Chapter 154 Beryl R. Newman Memorial Highway.**

An Act to designate that portion of Virginia Route 227 between the Town of Urbanna and Cooks Corner in Middlesex County the “Beryl R. Newman Memorial Highway.”

[\[H 2159\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 227 between the Town of Urbanna and Cooks Corner in Middlesex County is hereby designated the "Beryl R. Newman Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 155 Beryl R. Newman Memorial Bridge.**

An Act to designate the Virginia Route 227 bridge over Urbanna Creek in Middlesex County the "Beryl R. Newman Memorial Bridge."

[\[H 2160\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 227 bridge over Urbanna Creek in Middlesex County is hereby designated the "Beryl R. Newman Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

## **Chapter 159 Andrew Lewis Memorial Highway.**

An Act to designate one portion of Interstate Route 81 the "John Lewis Memorial Highway" and another portion of Interstate Route 81 the "Andrew Lewis Memorial Highway."

[\[H 2406\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Interstate Route 81 within the boundaries of Augusta County is hereby designated the "John Lewis Memorial Highway"; that portion of Interstate Route 81 within the boundaries of Rockbridge County, Botetourt County, Roanoke County, and the City of Salem is hereby designated the "Andrew Lewis Memorial Highway." The*

*Department of Transportation shall place and maintain appropriate markers indicating these designations. These designations shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 577 Commissions; repeal of inactive groups.**

An Act to amend and reenact §§ 2.1-1.7, 2.1-33, 2.1-51.15, 9-6.23, and 9-6.25:1 of the Code of Virginia, to repeal Chapter 11.2 (§§ 9-95.5 and 9-95.6) of Title 9, Chapter 30 (§§ 9-267 through 9-273) of Title 9, Chapter 32.1 (§ 9-291.1) of Title 9, Chapter 43 (§§ 9-334 and 9-335) of Title 9, and Chapter 12 (§§ [30-90](#) through [30-93](#)) of Title 30 of the Code of Virginia and to repeal § 1 of Chapter 577 of the 1999 Acts of Assembly, as amended by Chapter 1033 of the 2000 Acts of Assembly, relating to the repeal of certain inactive commissions, councils, and task forces.

[\[S 1365\]](#)

Approved March 24, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.7, 2.1-33, 2.1-51.15, 9-6.23, and 9-6.25:1 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-1.7. State councils.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

Adult Education and Literacy, Virginia Advisory Council for

Aging, Commonwealth Council on

Agricultural Council, Virginia

Apprenticeship Council

Blue Ridge Regional Education and Training Council

Child Day-Care Council

Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion

Coastal Land Management Advisory Council, Virginia

Commonwealth Competition Council

Commonwealth's Attorneys' Services Council

Developmental Disabilities Planning Council, Virginia

Disability Services Council

Equal Employment Opportunity Council, Virginia

Housing for the Disabled, Interagency Coordinating Council on  
Human Rights, Council on  
Human Services Information and Referral Advisory Council  
Indians, Council on  
Interagency Coordinating Council, Virginia  
Job Training Coordinating Council, Governor's  
Land Evaluation Advisory Council  
Maternal and Child Health Council  
~~Military Advisory Council, Virginia~~  
Needs of Handicapped Persons, Overall Advisory Council on the  
~~Prevention, Virginia Council on Coordinating~~  
Public Records Advisory Council, State  
Rate-setting for Children's Facilities, Interdepartmental Council on  
Revenue Estimates, Advisory Council on  
Specialized Transportation Council  
State Health Benefits Advisory Council  
Status of Women, Council on the  
Substance Abuse Services Council  
Virginia Business-Education Partnership Program, Advisory Council on the  
Virginia Recycling Markets Development Council  
Workforce Council, Virginia.

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Higher Education, State Council of  
Independent Living Council, Statewide  
Rehabilitation Advisory Council, Statewide  
Rehabilitation Advisory Council for the Blind, Statewide  
Transplant Council, Virginia.

§ 2.1-33. Further exceptions.

Section 2.1-30 shall not be construed:

1. To prevent members of Congress from acting as visitors of the University of Virginia or the Virginia Military Institute, or from holding offices in the militia;
2. To exclude from offices under the state, city or town government or offices under any county, a person to whom a pension has been granted by the United States or who receives retirement compensation in any manner from the United States, or any person receiving or entitled to receive benefits under the Federal Old-Age and Survivors' Insurance System or under the Federal Railroad Retirement Act;

3. To exclude from such office or post, officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty;
4. To prevent United States commissioners or United States census enumerators, supervisors, or the clerks under the supervisor of the United States census, or fourth-class or third-class postmasters, or United States caretakers of the National Guard of Virginia, from acting as notaries, school board selection commission members, or supervisors, or from holding any district office under the government of any county, or the office of councilman of any town or city in this Commonwealth;
5. To prevent any United States rural mail carrier, or star route mail carrier from being appointed and acting as notary public or holding any county or district office;
6. To prevent any civilian employee of the United States government from being appointed and acting as notary public;
7. To prevent any United States commissioners or United States park commissioners from holding the office of commissioner in chancery, bail commissioner, jury commissioner, commissioner of accounts, assistant commissioner of accounts, substitute or assistant civil justice, or assistant judge of a municipal court of any city or assistant judge of a juvenile and domestic relations district court of any city, or judge of any county court or juvenile and domestic relations district court of any county, or the municipal court or court of limited jurisdiction, by whatever name designated, of any incorporated town;
8. To prevent any person employed by, or holding office or a post of profit, trust or emolument, civil, legislative, executive or judicial, under the government of the United States, from being a member of the militia or holding office therein, or from being a member or director of any board, council, commission or institution of the Commonwealth who serves without compensation except one who serves on a per diem compensation basis;
9. To prevent foremen, quartermen, leading men, artisans, clerks or laborers, employed in any navy yard or naval reservation in Virginia from holding any office under the government of any city, town or county in this Commonwealth;
10. To prevent any United States government clerk from holding any office under the government of any town or city; or from being appointed as special policemen for a county by the circuit court or judge thereof as provided for in § 15.1-144;
11. To prevent any person holding an office under the United States government from holding a position under the management and control of the State Board of Health;
12. To prevent any state federal director of this Commonwealth in the employment service of the United States Department of Labor from holding the office of Commissioner of Labor of this Commonwealth;

13. To prevent clerks and employees of the federal government engaged in the departmental service in Washington from acting as school trustees;
14. To prevent any person, who is otherwise eligible, holding any office or post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of the United States, or who is in the employment of such government or receives from it in any way any emolument whatever from serving as a member of the governing body or school board of any county, city or town, or as a member of any public body who is appointed by such governing body or school board, or as an appointive officer or employee of any county, city or town or the school board thereof;
15. To prevent game management agents of the United States Fish and Wildlife Service or United States deputy game wardens from acting as special game wardens;
16. To prevent any appointive state or local official or employee from serving, with compensation, on an advisory board of the federal government;
17. To prevent any state or local law-enforcement officer from serving as a United States law-enforcement officer; however, this provision shall not be construed to authorize any law-enforcement officer to receive double compensation;
18. To prevent any United States law-enforcement officer from serving as a state or local law-enforcement officer when requested by the chief law-enforcement officer of the subject jurisdiction; however, this provision shall not be construed to authorize any law-enforcement officer to receive double compensation;
19. To prevent any attorney for the Commonwealth or assistant attorney for the Commonwealth from serving as or performing the duties of a special assistant United States attorney or assistant United States attorney; however, this provision shall not be construed to authorize any attorney for the Commonwealth or assistant attorney for the Commonwealth to receive double compensation;
20. To prevent any assistant United States attorney from serving as or performing the duties of an assistant attorney for the Commonwealth when requested by the attorney for the Commonwealth of the subject jurisdiction; however, this provision shall not be construed to authorize any assistant United States attorney to receive double compensation;
21. To prevent any elected state or local official from serving, without compensation, on an advisory board of the federal government; however, this provision shall not be construed to prohibit reimbursement for actual expenses;
22. To prevent sheriffs' deputies from patrolling federal lands pursuant to contracts between federal agencies and local sheriffs; *or*

23. To prevent state judicial officers from performing acts or functions with respect to United States criminal proceedings when such acts or functions are authorized by federal law to be performed by state judicial officers; ~~or~~

~~24. To prevent any member of the Armed Forces of the United States from serving on the Virginia Military Advisory Council.~~

§ 2.1-51.15. Agencies for which responsible.

The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Visually Handicapped, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department for Rights of Virginians With Disabilities, Department of Medical Assistance Services, the Council on Indians, Governor's Employment and Training Department, Child Day-Care Council, *and the Virginia Department for the Deaf and Hard-of-Hearing*, ~~and the Virginia Council on Coordinating Prevention~~. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another secretary.

§ 9-6.23. Prohibition against service by legislators on boards, commissions, and councils within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § [23-231.3](#); to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.1-750; to members of the Advisory Council on the

Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided for in § [53.1-45.3](#); to members appointed to the Virginia Veterans Cemetery Board pursuant to § 2.1-739.2; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § [23-231.15](#); to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 9-343; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.1-563.41; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § [22.1-346.1](#); ~~to members of the Council on Coordinating Prevention, who shall be appointed as provided for in § 9-268;~~ to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; ~~or~~ to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9-168; or to members of the Virginia Workforce Council, who shall be appointed as provided for in § 9-329.1.

§ 9-6.25:1. Advisory boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

Advisory Board for the Department for the Deaf and Hard-of-Hearing  
Advisory Board on Athletic Training  
Advisory Board on Child Abuse and Neglect  
Advisory Board on Medicare and Medicaid  
Advisory Board of Occupational Therapy  
Advisory Board on Rehabilitation Providers  
Advisory Board on Respiratory Care to the Board of Medicine  
Advisory Board on Teacher Education and Licensure  
Advisory Commission on the Virginia Schools for the Deaf and the Blind  
Advisory Council on Revenue Estimates  
Advisory Council on the Virginia Business-Education Partnership Program  
Appomattox State Scenic River Advisory Board  
Aquaculture Advisory Board  
Art and Architectural Review Board  
Board for the Visually Handicapped, Virginia  
Board of Directors, Virginia Truck and Ornaments Research Station  
Board of Forestry

Board of Military Affairs  
Board of Rehabilitative Services  
Board of Transportation Safety  
Board of Trustees of the Family and Children's Trust Fund  
Board of Visitors, Gunston Hall Plantation  
Board on Veterans' Affairs  
Catoctin Creek State Scenic River Advisory Board  
Cave Board  
Charity Food Assistance Advisory Board  
Chickahominy State Scenic River Advisory Board  
Chief Information Officer Advisory Board  
Clinch Scenic River Advisory Board  
Coal Surface Mining Reclamation Fund Advisory Board  
Coastal Land Management Advisory Council, Virginia  
Commonwealth Competition Council  
Commonwealth Council on Aging  
Council on Indians  
Council on the Status of Women  
Debt Capacity Advisory Committee  
Emergency Medical Services Advisory Board  
Falls of the James Committee  
Goose Creek Scenic River Advisory Board  
Governor's Mined Land Reclamation Advisory Committee  
Hemophilia Advisory Board  
Human Services Information and Referral Advisory Council  
Interagency Coordinating Council on Housing for the Disabled  
Interdepartmental Board of the State Department of Minority Business Enterprise  
Litter Control and Recycling Fund Advisory Board  
Local Advisory Board to the Blue Ridge Community College  
Local Advisory Board to the Central Virginia Community College  
Local Advisory Board to the Dabney S. Lancaster Community College  
Local Advisory Board to the Danville Community College  
Local Advisory Board to the Eastern Shore Community College  
Local Advisory Board to the Germanna Community College  
Local Advisory Board to the J. Sargeant Reynolds Community College  
Local Advisory Board to the John Tyler Community College  
Local Advisory Board to the Lord Fairfax Community College

Local Advisory Board to the Mountain Empire Community College  
Local Advisory Board to the New River Community College  
Local Advisory Board to the Northern Virginia Community College  
Local Advisory Board to the Patrick Henry Community College  
Local Advisory Board to the Paul D. Camp Community College  
Local Advisory Board to the Piedmont Virginia Community College  
Local Advisory Board to the Rappahannock Community College  
Local Advisory Board to the Southside Virginia Community College  
Local Advisory Board to the Southwest Virginia Community College  
Local Advisory Board to the Thomas Nelson Community College  
Local Advisory Board to the Tidewater Community College  
Local Advisory Board to the Virginia Highlands Community College  
Local Advisory Board to the Virginia Western Community College  
Local Advisory Board to the Wytheville Community College  
Maritime Incident Response Advisory Board  
Maternal and Child Health Council  
Medical Advisory Board, Department of Motor Vehicles  
Migrant and Seasonal Farmworkers Board  
North Meherrin State Scenic River Advisory Board  
Nottoway State Scenic River Advisory Board  
Personnel Advisory Board  
Plant Pollination Advisory Board  
Private College Advisory Board  
Private Security Services Advisory Board  
Psychiatric Advisory Board  
Public Guardian and Conservator Advisory Board  
Radiation Advisory Board  
Rappahannock Scenic River Advisory Board  
Recreational Fishing Advisory Board, Virginia  
Reforestation Board  
Rockfish State Scenic River Advisory Board  
Shenandoah State Scenic River Advisory Board  
Small Business Advisory Board  
Small Business Environmental Compliance Advisory Board  
St. Mary's Scenic River Advisory Committee  
State Advisory Board on Air Pollution  
State Building Code Technical Review Board

State Health Benefits Advisory Council  
State Land Evaluation Advisory Council  
State Networking Users Advisory Board  
State Public Records Advisory Council  
Statewide Independent Living Council  
Statewide Rehabilitation Advisory Council  
Statewide Rehabilitation Advisory Council for the Blind  
Staunton Scenic River Advisory Committee  
Substance Abuse Services Council  
Telecommunications Relay Service Advisory Board  
Virginia-Israel Advisory Board  
Virginia Advisory Commission on Intergovernmental Relations  
Virginia Advisory Council for Adult Education and Literacy  
Virginia Coal Mine Safety Board  
Virginia Coal Research and Development Advisory Board  
Virginia Commission for the Arts  
Virginia Correctional Enterprises Advisory Board  
~~Virginia Council on Coordinating Prevention~~  
Virginia Equal Employment Opportunity Council  
Virginia Geographic Information Network Advisory Board  
Virginia Interagency Coordinating Council  
~~Virginia Military Advisory Council~~  
Virginia Public Buildings Board  
Virginia Recycling Markets Development Council  
Virginia Transplant Council  
Virginia Veterans Cemetery Board  
Virginia Water Resources Research Center, Statewide Advisory Board  
Virginia Winegrowers Advisory Board.

2. That Chapter 11.2 (§§ 9-95.5 and 9-95.6) of Title 9, Chapter 30 (§§ 9-267 through 9-273) of Title 9, Chapter 32.1 (§ 9-291.1) of Title 9, Chapter 43 (§§ 9-334 and 9-335) of Title 9, and Chapter 12 (§§ [30-90](#) through [30-93](#)) of Title 30 of the Code of Virginia are repealed and § 1 of Chapter 557 of the 1999 Acts of Assembly, as amended by Chapter 1033 of the 2000 Acts of Assembly, is repealed.

## **Chapter 176 Dr. Ralph Stanley Highway.**

An Act to designate Virginia Route 652 between Toms Creek *in Wise County and Nora in Dickenson County* the "Dr. Ralph Stanley Highway."

[\[H 2524\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 652 between Toms Creek in Wise County and Nora in Dickenson County is hereby designated the "Dr. Ralph Stanley Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 177 Henderson Road in Fairfax County.**

An Act to designate Henderson Road in Fairfax County a Virginia byway.

[\[H 2559\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, Henderson Road in Fairfax County is hereby designated a Virginia byway.*

## **Chapter 178 Senator M. M. Long Highway.**

An Act to designate U.S. Alternate Route 58 between the community of Hansonville and the City of Norton the "Senator M. M. Long Highway."

[\[H 2599\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. U.S. Alternate Route 58 between the community of Hansonville and the City of*

*Norton is hereby designated the "Senator M. M. Long Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 179 Hampton Veterans' Highway.**

An Act to designate a certain highway in the City of Hampton the "Hampton Veterans' Highway."

[\[H 2688\]](#)

Approved March 13, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The entire length of Hampton Roads Center Parkway in the City of Hampton, including any future extensions thereof, is hereby designated the "Hampton Veterans' Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 207 Gordon C. Willis, Sr., Smart Road.**

An Act to designate the "Gordon C. Willis, Sr., Smart Road."

[\[H 2656\]](#)

Approved March 14, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The approximately 5.7-mile highway constructed by the Virginia Department of Transportation and the Transportation Institute of Virginia Polytechnic Institute and State University, generally referred to as Virginia's "smart road", which will, in the future, provide a direct highway link between the Town of Blacksburg and Interstate Route 81 is hereby designated the "Gordon C. Willis, Sr., Smart Road." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 220 Court records; privacy of those electronically filed.**

An Act to provide privacy of electronically filed court records.

[\[H 2043\]](#)

Approved March 14, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Supreme Court shall promulgate rules to restrict remote electronic access to records, in any cases filed electronically in the electronic filing pilot projects, to judges, court personnel, any persons assisting such persons in the administration of the electronic filing system, counsel of record, and parties appearing pro se.-*

2. That the provisions of this act shall expire on July 1, 2002.

## **Chapter 230 Virginia State Bar; eligibility to sit for bar examination.**

An Act to designate certain applicants eligible to sit for the Virginia bar examination.

[\[H 2718\]](#)

Approved March 14, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. An applicant who (i) has successfully completed all requirements for a degree from the Potomac School of Law in the District of Columbia, (ii) was enrolled and attended classes at the Potomac School of Law during or prior to the 1977 fall term, (iii) was a resident of Virginia at the time of application for admission to the Potomac School of Law, (iv) has passed the bar examination in another state or territory of the United States or the District of Columbia, which examination included the national multistate examination, and (v) has been admitted to practice before the court of last resort in any other state or territory of the United States or the District of Columbia is eligible to sit for the Virginia bar examination.*

## **Chapter 212 Guidelines to Electronic Trans. Act's implications on st. agencies.**

An Act to direct the Attorney General of Virginia, in consultation with the Secretary of Technology, to develop guidelines to the Uniform Electronic Transactions Act's implications on state agencies.

[\[S 1019\]](#)

Approved March 14, 2001

Whereas, the Uniform Electronic Transactions Act (§ [59.1-479](#) et seq.) provides that electronic records and signatures are legally enforceable, but if other provisions of the Code of Virginia require specific nonelectronic methods of delivery, then the other provisions govern; and

Whereas, each agency undertaking actions to implement electronic transactions must resolve differences between agency-specific provisions of the Code of Virginia and the Uniform Electronic Transactions Act; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Attorney General of Virginia, in consultation with the Secretary of Technology, shall develop and provide guidelines to the Uniform Electronic Transactions Act (§ [59.1-479](#) et seq.) and its implications on the state agencies' electronic transactions implementations. Upon receiving such guidelines, each agency shall examine provisions of the Code of Virginia specific to that agency and identify if any changes are necessary to facilitate the agency's implementation of electronic transactions and report such findings to the Secretary of Technology.*

## **Chapter 247 Property conveyance; Mary B. Stratton Estate.**

An Act authorizing the Department of Conservation and Recreation to acquire certain property in Chesterfield County and to lease said property to Chesterfield County.

[\[H 2858\]](#)

Approved March 14, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant*

to § [10.1-104](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to acquire, with the approval of the Governor and in a form approved by the Attorney General, that certain parcel of real property and appurtenances thereto, consisting of 154 acres, plus or minus, known as the Mary B. Stratton Estate property fronting on State Route 643, in Chesterfield County.

§ 2. Further, in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease to Chesterfield County upon terms and conditions the Department deems proper, with approval of the Governor, the above described property. The lease shall require that the property be maintained and open to public recreational use. If this condition is not met, the lease shall terminate and control shall revert to the Department of Conservation and Recreation.

§ 3. Notwithstanding the lease term limits under § [10.1-109](#), the initial term of this lease shall be for a term of thirty years and may be renewed for three additional periods of similar length. All lease renewals shall require approval of the Governor.

## **Chapter 325 Importation and breeding of dogs.**

An Act to repeal Chapter 167 of the 1938 Acts of Assembly, as amended by Chapter 156 of the 1964 Acts of Assembly, relating to the importation or breeding of certain dogs in certain counties.

[\[H 2105\]](#)

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1. That Chapter 167 of the 1938 Acts of Assembly, as amended by Chapter 156 of the 1964 Acts of Assembly, is repealed.

## **Chapter 352 Modification of sentencing guidelines for methamphetamine.**

An Act relating to modification of sentencing guidelines for methamphetamine.

[\[S 1178\]](#)

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Criminal Sentencing Commission shall develop discretionary felony sentencing guidelines midpoint and range recommendations for convictions related to possessing, manufacturing, selling, giving, distributing, or possessing with the intent to distribute, methamphetamine. The Commission shall conduct an assessment of the quantity of methamphetamine seized in such cases with regard to the recently amended provisions of subsection H of § [18.2-248](#) and shall complete the assessment on or before December 1, 2001.-*

## **Chapter 375 Modification of sentencing guidelines for methamphetamine.**

An Act relating to modification of sentencing guidelines for methamphetamine.

[\[H 2356\]](#)

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Criminal Sentencing Commission shall develop discretionary felony sentencing guidelines midpoint and range recommendations for convictions related to possessing, manufacturing, selling, giving, distributing, or possessing with the intent to distribute, methamphetamine. The Commission shall conduct an assessment of the quantity of methamphetamine seized in such cases with regard to the recently amended provisions of subsection H of § [18.2-248](#) and shall complete the assessment on or before December 1, 2001.-*

## **Chapter 331 Capital Region Airport Commission.**

An Act to amend and reenact §§ 7 and 15 of Chapter 380 of the Acts of Assembly of 1980, relating to the organization of and issuance of bonds by the Capital Regional Airport Commission.

[\[H 2479\]](#)

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 7 and 15 of Chapter 380 of the Acts of Assembly of 1980 are amended and reenacted as follows:

§ 7. Organization.--A majority of the Commissioners in office shall constitute a quorum. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

The Commissioners shall annually elect from their membership a chairman and a vice-chairman and, from their membership or not as they desire, a secretary and a treasurer or a secretary-treasurer, and such other officers as they may deem appropriate. The Commissioners shall appoint an ~~executive director~~ *airport administrator*, who shall not be a Commissioner, ~~who shall exercise such~~ *and whose title shall be president and chief executive officer. He shall administer, manage, and direct the affairs and activities of the Commission in accordance with the policies and under the control and direction of the Commissioners. He shall, in addition, have such other powers and perform such other* duties as may be delegated to him by the Commissioners, including powers and duties involving the exercise of discretion.

The Commissioners may make and from time to time amend and repeal bylaws, not inconsistent with this act, governing the manner in which the Commission's business may be transacted and in which the power granted to it may be enjoyed. The Commissioners may appoint such committees as they may deem advisable and fix the duties and responsibilities of such committees.

§ 15. Authority to issue bonds.--The Commission shall have power and is hereby authorized to issue bonds from time to time in its discretion for any of its purposes, including the payment of all or any part of the cost of any of its facilities and the refunding of any bonds previously issued by it.

The Commission shall not issue bonds unless and until the maximum amount of such issue and the general purposes thereof have been approved by the governing body of each participating political subdivision. Subject to the foregoing, bonds may be issued under this act notwithstanding any debt or other limitation prescribed in any statute and without obtaining the consent of any city, town, or county government or any commission, board, bureau, or agency of the Commonwealth or of any of the foregoing, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this act.

The Commission may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable as to principal and interest: (i) from its revenues generally; (ii) exclusively from the income and revenues of a particular

project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, as such participating political subdivision, or other entities may be authorized to make under general law or by a pledge of any income or revenues of the Commission, or where such mortgage has been approved by the participating political subdivisions, a mortgage of any facilities of the Commission. Bonds of the Commission shall be authorized by resolution and may be issued in one or more series, ~~shall~~ *may* be dated, ~~shall~~ *may* mature at such time or times not exceeding forty years from their date or dates ~~and shall bear interest at such rate or rates as may be determined by the Commission, and may be made redeemable before maturity at the option of the Commission,~~ *may be subject to redemption or repurchase at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds, and may contain such other provisions, all as determined by the Commission before their issuance or in such manner as the Commission may provide. The bonds may bear interest at such rate or rates as may be determined by the Commission or in such manner as the Commission may provide, including the determination by reference to indices or formulas or by agents designated by the Commission under guidelines established by it.* The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the conversion and reconversion into coupon bonds of any bonds registered as to both principal and interest and vice versa.

The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Commission. Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery.

## **Chapter 382 Woodrow Wilson Memorial Bridge.**

An Act to limit use of Virginia revenues in connection with repairs and/or replacement of the Woodrow Wilson Memorial Bridge over the Potomac River.

[\[H 2563\]](#)

Approved March 19, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§1. Notwithstanding any contrary provision of law, no Virginia revenues shall be allocated, released, dedicated, or spent, in whole or in part, for any purpose whatsoever in connection with repairs to and/or replacement of the Woodrow Wilson Memorial Bridge over the Potomac River if or so long as such repair or replacement project is subject to a project labor agreement.*

## **Chapter 604 No-truck route; US 17.**

An Act to prohibit use of portions of U.S. Route 17 in Fauquier County by certain vehicles; penalty.

[\[S 822\]](#)

Approved March 24, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Operation of any tractor truck/semitrailer combination on U.S. Route 17 in Fauquier County between U.S. Route 50 and Interstate Route 66, except for local deliveries, pickups, or transactions to be made within twenty-five miles of such route, is prohibited. Violation of this section shall constitute a traffic infraction punishable as provided in [§ 46.2-113](#) of the Code of Virginia.*

2. That the provisions of this act shall expire on June 30, 2002.

## **Chapter 682 Retirement System benefits.**

An Act to increase the retirement allowance of persons who retired from the Virginia Retirement System or the State Police Officers' Retirement System within certain time periods.

[\[S 945\]](#)

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any person who retired (i) from the Virginia Retirement System or the State Police Officers' Retirement System (or any predecessor retirement system for such retirement systems) before January 1, 1980, and (ii) with at least fifteen years of creditable service under such retirement systems before January 1, 1980, or any contingent annuitant or survivor of such person, as provided under the provisions of Title 51.1, shall have his monthly retirement allowance increased, beginning July 1, 2001, by the sum of (a) four dollars multiplied by the member's number of years of creditable service under such retirement systems at the time of retirement prior to January 1, 1980, plus (b) four dollars multiplied by the number of years between such member's retirement date prior to January 1, 1980, and 12:00 p.m. on December 31, 1979. For purposes of this computation, any portion of a year shall be rounded to a full year. All post-retirement supplements applicable after July 1, 2001, pursuant to Title 51.1 shall be based on such increased retirement allowance. Such increase shall not be applicable to the additional allowance provided under subsection B of § [51.1-206](#) or such additional allowance as it is incorporated in § [51.1-138](#).*

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## **Chapter 734 Joseph V. Gartlan, Jr., Parkway.**

An Act to designate a portion of the Franconia-Springfield Parkway in Fairfax County the "Joseph V. Gartlan, Jr., Parkway."

[\[S 291\]](#)

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Franconia-Springfield Parkway in Fairfax County from Rolling Road to Beulah Street is hereby designated the "Joseph V. Gartlan, Jr., Parkway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

2. That no signage indicating "Joseph V. Gartlan, Jr., Parkway" shall be placed west of Interstate 95 until the completion of the Fairfax County Parkway.

## **Chapter 805 Professional teacher's examination.**

An Act relating to licensure of teachers.

[\[H 2123\]](#)

Approved April 4, 2001

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Board to review Praxis I assessment passing scores.*

*The Board of Education shall review the passing scores it has previously established for the professional teacher's examination pursuant to subdivision B 1 of § [22.1-298](#), and may make such modifications to the passing scores as the Board may deem appropriate, which may include, but need not be limited to, composite scoring.*

# Uncodified Acts of Assembly - 2002

## Chapter 1 Business Corporations Act; domestication and conversion, fees.

An Act to amend and reenact the second and third enactments of Chapter 545 of the Acts of Assembly of 2001, relating to corporations; domestication and conversion; fees.

[\[S 254\]](#)

Approved January 30, 2002

Be it enacted by the General Assembly of Virginia:

1. That the second and third enactments of Chapter 545 of the Acts of Assembly of 2001 are amended and reenacted as follows:
2. That § [13.1-617](#) of the Code of Virginia is repealed effective ~~July~~*February* 1, 2002.
3. That the provisions of this act shall become effective on ~~July~~*February* 1, 2002; *however, no domestication pursuant to Article 12.1 (§ [13.1-722.2](#) et seq.) of Chapter 9 of Title 13.1 shall occur prior to July 1, 2002, and no conversion pursuant to Article 12.2 (§ [13.1-722.8](#) et seq.) of Chapter 9 of Title 13.1 shall occur prior to July 1, 2002, unless the converting entity is (i) a domestic corporation incorporated before July 1, 1970, and (ii) the corporation is authorized to issue 5,000 shares or more.*
2. That an emergency exists and this act is in force from its passage.

## Chapter 58 Wills and estates; presumption of death due to September 11, 2001.

An Act relating to certain presumption of death exception for persons disappearing as a result of the September 2001 terrorist attacks; emergency.

[\[S 575\]](#)

Approved February 28, 2002

Be it enacted by the General Assembly of Virginia:

1.  
*§ 1. Presumption of death exception.*

*A. Notwithstanding the provisions of § 64.1-105 of the Code of Virginia, any person (i) who has been documented to have been in that portion of the Pentagon damaged by the terrorist attack of September 11, 2001, or on American Airlines Flight 77 on September 11, 2001, when it was flown into the Pentagon; (ii) who has disappeared as a result of this terrorist attack and has not been heard from in three or more months since such terrorist attack; and (iii) whose body has not been found or whose remains have not been identified through scientific testing shall be presumed dead in any instance or cause in which his death shall be a question. The provisions of Chapter 5 (§ 64.1-105 et seq.) of Title 64.1 shall apply to such person, his alleged heirs, devisees, legatees, and next of kin.*

*B. Upon petition to the Circuit Court of Arlington County by any heir, devisee, legatee, or next of kin or executor or administrator of such person's estate, the court, upon good cause shown, may find that such person is deceased and issue an order of the court declaring that such person is deceased.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 87 Eastern Virginia Medical School; name change.**

An Act to amend and reenact §§ 1 through 19, as amended, of Chapter 471 of the Acts of Assembly of 1964, and to amend such chapter by adding sections numbered 8.2 and 8.3, and to amend and reenact §§ [2.2-3106](#), [2.2-3705](#), [2.2-3711](#), [2.2-4343](#), [2.2-4345](#), [22.1-209.2](#), [23-14](#), [32.1-122.6](#), [32.1-279](#), and [54.1-2961](#) of the Code of Virginia, relating to Eastern Virginia Medical School; emergency.

[\[H 19\]](#)

Approved March 4, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 through 19, as amended, of Chapter 471 of the Acts of Assembly of 1964 are amended and reenacted, and that such chapter is amended by adding sections numbered 8.2 and 8.3, and that §§ [2.2-3106](#), [2.2-3705](#), [2.2-3711](#), [2.2-4343](#), [2.2-4345](#), [22.1-209.2](#), [23-14](#), [32.1-122.6](#), [32.1-279](#), and [54.1-2961](#) of the Code of Virginia are amended and reenacted as follows:

§ 1. There is hereby created a public body politic and corporate *and a political subdivision of the Commonwealth* to be known as the "~~Medical College of Hampton Roads~~*Eastern Virginia Medical School*" hereinafter referred to as "the Medical College

*School,*" with such public and corporate powers as are hereinafter set forth. The Medical-~~College~~*School* may sue and be sued, plead and be impleaded, and shall have the power and authority to contract and be contracted with and to exercise and discharge all the powers and duties imposed and conferred upon it, as hereinafter provided.

§ 2. The Medical-~~College~~ *School* shall be governed by a Board of Visitors (the "Board") composed of seventeen members, six of whom shall be appointed by the *Eastern Virginia Medical-~~College~~ of Hampton Roads School* Foundation and eleven of whom shall be appointed by their respective city councils as follows: one member for the City of Chesapeake, one member for the City of Hampton, one member for the City of Portsmouth, one member for the City of Suffolk, one member for the City of Newport News, two members for the City of Virginia Beach, and four members for the City of Norfolk. Appointments by the *Eastern Virginia Medical-~~College~~ of Hampton Roads School* Foundation (the "Foundation") shall represent the broad involvement of the Medical-~~College~~*School* in the Commonwealth at large. All appointments shall be for terms of three years, ~~except that~~ *commencing on the first day of July of the appointment year.* *However,* appointments to fill vacancies shall be made by the Foundation and each council, as the case may be, *to commence on appropriate dates* for the unexpired terms. No person shall be eligible to serve for more than two successive full three-year terms, ~~but;~~ *however,* after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which *the member was* appointed to fill a vacancy, or after one year following the expiration of a second full three-year term, two additional three-year terms may be served by a member, if appointed.

Members shall receive no salaries but shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties. Each member shall continue to hold office until his successor has been appointed and qualified.

The Foundation and each city council shall have the right to remove any member appointed by them, for malfeasance or misfeasance, ~~incompetency~~*incompetence*, or gross neglect of duty.

Members shall take an appropriate oath of office before the clerk of the circuit court of the municipality ~~representing them~~ *that they represent or the clerk of an appropriate circuit court,* and ~~same~~ *the oaths* shall be filed with ~~their respective city~~*the relevant* clerks. Members appointed by the Foundation shall take an appropriate oath of office before the clerk of the Norfolk Circuit Court, ~~and same~~ *which* shall be filed with the city clerk of Norfolk. Members of the Board shall elect, on an annual basis, one of their number as rector and another as vice-rector and shall also elect a secretary and treasurer and such assistant

secretaries and treasurers as the Board may authorize for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer.

The Board shall appoint a President, who shall be the chief executive officer, with such duties as may be prescribed by the Board ~~and it~~. *The Board shall also appoint a dean, a provost, such vice presidents, and other administrative and academic officers as the Board may authorize, and such professors, teachers, staff members, and agents as they deem proper; The Board may prescribe their the duties; of such staff and faculty, and provide for the employment of other personnel as may be necessary; and. The Board shall generally direct the affairs of the Medical College School.*

The Board shall make such rules, regulations and bylaws for its own government and procedures as it shall determine; *The Board may generally, in respect to the government and management of the Medical College School, make adopt such rules and regulations as it may deem expedient, which are not contrary to law; and. The Board shall meet at least six times each year and may hold such special meetings as it deems necessary. The rector or any three members may call special meetings of the Board. The Board may appoint an executive committee composed of at least three and no more than five members for the transaction of business in the recess of the Board.*

The Board shall have the right to confer degrees, including honorary degrees, *consistent with the approval authority of the State Council of Higher Education pursuant to Title 23 of the Code of Virginia.*

§ 3. *The Medical College School shall be deemed to be a public instrumentality, having its primary offices and facilities located in the Hampton Roads area of the Commonwealth of Virginia. The Medical School shall have the power to exercise and the purpose of exercising public and essential governmental functions to provide for the public health, welfare, convenience, knowledge, benefit, and prosperity of the residents of the Commonwealth of Virginia and such other persons who might as may be served by the Medical College School, and to provide medical education and improved. In the exercise of such power and purpose, the Medical School shall deliver and support the delivery of high quality medical and health care and related services to such residents and persons regardless of their ability to pay, by providing educational opportunities and conducting and facilitating research and. Further, the Medical School is hereby authorized to exercise the powers conferred by the following sections, consistent with the approval authority of the State Council of Higher Education pursuant to the Code of Virginia this chapter.*

§ 4. The Medical-~~College~~*School* may identify, document and evaluate needs, problems and resources relating to ~~health and~~ *medical and health care, education, and research*; and may plan, develop and implement programs to meet such needs on both an immediate and long-range basis.

§ 5. The Medical-~~College~~*School* may plan, design, construct, *possess, own*, remove, renovate, enlarge, equip, maintain and operate projects for the purpose of providing *medical and health care, education, medical care, and research*, and related and supporting services, and other appropriate purposes. The Medical-~~College~~*School* may lease, sell, or otherwise convey any or all of its projects to others who agree to provide for the operation of the same if the Medical-~~College~~*School* determines that such ~~sale, lease, sale,~~ or other conveyance will assist, promote, or further the purposes and intent of this act.

"Projects," as used in this act, mean any medical educational institutions and facilities, including, but not limited to, colleges, schools, and divisions offering undergraduate and graduate programs for the health professions and sciences and such other branches of learning as may be appropriate; medical and paramedical facilities; and such other facilities as shall be deemed by the Board as consistent with the powers and purposes of the Medical-~~College~~ *School*, together with all related and supporting facilities; and all lands, buildings, improvements, and any other appurtenances and equipment necessary or desirable in connection therewith or incidental thereto.

"Operating project," as used in this act, means any project owned, in whole or in part, or controlled, directly or indirectly, in whole or in part, or operated, directly or indirectly, by the Medical-~~College~~ *School*, and shall also include, without limitation, parking, utility, and similar essential and related facilities operated by the Medical-~~College~~*School* or an agent therefor, either for itself or for itself and other health-related entities and institutions on a shared-support basis.

§ 6. The Medical-~~College~~*School* may acquire property, real or personal, by purchase, lease, gift, devise or by the exercise of the power of eminent domain, on such terms and conditions, and in such manner as it may deem proper, and such rights, easements or estates therein as may be necessary for its purposes, and sell, lease and dispose of the same, or any portion thereof or interest therein whenever it shall become expedient to do so. The power of eminent domain shall be exercised in accordance with Chapter 1.1 (§ 25-46.1 *et seq.*) of Title 25 of the Code of Virginia and only within the corporate limits of the City of Norfolk and only for the purpose of acquiring property to be used for operating projects. No property of any corporation itself having the power of eminent domain may be condemned hereunder.

§ 7. The Medical College School may fix and revise from time to time and charge and collect rates, rentals, fees and other charges for the services and facilities furnished by the Medical College School, and establish and revise from time to time regulations, in respect to the use, occupancy or operation of any such facility or part thereof, or service rendered.

§ 8. The Medical College School may accept loans, grants, contributions, or assistance from the federal government, the Commonwealth of Virginia, any municipality thereof, or from any other sources, public or private, to carry out any of its purposes and may enter into any agreement or contract regarding or relating to the acceptance or use or repayment of any such loan, grant, contribution, or assistance.

§ 8.1. The Medical College School shall have the following powers to carry out the purposes and intent of this act:

(a) To provide or assist in providing medical *and health care*, education, and ~~medical care research~~ and related and supporting services ~~in~~ *within or without* the Commonwealth of Virginia *or the United States*.

(b) *To develop, undertake, conduct, and provide programs, alone or in conjunction with any other public or private person or entity for medical, biomedical, and health care research and any associated disciplines relating to the knowledge about and the causes and cures of diseases, conditions, syndromes, or disorders or to health care services or the delivery of health care.*

(c) *To foster the utilization of information, discoveries, data, and material produced through medical, biomedical, and health care research; to obtain patents, copyrights, and trademarks for such intellectual properties; to administer and manage such intellectual properties or to contract for such administration and management by entities organized for such purpose; and to market, transfer, and convey, in whole or in part, any interests in such information, discoveries, data, materials, patents, copyrights, trademarks, or other intellectual properties in any manner consistent with the Medical School's patent and copyright policies and the terms of any grants or contracts providing financial support for the relevant research.*

(d) To promote, develop, improve, and increase the health, welfare, convenience, commerce, and prosperity of the Commonwealth of Virginia.

(ee) To assist in or provide for the creation of *domestic or foreign* stock and nonstock corporations, and to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any domestic or foreign corporations, partnerships, associations, joint ventures, or other entities organized for any purpose, or direct or indirect

obligations of the United States, or of any other government, state, territory, governmental district, or municipality, or of any other obligations of any association, partnership, or individual or any other domestic or foreign corporation organized for any purpose.

~~(df) To provide appropriate assistance in carrying out any activities authorized by this act to any domestic or foreign corporations, partnerships, associations, joint ventures, or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the Medical College School, appropriate assistance, including, but not limited to, making loans and providing time of employees, in carrying out any activities authorized by this act.~~

(eg) To make loans and provide other assistance to corporations, partnerships, associations, joint ventures, or other entities.

(fh) To make contracts or guarantees, incur liabilities, borrow money, or secure any obligations of others.

~~(gi) To transact its business, establish and locate its offices, facilities, and any satellite offices and facilities, other than its primary Hampton Roads offices and facilities, at other locations within and without the Commonwealth of Virginia or the United States, and control, directly or through domestic or foreign stock or nonstock corporations or other entities, facilities that will assist or aid the Medical College School in carrying out the purposes and intent set forth in this act as set forth in § 3 above, including, without limitation but not limited to, the power to own or operate, directly, or indirectly, medical educational and research institutions, medical, research, and paramedical facilities, together with related and supporting facilities and projects, in within or without the Commonwealth of Virginia or the United States.~~

~~(j) To hire employees and staff as necessary for the transaction of its business within and without the Commonwealth of Virginia and the United States.~~

~~(hk) To participate in joint ventures, within or without the Commonwealth of Virginia or the United States, with individuals, corporations, partnerships, associations, or other entities for providing such medical and health care, education, medical care and research, or related services or other activities that the Medical College School may determine to undertake to the extent that such undertakings assist the Medical College in carrying out the purposes and intent of this act.~~

(il) To conduct or engage, directly or indirectly, in any lawful business, activity, effort, or project, necessary or, convenient, or desirable to assist the Medical School in carrying out its for the public purposes of the Medical College or for the exercise of any of its powers, within or without the Commonwealth of Virginia or the United States, so long as

*any private benefit resulting to any other corporation or other entity from any such business, activity, effort, or project is merely incidental to the resulting public benefit.*

*However, nothing contained in this section shall be deemed a waiver of the sovereign immunity of the Commonwealth of Virginia or of the Medical School.*

(j)m) To have and exercise, in addition to its other powers, all the corporate powers granted to corporations by the provisions of Title 13.1 of the Code of Virginia, except in those cases where, by the express terms of the provisions thereof, it is confined to corporations created under such title; and, *further*, to ~~also~~ have the power to accept, execute, and administer any trust in which it may have an interest under the terms of the instrument creating the trust.

§ 8.2. *The provisions of the Administrative Process Act (§ [2.2-4000](#), et seq.) and the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia shall not apply to the Eastern Virginia Medical School in the exercise of any power conferred under this chapter, as amended.*

§ 8.3. *In hiring practices and in the procurement of goods and services, the Medical School shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.*

§ 9. ~~The Medical College School~~ may borrow money and issue bonds as hereinafter provided.

§ 10. In addition to the powers granted by general law or by its charter, any county, city, or town in the Commonwealth is empowered to cooperate with the ~~Medical College School~~ as follows:

(a) To make such appropriations and provide such funds for the operation and carrying out the purposes of the ~~Medical College School~~ as the governing body may deem proper, either by outright donation or by loan, or the governing body may agree with the ~~Medical College School~~ to take such action.

(b) To dedicate, sell, convey, or lease any of its interest in property, or grant liens, easements, licenses or any other privileges therein or thereon to or for the benefit of the ~~Medical College School~~.

(c) To cause parks, playgrounds, and recreational, community, educational, water, sewer or drainage facilities, or any other works, which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with property of or any facility or project of the ~~Medical College School~~.

(d) To furnish, dedicate, close, pave, install, grade or regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places, which it is otherwise empowered to undertake.

(e) To plan or replan, zone or rezone any part of such county, city, or town in connection with the use of any property of the ~~Medical College School~~ or any property adjacent to the property of the ~~Medical College School~~ or any of its facilities or projects ~~which~~ *that* it is otherwise empowered to undertake, in accordance with general laws.

(f) To cause services to be furnished to the ~~Medical College School~~ of the character ~~which~~ *that* such county, city, or town is empowered to furnish.

(g) To purchase any of the bonds of the ~~Medical College School~~ or legally invest in such bonds any funds belonging to or within the control of such county, city, or town and exercise all the rights of any holder of such bonds.

(h) To do any and all things necessary or convenient to aid or cooperate in the planning, undertaking, construction or operation of any of the plans, projects or facilities of the ~~Medical College School~~.

(i) To enter into agreements with the ~~Medical College School~~ respecting action to be taken by such county, city, or town pursuant to any of the above powers.

§ 11. The ~~Medical College School~~ is hereby authorized to issue bonds from time to time in its discretion for the purpose of paying all or any part of the cost of any project within the Commonwealth of Virginia, financing any of its programs or its general operations, or refunding any bonds or other obligations of the ~~Medical College School~~ now or hereafter outstanding whether or not the bonds or obligations to be refunded have matured or are then subject to redemption.

Refunding bonds may be issued in exchange for bonds or obligations being refunded, to pay the principal, premium, if any, and interest accrued and to accrue on such bonds or obligations, or any portion thereof, to maturity or earlier date of redemption or to pay the purchase price of any such bonds or obligations to be retired upon such purchase, as may be determined by the ~~Medical College School~~.

The ~~Medical College School~~ may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable as to principal and interest from any one or more of the following sources: (a*i*) its revenues generally; (b*ii*) the income and revenues of a particular project (including revenues from the sale or lease of such project); (c*iii*) the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds ; (d*iv*) the proceeds of the sale or lease of any project or projects, whether or not they are financed from the proceeds of such bonds; (e*v*) funds realized from the enforcement of

security interests or other liens securing such bonds; (fvi) proceeds from the sale of bonds of the Medical-College School; (gvii) payments due under letters of credit, policies of municipal bond insurance, guarantees, or other credit enhancements securing payment of bonds of the Medical-College School; (hvi) any reserve or sinking funds created to secure such payment; or (ix) other available funds of the Medical-College School.

*As used in this act, unless the context requires otherwise:*

"Bonds;" ~~as used in this act;~~ includes bonds, notes, revenue certificates, lease participation certificates, and other evidences of indebtedness or deferred purchase financing arrangements.

"Cost;" ~~as used in the previous paragraph;~~ means costs of construction, reconstruction, renovation, site work, acquisition of lands, structures, rights-of-way, franchises, easements, and other property rights and interests; costs of demolition, removal, or relocation of buildings or structures; costs of labor, materials, machinery, and all other kinds of equipment; financing charges; costs of issuance of the bonds, including printing, engraving, advertising, legal, and other similar expenses; credit enhancement and liquidity facility fees; fees for interest rate caps, collars, and swaps; interest on bonds and other borrowing in connection with a project prior to and during construction thereof and for a period not exceeding one year after the completion of such construction; costs of engineering and inspections, financial, legal, and accounting services, plans, specifications, studies, surveys, estimates of costs and of revenues, feasibility studies, administrative expenses, including administrative expenses during the start-up of any project; provisions for working capital to be used in connection with any project; reserve funds and other reserves for the payment of principal and interest on bonds; and all other expenses necessary, desirable, or incidental to the construction, reconstruction, renovation, and acquisition of projects, the financing of same, or placing of the same in operation.

Any such bonds may be additionally guaranteed by, or secured by a pledge of any grant, contribution, or appropriation from, a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, or a pledge of any income or revenues of the Medical-College School, or a mortgage of, or a deed of trust or other lien or a security interest in, any particular project or projects or other property of the Medical-College School or any individual or entity referred to above. Neither the members of the Board of the Medical-College School nor any person executing any bonds issued under the provisions of this act shall be liable personally on the bonds by reason of the issuance thereof. The bonds of the Medical-College School (and such bonds shall so state on their face) shall not be a debt of the Commonwealth or any

political subdivision thereof ~~and~~; neither the Commonwealth nor any political subdivision thereof, other than the *Medical College School*, shall be liable thereon, nor shall such bonds be payable out of any funds or properties of the Commonwealth or any political subdivision thereof, other than those of the *Medical College School*. The bonds shall not constitute ~~an~~ indebtedness within the meaning of any debt limitation or restriction *on any Virginia local government*. Bonds of the *Medical College School* are declared to be issued for an essential public and governmental purpose.

§ 12. Bonds of the *Medical College School* shall be authorized by resolution and may be issued in one or more series, shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest payable at such time or times at such rate or rates, as may be determined by the *Medical College School*, or as may be determined in such manner as the *Medical College School* may provide, including the determination by agents designated by the *Medical College School* under guidelines established by the *Medical College School*, ~~and~~. *Such bonds* may be made redeemable or subject to tender before maturity, at the option of the *Medical College School*, at such price or prices and under such terms and conditions as may be fixed by the *Medical College School* prior to the issuance of the bonds.

The *Medical College School* shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company or securities depository within or without the Commonwealth.

In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

Notwithstanding any of the other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth *of Virginia*. The bonds may be issued in coupon or registered form or both, as the *Medical College School* may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payments of principal of and premium, if any, and interest on such bonds.

The Medical-~~College~~ *School* may contract for the services of one or more banks, trust companies, financial institutions, or other entities or persons, within or outside the Commonwealth, for the authentication, registration, transfer, exchange, and payment of the bonds, or may provide such services itself. The Medical-~~College~~ *School* may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Medical-~~College~~ *School*.

Prior to the preparation of definitive bonds, the Medical-~~College~~*School* may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Medical-~~College~~ *School* may also provide for the replacement of any bonds-~~which~~ *that* shall become mutilated or shall be destroyed, stolen, or lost. Bonds may be issued under the provisions of this act without obtaining the consent of any commission, board, bureau or agency of the Commonwealth or of any political subdivision, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things-~~which~~ *that* are specifically required by this act.

§ 13. In the discretion of the Medical-~~College~~ *School*, any bonds issued under the provisions of this act may be issued pursuant to or secured by a trust indenture by way of conveyance, deed of trust or mortgage of any project or any other property of the Medical-~~College~~ *School*, whether or not financed in whole or in part from the proceeds of such bonds, or by a trust or other agreement by and between the Medical-~~College~~ *School* and a corporate trustee (which may be any trust company or bank having the powers of a trust company within or without the Commonwealth) or other agent for bondholders, or by both such conveyance, deed of trust or mortgage and indenture-~~or~~, trust or other agreement.

Such trust, indenture or agreement, or the resolution providing for the issuance of such bonds may pledge or assign fees, rents and other charges to be received. Such trust indenture or trust or other agreement, or resolution providing for the issuance of such bonds, may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants providing for the repossession and sale by the Medical-~~College~~ *School* or any trustees under any trust indenture or agreement of any project, or part thereof, upon any default under the lease or sale of such project, setting forth the duties of the Medical-~~College~~ *School* in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of any project or other property of the Medical-~~College~~ *School*, the amounts of fees, rents and other charges to be charged,

the collection of such fees, rents, and other charges, and the custody, safeguarding and application of all moneys of the ~~Medical-College School~~, and conditions or limitations with respect to the issuance of additional bonds.

It shall be lawful for any national bank with its main office in the Commonwealth or any other state or any bank or trust company incorporated under the laws of the Commonwealth or another state ~~which~~ *that* may act as depository of the proceeds of such bonds or of other revenues of the ~~Medical-College School~~ to furnish indemnifying bonds or to pledge such securities as may be required by the ~~Medical-College School~~.

Such trust indenture, trust, or other agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee or other agent for the bondholders, and may restrict the individual right of action by bondholders.

In addition to the foregoing, such trust indenture, trust or other agreement or resolution may contain such other provisions as the ~~Medical-College School~~ may deem reasonable and proper for the security of the bondholders, including, without limitation, provisions for the assignment to a corporate trustee or other agent for bondholders of any rights of the ~~Medical-College School~~ in any project owned, operated, or controlled by, or leases or sales of any projects made by, the ~~Medical-College School~~.

All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution or other agreements relating to any project, including those to which the ~~Medical-College School~~ may not be a party, may be treated as a part of the cost of a project.

§ 14. The ~~Medical-College School~~ is hereby authorized to fix, revise, charge and collect fees, rents and other charges for the use of any project. Such fees, rents and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay the principal of and any interest on bonds secured by or otherwise to be paid by such revenues as the same shall become due and payable, to create reserves for such purposes and for other purposes of the ~~Medical-College School~~ and to pay the cost of maintaining, repairing, and operating the project. Such fees, rents and charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or any such participating political subdivision.

The fees, rents and other charges received by the ~~Medical-College School~~ may be applied and be set aside from time to time in the order and in the manner as may be provided in such resolution or trust indenture or agreement, including application to a sinking fund ~~which~~ *that* may be pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemp-

tion price or the purchase price of such bonds retired by call or purchase as therein provided.

All pledges of such fees, rents, and other charges to payment of bonds shall be valid and binding from the time when the pledge is made. The fees, rents and charges so pledged and thereafter received by the ~~Medical College School~~ shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the ~~Medical College School~~, *irrespective regardless* of whether such parties have notice thereof. Neither the resolution, any trust indenture, trust, nor other agreement by which a pledge is created need be filed or recorded except in the records of the ~~Medical College School~~. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or trust or other agreement. Except as may otherwise be provided in such resolution or such trust indenture or trust or other agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

§ 15. All moneys received pursuant to ~~the authority of this act~~ *by the Medical School*, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act.

§ 16. Any holder of bonds, issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee or other agent for bondholders under any trust indenture or trust or other agreement, except to the extent that the rights herein given may be restricted by such trust indenture or trust or other agreement, may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this act or under such trust indenture or trust or other agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such trust indenture or trust or other agreement or resolution to be performed by the ~~Medical College School~~ or by any officer or agent thereof, including the fixing, charging and collection of fees, rents and other charges.

§ 17. The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the promotion of their safety, health, welfare, knowledge, benefit, convenience and prosperity, and as the operation and maintenance of any project ~~which~~ *that* the ~~Medical College School~~ is authorized to undertake will constitute the performance of an essential governmental function, no authority shall be required to pay any taxes or assessments upon any project acquired and

constructed by it under the provisions of this act; and the bonds issued under the provisions of this act, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof.

§ 18. Bonds issued by the ~~Medical College~~ *School* under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligation is now or may hereafter be authorized by law.

§ 19. This act shall constitute full and complete authority *for the Medical School*, without regard to the provisions of any other law, ~~for the doing of the acts and things~~ *purposes, activities, and powers* herein authorized, and shall be liberally construed to effect the purposes hereof. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this act.

§ [2.2-3106](#). Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School.

A. No officer or employee of any governmental agency of state government *or Eastern Virginia Medical School* shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government *or Eastern Virginia Medical School* shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § [2.2-4301](#) or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the

employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education *or the Eastern Virginia Medical School* in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution *or the Eastern Virginia Medical School*, (ii) the governing board of the educational institution finds that it is in the best interests of the institution *or the Eastern Virginia Medical School* and the Commonwealth for such dual employment to exist, and (iii) after such finding, the *governing board of the educational institution or the Eastern Virginia Medical School* ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency *or the Eastern Virginia Medical School* of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia *or the Eastern Virginia Medical School* and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. Subject to approval by the board of visitors, an employee's personal interest in a contract between *the Eastern Virginia Medical School* or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education *or the Eastern Virginia Medical School* and of which such employee is a member or employee;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia *or the Eastern Virginia Medical School* and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education *or the Eastern Virginia Medical School* prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to [§ 2.2-3117](#) and thereafter files such statement annually on or before January 15; (iii) the

institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education *or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors*; and (iv) no later than December 31 of each year, the institution *or the Eastern Virginia Medical School* files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's *or the Eastern Virginia Medical School's* employee responsible for administering each contract, the details of the institution's *or the Eastern Virginia Medical School's* commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or 8. Subject to approval by the *relevant* board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia *or the Eastern Virginia Medical School* and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution *or the Eastern Virginia Medical School* prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § [2.2-3117](#) and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's *or the Eastern Virginia Medical School's* decision to contract; (iv) the president of the institution *or the Eastern Virginia Medical School* finds and certifies in writing that the contract is for goods and services needed for quality patient care, *including related medical education or research*, by the institution's medical center *or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission*, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution *or the Eastern Virginia Medical School* files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's *or the Eastern Virginia Medical School's* employee responsible for administering each contract, the details of the institution's *or the Eastern Virginia Medical School's* commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

*D. Notwithstanding the provisions of subdivisions C 7 and C 8, if the research and development or commercialization of intellectual property or the employee's personal interest*

*in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 7 and C 8, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.*

§ [2.2-3705](#). Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § [58.1-3](#).

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a non-custodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the pro-

tections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § [2.2-3704](#). No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of

Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

7. Written advice of legal counsel to state, regional or local public bodies or public officials and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § [2.2-3711](#).

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public.

However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § [2.2-3711](#). However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ [2.2-706](#) and 63.1-55.4.

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § [62.1-132.4](#) or § [62.1-134.1](#).

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.
23. Information that was filed as confidential under the Toxic Substances Information Act (§ [32.1-239](#) et seq.), as such Act existed prior to July 1, 1992.
24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.
26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.
27. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § [28.2-204](#).
28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.
30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but exclud-

ing the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-2638](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or § [15.2-2305](#). However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of them would have a detrimental effect upon the negotiating pos-

ition of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18 of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ [32.1-111.1](#) et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#).

Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § [32.1-102.3:4](#).

45. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § [54.1-2506.1](#).

53. Confidential information designated as provided in subsection D of § [2.2-4342](#) as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § [2.2-4317](#).

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), during a review of any child death by a local or regional child fatality review team established pursuant to §

[32.1-283.2](#), and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § [32.1-283.3](#).

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.

56. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center *or Eastern Virginia Medical School, as the case may be*, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center *or Eastern Virginia Medical School, as the case may be*, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center *or Eastern Virginia Medical School, as the case may be*, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center *or Eastern Virginia Medical School, as the case may be*.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § [32.1-276.9](#), to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § [32.1-276.4](#).

60. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records that are provided by a franchisee under § [15.2-2108](#) to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a non-experimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of

the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § [54.1-2517](#).

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [32.1-73.1](#) et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § [18.2-340.34](#).

67. Personal information, as defined in § [2.2-3801](#), provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ [32.1-137.4](#) and [32.1-137.5](#), including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which

would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

71. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

72. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

73. Records of the Department for Rights of Virginians with Disabilities consisting of documentary evidence received or maintained by the Department or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Department and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Department may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

74. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§

[2.2-1000](#) et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

75. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) of Title 59.1, submitted by CMRS providers as defined in § [56-484.12](#) to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), relating to the provision of wireless E-911 service.

76. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations, and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

77. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.1-53 and 63.1-209.

B. Neither any provision of this chapter nor any provision of Chapter 38 (§ [2.2-3800](#) et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4. of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter or Chapter 21 (§ [30-178](#) et seq.) of Title 30 shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ [53.1-261](#) et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

§ [2.2-3711](#). Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.
2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.
3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to

believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations or other records excluded from this chapter pursuant to subdivision A 11 of § [2.2-3705](#).

12. Discussion, consideration or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision A 5 of § [2.2-3705](#), and those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation or Department of Health Professions conducted pursuant to § [2.2-4019](#) or § [2.2-4020](#) during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions A 37 and A 38 of § [2.2-3705](#).

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

19. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

20. Discussion of plans to protect public safety as it relates to terrorist activity.

21. In the case of corporations organized by the Virginia Retirement System, discussion or consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

22. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#).

23. Those portions of meetings of the University of Virginia Board of Visitors *or the Eastern Virginia Medical School Board of Visitors, as the case may be*, and those portions of meetings of any persons to whom management responsibilities for the University

of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

24. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

25. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

26. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 is discussed.

27. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) of Title 59.1, submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such

resolution, ordinance, rule, contract, regulation or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ [2.2-4343](#). Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ [62.1-128](#) et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, including but not limited to actuarial services. Selection of these services shall be governed by the standard set forth in § [51.1-124.30](#).

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § [2.2-4514](#), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § [23-38.80](#).

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § [2.2-1303](#) apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § [2.2-4300](#), remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § [2.2-4300](#), remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 12, the provisions of subsections C and D of § [2.2-4303](#), and §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#), [2.2-4317](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3. a. of § [2.2-4301](#) in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § [22.1-212.2:2](#) shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ [2.2-4311](#) and [2.2-4367](#) through [2.2-4377](#).

13. A public body which is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators which are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ [56-265.14](#) et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or reg-

ulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. The provisions of this chapter shall not apply to purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. *The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.).*

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ [2.2-4345](#). Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. (For expiration date - See note) The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection E of § [32.1-325](#), provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

1. (Delayed effective date - See note) The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § [32.1-325](#), provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. (Effective until July 1, 2003) The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ [32.1-276.2](#) et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.
3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ [30-146](#) and [30-148](#), to publish the Code of Virginia or the Virginia Administrative Code.
4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.
5. The Department for the Aging, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.
6. The Department of Health for (a) child restraint devices, pursuant to § [46.2-1097](#); (b) health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.
7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.
8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ [15.2-5800](#) et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

11. The Hospital Authority of Norfolk in the exercise of any power conferred under Chapter 53 (§ [15.2-5300](#) et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ [2.2-5200](#) et seq.) or the Virginia Juvenile Community Crime Control Act (§ [16.1-309.2](#) et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § [2.2-4303](#).

*15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.*

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$30,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed

bidding or after competitive negotiation as provided under of subsection D of § [2.2-4303](#). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ [22.1-209.2](#). Programs and teachers in regional detention homes, certain local detention homes and state agencies and institutions.

The Board of Education shall prepare and supervise the implementation in the regional detention homes and those local detention homes having teachers whose salaries were being funded by the Commonwealth on January 1, 1984, a program designed to educate and train the children detained in the homes. In addition, the Board shall supervise those programs of evaluation, education and training provided to school-age children by the Department of Health, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the children's teaching hospital associated with the *Eastern Virginia Medical College of Hampton Roads School*, the *Medical College of Virginia Hospitals Commonwealth University Health System Authority*, and the University of Virginia Hospitals pursuant to the Board's standards and regulations as required by § [22.1-7](#).

The Board shall promulgate such rules and regulations as may be necessary to conform these programs with the applicable federal and state laws and regulations including, but not limited to, teacher/student ratios and special education requirements for children with disabilities. The education programs in the relevant detention homes and state agencies and institutions shall be approved by the Board and the Board shall prepare a budget for these educational programs which shall be solely supported by such general funds as are appropriated by the General Assembly for this purpose. Teacher staffing ratios for regional or local detention homes shall be based on a ratio of one teacher for every twelve beds based on the capacity of the facility; however, if the previous year's average daily attendance exceeds this bed capacity, the ratio shall be based on the average daily attendance at the facility as calculated by the Department of Education from the previous school year.

The Board of Education shall enter into contracts with the relevant state agency or institution or detention facility or the local school divisions in which the state agencies or institutions or the regional detention homes and the relevant local detention homes are located for the hiring and supervision of teachers.

In any case in which the Board enters into a contract with the relevant state agency or institution, the Department of Human Resource Management shall establish salary schedules for the teachers which are competitive with those in effect for the school divisions in which the agency or institution is located.

§ [23-14](#). Certain educational institutions declared governmental instrumentalities; powers vested in majority of members of board.

The College of William and Mary in Virginia, at Williamsburg; the rector and visitors of Christopher Newport University, at Newport News; Longwood College, at Farmville; the Mary Washington College, at Fredericksburg; George Mason University, at Fairfax; the James Madison University, at Harrisonburg; Old Dominion University, at Norfolk; the State Board for Community Colleges, at Richmond; the Virginia Commonwealth University, at Richmond; the Radford University, at Radford; the Roanoke Higher Education Authority and Center; the rector and visitors of the University of Virginia, at Charlottesville; the University of Virginia's College at Wise; the Virginia Military Institute, at Lexington; the Virginia Polytechnic Institute and State University, at Blacksburg; the Virginia Schools for the Deaf and the Blind; the Virginia State University, at Petersburg; Norfolk State University, at Norfolk; the Woodrow Wilson Rehabilitation Center, at Fishersville; the *Eastern Virginia Medical College of Hampton Roads School*; and the Southwest Virginia Higher Education Center are hereby classified as educational institutions and are declared to be public bodies and constituted as governmental instrumentalities for the dissemination of education. The powers of every such institution derived directly or indirectly from this chapter shall be vested in and exercised by a majority of the members of its board, and a majority of such board shall be a quorum for the transaction of any business authorized by this chapter. Wherever the word "board" is used in this chapter, it shall be deemed to include the members of a governing body designated by another title.

§ [32.1-122.6](#). Conditional grants for certain medical students.

A. With such funds as are appropriated for this purpose, the Board of Health shall establish annual medical scholarships for students who intend to enter the designated specialties of family practice medicine, general internal medicine, pediatrics, and obstetrics/gynecology for students in good standing at the Medical College of Virginia of Virginia Commonwealth University, the University of Virginia School of Medicine, and the *Eastern Virginia Medical College of Hampton Roads School*. No recipient shall be awarded more than five scholarships. The amount and number of such scholarships and the apportionment of the scholarships among the medical schools shall be determined annually as provided in the appropriation act; however, the Board shall reallocate annually any remaining funds from awards made pursuant to this section and § [32.1-122.5:1](#) among the schools participating in these scholarship programs, proportionally to their need, for additional medical scholarships for eligible students. The Commissioner shall act as fiscal agent for the Board in administration of the scholarship funds.

The governing boards of Virginia Commonwealth University, the University of Virginia, and the *Eastern Virginia Medical College of Hampton Roads School* shall submit to the Commissioner the names of those eligible applicants who are most qualified as determined by the regulations of the Board for these medical scholarships. The Commissioner shall award the scholarships to the applicants whose names are submitted by the governing boards.

B. The Board, after consultation with the Medical College of Virginia of *Virginia Commonwealth University*, the University of Virginia School of Medicine, and the *Eastern Virginia Medical College of Hampton Roads School*, shall promulgate regulations to administer this scholarship program which shall include, but not be limited to:

1. Qualifications of applicants;
2. Criteria for award of the scholarships to assure that recipients will fulfill the practice obligations established in this section;
3. Standards to assure that these scholarships increase access to primary health care for individuals who are indigent or who are recipients of public assistance;
4. Assurances that bona fide residents of Virginia, as determined by § [23-7.4](#), students of economically disadvantaged backgrounds and residents of medically underserved areas are given preference over nonresidents in determining scholarship eligibility and awards;
5. Assurances that scholarship recipients will begin medical practice in one of the designated specialties in an underserved area of the Commonwealth within two years following completion of their residencies;
6. Methods for reimbursement of the Commonwealth by recipients who fail to complete medical school or who fail to honor the obligation to engage in medical practice for a period of years equal to the number of annual scholarships received;
7. Procedures for reimbursing any recipient who has repaid the Commonwealth for part or all of any scholarship and who later fulfills the terms of his contract;
8. Procedures for transferring unused funds upon the recommendation of the Commissioner and the approval of the Department of Planning and Budget in the event any of the medical schools has not recommended the award of its full complement of scholarships by January of each year and one or both of the other medical schools has a demonstrated need for additional scholarships for that year; and
9. Reporting of data related to the recipients of the scholarships by the medical schools.

C. Prior to the award of any scholarship, the applicant shall sign a contract in which he agrees to pursue the medical course of the school nominating him for the award until his graduation or to pursue his first year of postgraduate training at the hospital or institution

approved by the school nominating him for the award and upon completing a term not to exceed three years, or four years for the obstetric/gynecology specialty, as an intern or resident at an approved institution or facility intends to promptly begin and thereafter engage continuously in one of the designated specialties of medical practice in an underserved area in Virginia for a period of years equal to the number of annual scholarships received. The contract shall specify that no form of medical practice such as military service or public health service may be substituted for the obligation to practice in one of the designated specialties in an underserved area in the Commonwealth.

The contract shall provide that the applicant will not voluntarily obligate himself for more than the minimum period of military service required for physicians by the laws of the United States and that, upon completion of this minimum period of obligatory military service, the applicant will promptly begin to practice in an underserved area in one of the designated specialties for the requisite number of years. The contract shall include other provisions as considered necessary by the Attorney General and the Commissioner.

The contract may be terminated by the recipient while the recipient is enrolled in medical school upon providing notice and immediate repayment of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt.

D. In the event the recipient fails to maintain a satisfactory scholastic standing, the recipient may, upon certification of the Commissioner, be relieved of the obligations under the contract to engage in medical practice in an underserved area upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt.

E. In the event the recipient dies or becomes permanently disabled so as not to be able to engage in the practice of medicine, the recipient or his estate may, upon certification of the Commissioner, be relieved of the obligation under the contract to engage in medical practice in an underserved area upon repayment to the Commonwealth of the total amount of scholarship funds plus interest on such amount computed at eight percent per annum from the date of receipt of scholarship funds. This obligation may be waived in whole or in part by the Commissioner in his discretion upon application by the recipient or his estate to the Commissioner with proof of hardship or inability to pay.

F. Except as provided in subsections D and E, any recipient of a scholarship who fails or refuses to fulfill his obligation to practice medicine in one of the designated specialties in an underserved area for a period of years equal to the number of annual scholarships received shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest at the prevailing bank rate for similar amounts of

unsecured debt. If the recipient has fulfilled part of his contractual obligations by serving in an underserved area in one of the designated specialties, the total amount of the scholarship funds received shall be reduced by the amount of the annual scholarship multiplied by the number of years served.

G. The Commissioner shall collect all repayments required by this section and may establish a schedule of payments for reimbursement consistent with the regulations of the Board. No schedule of payments shall amortize the total amount due for a period of longer than two years following the completion of the recipient's postgraduate training or the recipient's entrance into the full-time practice of medicine, whichever is later. All such funds, including any interest thereon, shall be used only for the purposes of this section and shall not revert to the general fund. If any recipient fails to make any payment when and as due, the Commissioner shall notify the Attorney General. The Attorney General shall take such action as he deems proper. In the event court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs and reasonable attorneys' fees incurred by the Commonwealth in such collection.

H. For purposes of this section, the term "underserved area" shall include those medically underserved areas designated by the Board pursuant to § [32.1-122.5](#) and health professional shortage areas designated in accordance with the criteria established in 42 C.F.R. Part 5.

§ [32.1-279](#). Duties of Chief Medical Examiner; teaching legal medicine.

A. The Chief Medical Examiner shall carry out the provisions of this article under the direction of the Commissioner. The central and district offices and facilities established as provided in § [32.1-277](#) shall be under the supervision of the Chief Medical Examiner.

B. The Chief Medical Examiner and his assistants shall be available to Virginia Commonwealth University, the University of Virginia, the *Eastern Virginia Medical College of Hampton Roads School*, and other institutions of higher education providing instruction in health science or law for teaching legal medicine and other subjects related to their duties.

§ [54.1-2961](#). Interns and residents in hospitals.

A. Interns and residents holding temporary licenses may be employed in a legally established and licensed hospital, medical school or other organization operating an approved graduate medical education program when their practice is confined to persons who are bona fide patients within the hospital or other organization or who receive treatment and advice in an outpatient department of the hospital or an institution affiliated with the graduate medical education program.

B. Such intern or resident shall be responsible and accountable at all times to a licensed member of the staff. The training of interns and residents shall be consistent with the requirements of the agencies cited in subsection D and the policies and procedures of the hospital, medical school or other organization operating a graduate medical education program. No intern or resident holding a temporary license may be employed by any hospital or other organization operating an approved graduate medical education program unless he has completed successfully the preliminary academic education required for admission to examinations given by the Board in his particular field of practice.

C. No intern or resident holding a temporary license shall serve in any hospital or other organization operating an approved graduate medical education program in this Commonwealth for longer than the time prescribed by the graduate medical education program. The Board may prescribe regulations not in conflict with existing law and require such reports from hospitals or other organizations in the Commonwealth as may be necessary to carry out the provisions of this section.

D. Such employment shall be a part of an internship or residency training program approved by the Accreditation Council for Graduate Medical Education or American Osteopathic Association or American Podiatric Medical Association or Council on Chiropractic Education. No unlicensed intern or resident may be employed as an intern or resident by any hospital or other organization operating an approved graduate medical education program. The Board may determine the extent and scope of the duties and professional services which may be rendered by interns and residents.

E. The Board of Medicine shall adopt guidelines concerning the ethical practice of surgeons and surgery interns and residents in hospitals or other organizations operating graduate medical education programs. These guidelines shall not be construed to be or to establish standards of care or to be regulations and shall be exempt from the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.). The Medical College of Virginia of Virginia Commonwealth University, the University of Virginia School of Medicine, and the *Eastern Virginia Medical College of Hampton Roads School* shall cooperate with the Board in the development of these guidelines.

The guidelines shall include, but need not be limited to (i) the obtaining of informed consent from all patients, after such patients are informed as to which surgeons, residents, or interns will perform the surgery; (ii) except in emergencies and other unavoidable situations, the need, consistent with the informed consent, for a surgeon to be present during the procedure; and (iii) policies to avoid situations, unless the circumstances fall within an exception in the Board's guidelines or the policies of the relevant hospital, medical

school or other organization operating the graduate medical education program, in which a surgeon, intern or resident represents that he will perform a procedure which he then fails to perform.

F. The Board shall publish and distribute the guidelines required by subsection E to its licensees.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 113 Blue Ridge Parkway, Colonial Parkway, and Skyline Drive; scenic hwys.**

An Act to designate the Blue Ridge Parkway, Skyline Drive, George Washington Memorial Parkway, and the Colonial Parkway scenic highways and Virginia byways.

[\[H 286\]](#)

Approved March 4, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, the entire length in Virginia of the Blue Ridge Parkway, Skyline Drive, George Washington Memorial Parkway, and the Colonial Parkway are hereby declared to be scenic highways and Virginia byways.*

## **Chapter 136 James Vincent Morgan Bridges.**

An Act to designate the twin bridges on U.S. Route 17 over Dragon Run at the Gloucester/Middlesex County boundary the "James Vincent Morgan Bridges."

[\[H 614\]](#)

Approved March 19, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The twin bridges on U.S. Route 17 over Dragon Run at the Gloucester/Middlesex County boundary are hereby designated the "James Vincent Morgan Bridges." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to these bridges.*

## **Chapter 152 Municipal deed restriction on certain property in Virginia Beach.**

An Act to amend and reenact § 2 of Chapter 931 of the Acts of Assembly of 1993, relating to municipal deed restrictions on certain property in Virginia Beach.

[\[S 248\]](#)

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 931 of the Acts of Assembly of 1993 is amended and reenacted as follows:

§ 2. Tracts 1 and 2 shall be used only for municipal recreational purposes and shall be subject to reclamation by the Commonwealth, in whole or in part, upon demand by the Governor, in the event of a national emergency declared by the President or by Congress. The property shall be returned to the City upon expiration of the emergency. *For purposes of this section, municipal recreational purposes include entering into a public-private partnership for improvements to any golf course located on such tracts.*

## **Chapter 482 Tobacco Indemnification and Community Revitalization Endowment.**

An Act to amend and reenact §§ 3.1-1106, 3.1-1110 and 3.1-1111 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 3.1-1109.1, and to authorize the Governor to sell a portion of the revenues from the Tobacco Master Settlement Agreement, all relating to sale of revenues derived from the Tobacco Master Settlement Agreement.

[\[S 457\]](#)

Approved April 4, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-1106, 3.1-1110 and 3.1-1111 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.1-1109.1 as follows:

§ 3.1-1106. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Active tobacco producer" means a person (i) actively engaged in planting, growing, harvesting, and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the crop, and is therefore entitled to share in the revenue derived from marketing the crop; and (ii) who produces such crop on a farm where tobacco was produced for the 1998 crop year, or any subsequent crop year upon which the Commission may determine to base indemnification payments, pursuant to a tobacco farm marketing quota or farm acreage allotment as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

*"Agreement" means the agreement or agreements between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.*

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to § 3.1-1107.

*"Commission allocation" means fifty percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.*

*"Corporation" means the Tobacco Settlement Financing Corporation as created under state law.*

*"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 3.1-1109.1.*

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.1-1111.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

*"Period of sale" means the time during which a purchaser under an agreement is entitled to receive the Commission allocation.*

"Quota holder" means an owner of a farm on July 1, 1998, or July 1 of any subsequent crop year upon which the Commission may determine to base indemnification payments, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

*"Tobacco assets" means all right, title, and interest in and to the portion of the Commission allocation that may be sold to the Corporation from time to time.*

*"Tobacco farmer" means a person who is an active tobacco producer, a quota holder, or both.*

*§ 3.1-1109.1. Tobacco Indemnification and Community Revitalization Endowment.*

*A. There is hereby established in the state treasury a special fund to be designated the "Tobacco Indemnification and Community Revitalization Endowment" (the "Endowment"). The Endowment shall receive any proceeds from any sale of all or any portion of the Commission allocation, and any gifts, grants and contributions that are specifically designated for inclusion in such Endowment. No part of the Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state treasury. The Endowment shall be under the management and control of the Treasury Board, and the Treasury Board shall have such powers and authority as may be necessary to exercise such management and control consistent with the provisions of this section. The income of the Endowment shall be paid out, not less than annually, to the Fund. In addition, up to ten percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Commission to the Treasury Board; provided, however, that upon two-thirds vote of the Commission, up to fifteen percent of the corpus of the Endowment shall be so paid. No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be deemed taxable. For purposes of this section, "income" of the Endowment means at the time of determination the lesser of the available cash in, or the realized investment income for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of determination the sum of the proceeds from the sale of all or any portion of the Commission Allocation, any gifts, grants and contributions that have been credited to such Endowment, and any income not appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus shall be conclusive.*

*B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such amounts as*

*may be necessary whenever in its judgment it would be more advantageous to borrow money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes and other customary transactional expenses shall be payable out of the income of the Endowment.*

*Not less than annually and more frequently if so desired by the Commission or requested by the Treasury Board, the Commission shall provide to the Treasury Board schedules of anticipated disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable, take into account such schedules and changes thereto in scheduling maturities and redemptions of its investments of the Endowment.*

§ 3.1-1110. Appointment of director; Commission employees; counsel to the Commission.

A. The Governor shall appoint an executive director subject to confirmation by the General Assembly. The compensation shall be determined by the Commission, subject to approval by the Governor. The executive director shall serve as the secretary to the Commission and shall administer the affairs and business of the Commission in accordance with the provisions of this chapter and subject to the policies, control and direction of the Commission. The Commission may employ technical experts and other officers, agents and employees, permanent and temporary, as it requires, and shall determine their qualifications, duties and compensation. The Commission may delegate to one or more of its agents or employees the administrative duties it deems proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

*B. Employees of the Commission shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees. Employees of the Commission shall not be subject to the provisions of Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2.*

BC. The Office of the Attorney General shall provide counsel to the Commission.

§ 3.1-1111. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology industries in tobacco-dependent localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by §§ 3.1-1109.1 and [32.1-360](#) and shall be included in general fund revenue calculations for purposes of subsection C of § [58.1-3524](#) and subsection B of § [58.1-3536](#). *However, in no case shall the amount received by the Endowment and Fund be included in general fund revenue calculations for purposes of subsection C of § [58.1-3524](#) and subsection B of § [58.1-3536](#).*

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. *Subject to the sale of all or any portion of the Commission Allocation, fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In the event of such sale (i) the Commission Allocation shall be paid in accordance with the agreement for the period of sale and (ii) the Fund shall receive the amounts withdrawn from the Endowment in accordance with § 3.1-1109.1.* Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; however, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § [58.1-439.15](#), for purposes of funding the tax credits provided in §§ [58.1-439.13](#) and [58.1-439.14](#) and the grants provided in § [58.1-439.17](#). Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

C. The obligations of the Commission shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall such obligations be payable out of any funds other than those credited to the Fund.

2. That certain revenues derived from the Master Settlement Agreement, as defined in § 3.1-1106, shall be subject to the following provisions:

*§ 1. Short title.*

*This act may be referred to as the "Tobacco Settlement Financing Corporation Act."*

*§ 2. Findings.*

*A. The major United States tobacco manufacturers and forty-six states (including the Commonwealth of Virginia), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa and the Territory of the Northern Marianas have signed a Master Settlement Agreement that should result in the Commonwealth receiving substantial sums of money in perpetuity. Virginia has reached State-Specific Finality, the Master Settlement Agreement has become effective in accordance with its terms, and Virginia has begun receiving its allocation of the tobacco settlement payments made under the Master Settlement Agreement.*

*B. Tobacco is Virginia's number one cash crop. Although tobacco production occurs in many states, the majority of production occurs within six states, including Virginia, of the southeastern United States. Virginia is home to tobacco growers, processors, warehouses and manufacturers. The relative prosperity of the tobacco industry directly influences the relative prosperity of the Commonwealth. Virginia derives income, sales and excise taxes directly and indirectly from the tobacco industry. Virginia derives a higher percentage of its general fund revenue directly and indirectly from the tobacco industry than do most other states.*

*C. The General Assembly has studied the techniques used recently by other jurisdictions to address their most critical needs and, in particular, the techniques used to convert future tobacco settlement payments received under the Master Settlement Agreement into current assets and thereby reduce such jurisdictions' exposure to the payment risks associated with the Master Settlement Agreement, and the credit risks associated with the tobacco industry, and finds that many jurisdictions have sold their allocations of payments under the Master Settlement Agreement and applied the sale proceeds toward such needs.*

*D. The Governor is authorized to sell all or part of the Commission Allocation to the Corporation created hereby, such sale to transfer to the Corporation that portion of the Tobacco Assets as provided in this act.*

*E. The General Assembly finds and determines that the optimum method for Virginia to convert its future tobacco settlement payments, under the Master Settlement Agreement, to current assets is one that does not require any increase in general taxes, that is not funded from taxes or other traditional general fund sources, that does not divert*

*resources from other needs of the Commonwealth and that is nonrecourse to, and requires no credit support by, the Commonwealth.*

*F. The General Assembly finds and determines that its creation of a special purpose corporation with power to issue obligations and use the proceeds to purchase the Tobacco Assets from the Commonwealth is compatible with the preceding subsections.*

*§ 3. Definitions. As used in this act:*

*"Agreement" means the agreement or agreements referred to in this act between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.*

*"Ancillary contracts" means contracts described in subsection A of § 15 hereof.*

*"Board" means the Board of the Corporation.*

*"Bonds" means Tobacco Bonds and refunding bonds, notes and other evidences of indebtedness, issued by the Corporation pursuant to this act.*

*"Closing Date" means the date of delivery of the first issue of Tobacco Bonds.*

*"Commission Allocation" means fifty percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.*

*"Corporation" means the Tobacco Settlement Financing Corporation created pursuant to this act.*

*"Financing costs" means all capitalized interest, costs, fees, reserves and credit and liquidity enhancements as the Corporation determines to be desirable in issuing, securing and marketing the bonds.*

*"Holders" and similar terms refer to the owners of the bonds. References to covenants and contracts with such holders, and to their rights and remedies shall, if so provided by the Corporation, extend to the parties to swaps and ancillary contracts.*

*"Income" means the portion of the Commission Allocation received by the Corporation and all aid, rents, fees, charges, payments and other income and receipts paid or payable to the Corporation or a trustee for the account of the Corporation or the holders.*

*"Indenture trustee" means the trust company or bank serving at the time as trustee under the trust indenture referred to in § 14 hereof.*

*"Master Settlement Agreement" or "MSA" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final*

*Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.*

*"Outstanding," when used with respect to bonds, shall exclude bonds that shall have been paid in full at maturity, or shall have otherwise been refunded, redeemed, defeased or discharged, or that may be deemed not outstanding pursuant to agreements with the holders thereof.*

*"Residual Trust" means the trust to be established by the Corporation, which is entitled to receive the income and bond proceeds of the Corporation that are in excess of the Corporation's expenses, debt service and contractual obligations to the holders and the Commonwealth of Virginia.*

*"Swap contracts" or "swaps" means contracts described in subsection B of § 15 hereof.*

*"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission Allocation that may be sold to the Corporation from time to time.*

*"Tobacco Bonds" means the bonds, notes and other obligations issued by the Corporation, exclusive of bonds that the Corporation may issue to refund bonds, the net proceeds (after financing costs) of the first issue of which shall be used by the Corporation to pay the cash portion of the purchase price to the Commonwealth for the Tobacco Assets.*

*§ 4. Corporation created; public body corporate.*

*The Tobacco Settlement Financing Corporation is created as a public body corporate and an independent instrumentality of the Commonwealth.*

*§ 5. Board; membership; terms; compensation and expenses; chairman and vice-chairman; quorum; employees; agents, etc.*

*The Board of the Corporation shall exercise all powers, rights and duties conferred by this act or other provisions of law upon the Corporation. The Board shall consist of the State Treasurer and five additional members from the public at large to be appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by the Governor shall have a background and significant experience in financial management and investments. The members of the Board appointed by the Governor shall serve for terms of four years each, or until their successors shall have been appointed and qualified, except that the initial terms of three of the members shall expire on June 30, 2003, 2004, and 2005, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation, or removal created such vacancy. Members with less than six years of service on the Board may be appointed to an additional term. Members shall be reimbursed for travel and other actual expenses incurred in performing their official*

*duties as members. Members of the Board appointed by the Governor shall be compensated at the rate provided in § [2.2-2813](#) of the Code of Virginia for each day or portion thereof in which the member is engaged in the business of the Corporation. The Governor shall designate one member of the Board as chairman. The State Treasurer shall be ineligible to serve as chairman. The chairman shall sign and execute all vouchers for the disbursement of funds belonging to the Corporation upon authorization by the Board. Four members of the Board shall constitute a quorum for the transaction of all business of the Corporation. The Board shall elect one of its members as vice-chairman, who shall exercise the powers of the chairman when so directed by the chairman, or when the chairman is absent. The State Treasurer shall be the secretary-treasurer. The Board may delegate its powers to its chairman, the secretary-treasurer, officers of the Corporation or committees of the Board, with such standards for the exercise of delegated powers as the Board may specify, and may, to the extent not inconsistent with the rights of the holders, revoke any such delegation.*

*§ 6. Powers of Corporation enumerated.*

*A. To enable the Corporation to carry out the financing, purchasing, owning and managing of the Tobacco Assets and activities incidental thereto, the Corporation is vested (subject to § 8 and the other provisions hereof) with all the powers of a private corporation including, without limitation, the power to sue and be sued, to make contracts, to adopt and use a common seal and to alter the same and is further particularly authorized and empowered to:*

- 1. Purchase the Tobacco Assets and receive, or to authorize the indenture trustee to receive, as the same shall be paid, the portion of the Commission Allocation sold to the Corporation;*
- 2. Adopt or alter or repeal any bylaws, rules or regulations as the Board may deem necessary or expedient;*
- 3. Issue bonds as authorized by this act and refund any of such bonds;*
- 4. Commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement;*
- 5. Pay its operating expenses;*
- 6. Establish the Residual Trust; and*
- 7. Do any and all other acts and things necessary, convenient, appropriate or incidental in carrying out the provisions of this act.*

*B. The Corporation is further authorized and empowered to incur obligations to pay its operating expenses in such form as may be authorized by the Corporation. This act shall govern the issuance of such obligations insofar as the same may be applicable.*

*C. The Corporation shall submit an annual report to the Governor, the Appropriations Committee of the House of Delegates and the Finance Committee of the Senate on or before November 1 of each year. Such report shall contain, at a minimum, the annual operating and financial statements of the Corporation for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of § [2.2-1127](#) of the Code of Virginia.*

*D. Any funds held by the Corporation or by the indenture trustee may be invested and reinvested in securities that are legal investments under the laws of the Commonwealth for funds held by fiduciaries.*

*E. The Corporation, subject to such agreements with holders as may then exist, shall have power to purchase bonds out of any funds available therefor.*

*§ 7. Department of the Treasury; Office of the Attorney General; Auditor of Public Accounts; consultants.*

*A. The Department of the Treasury shall serve as staff to the Corporation.*

*B. The Office of the Attorney General shall serve as counsel to the Corporation. The Corporation, subject to the approval of such counsel, may employ or retain such other attorneys as it may deem necessary and fix their compensation.*

*C. The accounts of the Corporation shall be audited annually by a certified public accounting firm employed by the Auditor of Public Accounts and paid for by the Corporation. The Auditor of Public Accounts is hereby authorized and empowered from time to time to examine the accounts and books of the Corporation; however, the Corporation shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapter 14 (§ [30-130](#) et seq.) of Title 30.*

*D. The Corporation may employ or retain such agents, financial advisers, accountants and consultants as it may deem necessary, and the provisions of any other law to the contrary notwithstanding, may determine their duties and compensation without the approval of any other agency or instrumentality of the Commonwealth.*

*E. The exercise of the powers granted by this act shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience and prosperity. Property, whether real or personal or tangible or intangible, of the Corporation and the income and operations of the Corporation shall be exempt from taxation or assessments upon any property acquired or used by the Corporation under the provisions of this act.*

*F. The Corporation shall have perpetual existence. The Board of the Corporation may, however, bring to a conclusion the affairs of the Corporation and terminate the existence of the Corporation at any time by making provisions for the discharge of all of its*

*liabilities. All of the assets and property of the Corporation shall pass to and be vested in the Commonwealth upon the termination or dissolution of the Corporation.*

*§ 8. No bankruptcy.*

*Prior to the date that is one year and one day after which the Corporation no longer has any bonds outstanding, the Corporation shall have no authority to file a voluntary petition under the federal bankruptcy code as it may, from time to time, be in effect, and neither any public officer nor any organization, entity or other person shall authorize the Corporation to be or become a debtor under the federal bankruptcy code during such period.*

*§ 9. Exemptions from Public Procurement Act.*

*The provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Corporation.*

*§ 10. Jurisdiction of suits affecting Corporation; service of process.*

*The Circuit Court of the City of Richmond shall have exclusive jurisdiction over any suit brought by or against the Corporation, and process in such suit shall be served on the chairman of the Board.*

*§ 11. Sale of Commission Allocation.*

*Subject to the limitations and conditions set forth in this act, the Governor is authorized to sell, at one time or from time to time, to the Corporation all or any portion of the Commission Allocation. The Governor is authorized to enter into one or more agreements, with such terms and covenants as he deems appropriate, and to execute and deliver an agreement on the Closing Date and the effective date of any subsequent sale. Each agreement shall provide that the purchase price payable by the Corporation to the Commonwealth for the Tobacco Assets sold shall consist of such cash and noncash consideration as provided in the agreement. Any sale of Tobacco Assets shall be treated as a true sale and absolute transfer of the property so transferred and not as a pledge or other security interest for any borrowing. The characterization of such a sale as an absolute transfer by the participants shall not be negated or adversely affected if less than all of the Commission Allocation is transferred, nor by the Commonwealth's acquisition of a direct or indirect subordinate interest in the Tobacco Assets, nor by any characterization of the Corporation or its bonds for purposes of accounting, taxation or securities regulation, nor by any other factor whatsoever.*

*§ 12. Ownership of Tobacco Assets.*

*On and after the effective date of each sale of Tobacco Assets, the Commonwealth shall have no right, title or interest in or to the Tobacco Assets sold; and such Tobacco Assets shall be property of the Corporation and not of the Commonwealth, and shall be owned, received, held and disbursed by the Corporation or the indenture trustee and not the*

*state treasury. On or before the Closing Date and the effective date of any subsequent sale, the Commonwealth, through the Attorney General, shall notify the escrow agent under the MSA that the Tobacco Assets have been sold to the Corporation and irrevocably instruct such escrow agent that, subsequent to the Closing Date or other effective date, the Commission Allocation related thereto is to be paid directly to the indenture trustee for the account of the Corporation.*

*§ 13. Issuance of bonds of Corporation.*

*The Board is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of the Corporation in such amount or amounts as the Board shall determine. Such bonds shall be payable solely from funds of the Corporation, including, without limitation, all or any combination of the following sources: (i) the Commission Allocation received by the Corporation, (ii) the proceeds of the sale of any such bonds, (iii) earnings on funds of the Corporation or the indenture trustee, and (iv) such other funds as may become available, as shall be provided by the resolution of the Board authorizing any such bonds. Bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith or credit of the Commonwealth, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the Commonwealth or of any political subdivision thereof is or shall be pledged to the payment of the principal of or the interest on such bonds. The bonds of each issue shall be dated, shall bear interest (which may be includable or excludable in the gross income of the holders for federal income tax purposes) at such fixed or variable rates, payable at or prior to maturity, and shall mature at such time or times, as may be determined by the Board and may be made redeemable before maturity, at the option of the Corporation, at such price or prices and under such terms and conditions as may be fixed by the Board. The principal and interest of such bonds may be made payable in any lawful medium. The Board shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the Commonwealth. If any officer whose signature or a facsimile thereof appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both, as the Board may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and*

*as to both principal and interest and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. The Board may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be for the best interests of the Corporation. The proceeds of such bonds shall be disbursed for the purposes for which such bonds were issued under such restrictions, if any, as the laws of the Commonwealth and the resolution authorizing the issuance of such bonds or the trust indenture provided for in § 14 hereof may provide. The Corporation may also provide for temporary bonds and for the replacement of any bond that shall become mutilated or shall be destroyed or lost. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions, and things that are specified and required by this act. Neither the members of the Board nor any other person executing the bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.*

*§ 14. Security for payment of bonds; provisions of trust indenture or resolution.*

*A. In the discretion of the Board, any bonds issued and any swaps or ancillary contracts made under the provisions of this act may be secured by a trust indenture by and between the Corporation and the indenture trustee, which may be any trust company or bank having the powers of a trust company, whether located within or outside the Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may:*

- 1. Pledge or assign all or any part of the income or other assets of the Corporation available for such purpose;*
- 2. Provide for the creation and maintenance of such reserves as the Board shall determine to be proper;*
- 3. Include covenants setting forth the duties of the Corporation in relation to the bonds, the income of the Corporation, the related agreement and the Tobacco Assets;*
- 4. Contain provisions respecting the custody, safeguarding and application of all moneys and securities and such provisions for protecting and enforcing the rights and remedies (pursuant thereto and to the related agreement) of the holders and other beneficiaries as may be reasonable and proper and not in violation of law; and*
- 5. Contain such other provisions as the Corporation may deem reasonable and proper for priorities and subordination among the holders and other beneficiaries. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth that may act as depository of the proceeds of bonds, or of any other funds or obligations received on behalf of the Corporation, to furnish such indemnifying bonds or to pledge*

*such securities as may be required by the Corporation. Any reference in this act to a resolution of the Board shall include any trust indenture authorized thereby.*

*B. Any pledge made by the Corporation shall be valid and binding from the time when the pledge is made. The income or other assets so pledged and then or thereafter received by the Corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed to perfect such pledge.*

*C. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.*

*§ 15. Swaps and ancillary contracts.*

*A. The Corporation may enter into, amend or terminate, as it determines to be necessary or appropriate, any ancillary contracts (i) to facilitate the issuance, sale, resale, purchase, repurchase or payment of bonds or the making or performance of swap contracts, including without limitation bond insurance, letters of credit and liquidity facilities, or (ii) to attempt to hedge risk or achieve a desirable effective interest rate or cash flow. The determination of the Board that an ancillary contract or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. Such contracts shall be made upon the terms and conditions established by the Board, including without limitation provisions as to security, default, termination, payment, remedy and consent to service of process.*

*B. The Corporation may enter into, amend or terminate, any swap contract that it determines to be necessary or appropriate to place the obligations or investments of the Corporation, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired by the Board, which contract may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Corporation in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. The determination by the Board that a swap contract or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. These*

*contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Board, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.*

*§ 16. No invalidity.*

*Any failure of the Corporation to comply with this act shall not invalidate or impair any bond or swap or ancillary contract. Bonds may contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity, the validity of the related agreements, and the regularity of the proceedings relating thereto.*

*§ 17. Bonds exempt from taxation.*

*The bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or any other political subdivision thereof.*

*§ 18. Distributions subject to appropriation.*

*Amounts received by the Commonwealth as a result of its sale of all or any portion of the Commission Allocation shall be subject to appropriation in accordance with the provisions of Article X, Section 7 of the Constitution of Virginia.*

*§ 19. Pledge and agreement.*

*The Commonwealth pledges and agrees with the Corporation, and the holders of the bonds in which the Corporation has included such pledge and agreement, that the Commonwealth will (i) irrevocably direct the escrow agent under the MSA to transfer all of the Commission Allocation related to the Tobacco Assets sold, directly to the Corporation or its assignee, (ii) enforce the Commonwealth's rights to receive the Commission Allocation to the full extent permitted by the terms of the MSA, (iii) not amend the MSA in any manner that would materially impair the rights of the holders, (iv) not limit or alter the rights of the Corporation to fulfill the terms of its agreements with such holders, and (v) not in any way impair the rights and remedies of such holders or the security for such bonds until such bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully paid and discharged.*

*§ 20. Construction and Effect.*

*This act and all powers granted hereby shall be liberally construed to effectuate its and their purposes, without implied limitations thereon. This act shall constitute full and complete authority for all things herein contemplated to be done. All rights and powers herein granted shall be cumulative with those derived from other sources and shall not, except as expressly stated herein, be construed in limitation thereof. Insofar as the provisions of*

*this act are inconsistent with the provisions of any other act, general or special, the provisions of this act shall be controlling. If any clause, sentence, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.*

§ 21. Appropriation.

*There is hereby appropriated to the Tobacco Indemnification and Community Revitalization Endowment all of the proceeds of any sale of the Commission Allocation pursuant to this act between the effective date of this act and June 30, 2004.*

## **Chapter 78 Tangible personal property tax in Alleghany County.**

An Act providing for tangible personal property taxes for the City of Clifton Forge, Alleghany County, and the Town of Clifton Forge for the period January 1, 2001, through December 31, 2001.

[\[S 246\]](#)

Approved March 4, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, any assessment of tangible personal property as of January 1, 2001, for tangible personal property located in the Town of Clifton Forge, with such assessment being made by the commissioner of the revenue of Alleghany County, shall be valid, regardless that residents of the Town of Clifton Forge were residents of an independent city, the City of Clifton Forge, on January 1, 2001. In addition, the levy or imposition of tangible personal property taxes for the entire 2001 tax year based upon such assessments shall also be valid subject to the following:*

*1. Such assessments upon the residents of the Town of Clifton Forge shall be deemed to have been assessments made to levy all tangible personal property taxes upon such persons for a period covering two separate tax years, the first beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, and the second beginning July 1, 2001, through 12:00 p.m. on December 31, 2001;*

*2. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be deemed to have been*

*assessments made by the commissioner of the revenue of the City of Clifton Forge for such short tax year. The tangible personal property taxes imposed by the City of Clifton Forge based upon such assessments shall have met the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed. In addition, such tangible personal property taxes applicable to the tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001, shall be levied at the tangible personal property tax rates in effect in the City of Clifton Forge as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning January 1, 2001, through 12:00 p.m. on June 30, 2001; and*

*3. The tangible personal property assessments by the county commissioner of the revenue on the residents of the Town of Clifton Forge applicable to the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be deemed to have been assessments made by the county commissioner of the revenue on the residents of the Town of Clifton Forge who also became residents of the county on July 1, 2001. The tangible personal property taxes levied by Alleghany County based upon such assessments shall be levied at the tangible personal property tax rates in effect in Alleghany County as of January 1, 2001, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.*

*§ 2. Any tangible personal property taxes levied by the Town of Clifton Forge upon town residents for the tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001, shall be valid. However, the amount of tax due shall be determined using tangible personal property tax rates in effect in the town as of July 1, 2001, and the amount of tax due shall be reduced by one-half to reflect a short tax year beginning July 1, 2001, through 12:00 p.m. on December 31, 2001.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 210 Hunter Mill Road; designated a byway.**

An Act to designate Hunter Mill Road in Fairfax County a Virginia byway.

[\[H 518\]](#)

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, the entire length of Hunter Mill Road in Fairfax County is hereby designated a Virginia byway.*

## **Chapter 317 Wilderness Road State Park; construction of interpretive 1775 fort.**

An Act authorizing certain construction by the Department of Conservation and Recreation at the Wilderness Road State Park.

[\[H 147\]](#)

Approved April 1, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation is hereby authorized to build an interpretive 1775 fort at Wilderness Road State Park utilizing the construction techniques of that period.*

*§ 2. That in the interest of accurately representing that historic period, the structure shall be exempt from the Uniform Statewide Building Code as set forth in § [36-97](#) et seq., and any other local building codes or ordinances.*

*§ 3. That the Department of Conservation and Recreation is authorized to enter into a lease contract with any entity, public or private, that it deems qualified, for the construction and operation of the facility. The Department may enter into this lease upon terms and conditions the Department deems proper and with the approval of the Governor and the Attorney General.*

-

## **Chapter 408 Prisoner sentencing information.**

An Act to require the Department of Corrections to maintain certain sentencing information.

[\[H 596\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§1. The Department of Corrections shall maintain, on each prisoner sentencing information data form, using the information compiled from the presentence report and the guidelines worksheet, the name of the defendant, the criminal sentencing guideline score, and the criminal sentencing guideline worksheet.*

## **Chapter 168 Medical care facilities certificate of public need.**

An Act to provide for the authorization and acceptance of certain certificate of public need applications.

[\[S 490\]](#)

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1

*. § 1. Certain certificate of public need applications authorized.*

*A. Notwithstanding the provisions of § [32.1-102.3:2](#) or the provisions of any current Request For Applications (RFAs) issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#), the Commissioner of Health shall reissue a Request For Applications for sixty new nursing home or nursing facility beds in Planning District 11 when (i) pursuant to the 1997 determination of a 240-nursing home bed need in Planning District 11 and the issuance by the Commissioner of Health of the formal legal notice of Request For Certificate of Public Need Applications, a certificate of public need for sixty new nursing home or nursing facility beds was issued to an existing nursing home in Planning District 11, and (ii) the sixty-bed certificate of public need issued pursuant to the 1997 Request For Applications for Planning District 11 to such nursing home has been formally surrendered by the company owning such nursing home because of lack of the requisite financing.*

*The Commissioner shall authorize and accept applications for such sixty nursing home or nursing facility beds and may issue one or more certificates of public need for an increase of such sixty new beds in which nursing facility or extended care services are to be provided to existing facilities within Planning District 11. The Commissioner shall give preference in reissuing any certificate of public need for these sixty beds to facilities located in a rapid-growth area of Planning District 11.*

*B. Further, notwithstanding the provisions of § [32.1-102.3:2](#) or the provisions of any current Request For Applications (RFAs) issued by the Commissioner of Health pursuant to*

§ [32.1-102.3:2](#), the Commissioner of Health shall also reissue a Request For Applications for 120 new nursing home or nursing facility beds in Planning District 13 when (i) pursuant to the 1997 determination of a 240-nursing home bed need in Planning District 13 and the issuance by the Commissioner of Health of the formal legal notice of Request For Certificate of Public Need Applications, a certificate of public need for 120 new nursing home or nursing facility beds was issued to a for-profit nursing home operating company incorporated in January 1973, and (ii) such 120-bed certificate of public need issued pursuant to the 1997 Request For Applications for Planning District 13 to such nursing home corporation was scheduled for completion by April 2000; however, the company awarded this 120-bed certificate of public need has not started construction because of lack of the requisite financing and, thus, the relevant certificate of public need has expired.

The Commissioner shall authorize and accept applications for such 120 nursing home or nursing facility beds and may issue one or more certificates of public need for an increase of such 120 new beds in which nursing facility or extended care services are to be provided to existing or proposed new facilities within Planning District 13.

## **Chapter 179 Medical care facilities certificate of public need.**

An Act to authorize certain certificate of public need.

[\[S 643\]](#)

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Certain certificate of public need authorized.*

Notwithstanding the provisions of § [32.1-102.3:2](#), as currently in effect, or the provisions of any Request For Applications (RFAs) issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#) designating any planning district as authorized to respond to any RFA, the Commissioner of Health shall authorize and accept an application and may issue a certificate of public need for the conversion of 16 assisted living beds to nursing facility, or extended care services, beds in an existing facility when (i) such application is filed by an existing 224-bed nursing facility located in Chesterfield County within Planning District 15; (ii) the 16 assisted living beds in the existing facility were built to nursing home standards; (iii) the existing facility is operated by a health center commission; (iv) the

*existing facility has a ninety-five to ninety-six percent occupancy rate; and (v) the converted nursing facility beds are to be dedicated to the provision of care for private pay and Medicare patients.*

## **Chapter 436 Property conveyance; James City County.**

An Act authorizing the Department of Conservation and Recreation to accept certain property in James City County.

[\[S 146\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-104](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to accept on behalf of the Commonwealth, upon terms and conditions the Department deems proper, with the approval of the Governor and by deed in a form approved by the Attorney General, a conveyance from The Trust for Public Land of a parcel of unimproved real property, known as the Taskinas Creek tract, in James City County of 45.38 acres, more or less, which is adjacent to York River State Park.*

*§ 2. Such real property when conveyed shall be included as a parcel within York River State Park.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 219 Purple Heart Trail.**

An Act to amend and reenact § 1 of Chapter 139 of the Acts of Assembly of 1996, as amended, relating to the Purple Heart Trail.

[\[H 667\]](#)

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 139 of the Acts of Assembly of 1996, as amended, is amended and reenacted as follows:

§ 1. The portion of Virginia Route 3 from George Washington's Birthplace National Monument in Westmoreland County, Virginia, to its junction with Interstate Route 95 at Fredericksburg, Virginia, the entire length of Interstate Highway 95 in Virginia, the portion of U.S. Route 1 from its junction with Interstate Route 95 to its junction with Virginia Route 235, Virginia Route 235 from its junction with U.S. Route 1 to George Washington's home and tomb at Mount Vernon, and the portion of Interstate Route 64 from its junction with Interstate Route 95 to the City of Norfolk, where General Douglas MacArthur is entombed, and Interstate Route 64 between its junction with Interstate 95 and the Virginia/West Virginia boundary are hereby designated as the Purple Heart Trail, in honor of General George Washington, *native son of Virginia*, and the combat-wounded veterans awarded the Purple Heart Medal. The Department of Transportation shall, *no earlier than July 1, 2004*, place and maintain *additional* appropriate markers indicating the designation of this route. This designation shall not affect any other designation heretofore or hereafter applied to these highways or any portions thereof.

## **Chapter 382 Research and Technology Advisory Commission; policies.**

An Act to direct the Virginia Research and Technology Advisory Commission (VRTAC), in conjunction with the research universities of the Commonwealth, to develop and adopt a statewide policy and uniform standard for the commercialization of intellectual property developed through university research.

[\[H 530\]](#)

Approved April 1, 2002

Whereas, the Virginia Research and Technology Advisory Commission was established to advise the Governor on appropriate research and technology strategies for the Commonwealth with emphasis on policy recommendations that will enhance the global competitive advantage of both research institutions and technology-based commercial endeavors within the Commonwealth; and

Whereas, the commercialization of intellectual property developed within the research universities will enhance the global competitive advantage of both research institutions and technology-based commercial endeavors within the Commonwealth; and

Whereas, each research university has very different policies and standards in this area; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§1. The Virginia Research and Technology Advisory Commission (VRTAC), in conjunction with the Center for Innovative Technology (CIT), the Office of the Attorney General and the research universities of the Commonwealth, shall develop a statewide policy and uniform standard for the commercialization of intellectual property developed through university research. The Commission shall provide such policy and standards to the Governor and the General Assembly and recommend any changes to the Code of Virginia by December 1, 2002.*

## **Chapter 426 Interstate Route 73.**

An Act to establish a pilot program to provide for early acquisition of certain property in connection with the construction of Interstate Route 73 in Virginia.

[\[H 1196\]](#)

Approved April 2, 2002

Whereas, the corridor through which Interstate Route 73 will be constructed in Virginia was designated by the Commonwealth Transportation Board in July of 2001; and  
Whereas, construction of this highway through this corridor will affect the Counties of Roanoke, Franklin, and Henry and the Cities of Roanoke and Martinsville; and  
Whereas, the action of the Commonwealth Transportation Board in designating this corridor effectively limits the ability of property owners in the corridor to sell or develop their property; and  
Whereas, the time required for actual acquisition of right-of-way for this project by the Virginia Department of Transportation under normal procedures and standard regulations is impossible to determine under current circumstances; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Department of Transportation shall promptly and expeditiously proceed to early acquisition of rights-of-way needed in connection with the construction of Interstate Route 73 in Virginia from all willing sellers, where the impact on the property of those willing sellers can be determined. Where the property owner and the Department are unable to agree on terms for the acquisition of the property, the owner and the Department may elect to enter into nonbinding mediation. If a final agreement is not reached, nothing in this act shall be construed to authorize the Commonwealth Transportation Commissioner to acquire the property through the use of the power of eminent domain*

*as provided in Article 7 (§ [33.1-89](#) et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia. The Department shall obtain from the Federal Highway Administration such approvals and permits as may be necessary to carry out its duties and responsibilities under this act and work with the Congress of the United States, the Federal Highway Administration, and other affected federal governmental entities to obtain funding necessary to carry out the provisions of this act.*

*Acquisition of property under this act shall be carried out using such federal funds as may be designated for that purpose. Prior to any purchase or acquisition of property under this act, the Department shall assess the impact of such acquisition on the federal Record of Decision for the construction of Interstate Route 73 in Virginia.*

*In carrying out the pilot project provided for in this act, the Department shall proceed in accordance with all applicable federal laws.*

2. That the provisions of this act shall not become effective unless reenacted by the 2003 Session of the General Assembly.

## **Chapter 427 Oyster grounds in Lafayette River.**

An Act to remove certain areas in the waters of the Lafayette River from the natural oyster rocks, beds, and shoals embraced within the Baylor Survey.

[\[H 1293\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1.

§ 1.

*That a portion of the Public Ground Number 6, located in the Lafayette River in the City of Norfolk, and previously set aside, shall no longer be a part of the natural oyster rocks, beds, and shoals of the waters of the Commonwealth and shall henceforth be assignable to any person for lawful private usage. The portion to be removed is described as follows:*

*Beginning at the southeastern point of Public Ground Number 6, in the waters of the Lafayette River, Virginia State Plane Coordinate System NAD83, North 3,497,269.93 East 12,123,735.36, said point being the true point and place of beginning; thence North 86°31'01" West, a distance of 257.64 feet, said point marking the proposed location of*

*the southeastern corner of Public Ground Number 6, thence North 08°21'40" East, a distance of 105.50 feet, said point marking the proposed location of the northeastern corner of Public Ground Number 6; thence South 81°13'50" East, a distance of 87.60 feet; thence South 55°30'26" East, a distance of 188.37 feet to the true point of beginning; and containing 0.39 acres or 17,122 square feet more or less.*

*§ 2. That a portion of the Public Ground Number 7, located in the Lafayette River in the City of Norfolk, and previously set aside, shall no longer be a part of the natural oyster rocks, beds, and shoals of the waters of the Commonwealth and shall henceforth be assignable to any person for lawful private usage. The portion to be removed is described as follows:*

*Beginning in the southwestern point of Public Ground Number 7, in the waters of the Lafayette River, Virginia State Plane Coordinate System NAD83, North 3,497,035.76 East 12,124,366.36 said point being the true point and place of beginning; thence North 07°28'51" West, a distance of 138.33 feet; thence South 77°36'58" East, a distance of 121.12 feet, said point marking the proposed northwestern corner of Public Ground Number 7; thence South 13°09'23" East, a distance of 154.97 feet to a point marking the proposed southwestern corner of Public Ground Number 7; thence North 73°40'07" West, a distance of 141.26 feet to the true point of beginning; and containing 0.40 acres or 17,407 square feet more or less.*

## **Chapter 458 Conveyance of certain lands to City of Portsmouth.**

An Act to authorize the Commonwealth to convey certain lands to the City of Portsmouth.

[\[S 471\]](#)

Approved April 2, 2002

Whereas, the City of Portsmouth has planned redevelopment and reuse of its downtown waterfront and has reclaimed, or plans to reclaim, bulkheading and filling, and certain submerged land from the bed of the Elizabeth River in Portsmouth, Virginia, abutting the property now, or formerly owned by it, and the City desires to perfect title to such reclaimed land by obtaining a conveyance thereof from the Commonwealth; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Governor is hereby authorized in consideration of the premises and the*

*payment of the sum of one dollar to execute in the name of the Commonwealth a proper deed of conveyance under the lesser seal of the Commonwealth conveying unto the City of Portsmouth, Virginia, its successors or assigns all its right, title and interest, if any, of the Commonwealth of Virginia in and to the following described property: Property lying landward, and to the west of a line more particularly identified as follows: Beginning at Station S-5 on the Pierhead Line as defined by the United States Army Corps of Engineers located on the western side of the southern branch of the Elizabeth River in the City of Portsmouth, Virginia, said station being 8.14 feet south of the Southern right of way line of High Street extended Eastward to its intersection with said river, which Station is the southern most point of lands previously conveyed to the City of Portsmouth pursuant to the authority of Chapter 35 of the Acts of Assembly of 1964; thence from said point of beginning running S 05° 34' 54" W 78.88 feet to a point located on the face of the existing concrete sea wall; then continuing along the face of the existing concrete sea wall having a curve to the left with a radius of 2,097.64 feet, an arc distance of 702.90 feet to a point on the face of the existing concrete sea wall; thence continuing along the face of the existing concrete sea wall S 13° 37' 03" E 175.00 feet to the end of the existing concrete sea wall at the South Inlet, all as shown on an exhibit titled "Exhibit Showing Area of Formerly Submerged Land Along the Southern Branch of Elizabeth River to be Conveyed to the City of Portsmouth from the Commonwealth of Virginia, Portsmouth, Virginia."*

§ 2. *The deeds of conveyance and other documents shall be in the form approved by the Attorney General.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 485 Posting of "In God We Trust" in courtrooms.**

An Act to require the posting of the National Motto in courtrooms of the Commonwealth.

[\[H 107\]](#)

Approved April 4, 2002

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *In every courtroom in the Commonwealth "'In God We Trust,' the National Motto, enacted by Congress in 1956", shall be posted.*

2. That this act shall become effective when such funds as are necessary to implement its provisions are appropriated by the General Assembly.

## **Chapter 429 Freedom of Information Act; electronic communication meetings.**

An Act to amend and reenact §§ 8, 10, 11, and 12 of the first enactment of Chapter 704 of the Acts of Assembly of 1999 and §§ 1, 13, 14 and 15 of the first enactment and the third enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000, relating to the Freedom of Information Act; electronic communication meetings.

[\[S 38\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 8, 10, 11, and 12 of the first enactment of Chapter 704 of the Acts of Assembly of 1999 and §§ 1, 13, 14 and 15 of the first enactment and the third enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000, are amended and reenacted as follows:

§ 1. That, in lieu of the provisions of ~~§ 2.1-343.1~~ [2.2-3708](#), (i) any public body, as defined in ~~§ 2.1-341~~ [2.2-3701](#), (a) in the legislative branch of state government or (b) responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to ~~§ 2.1-51.40~~ [2.2-204](#) or the Secretary of Technology pursuant to ~~§ 2.1-51.46~~ [2.2-225](#), or (ii) the State Board for Community Colleges established in § [23-215](#), shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 8. Notice for electronic communication meetings continued more than seven days after the meeting date shall be in the same manner as required by § 6. Notice for electronic communication meetings continued less than seven days from the meeting date to (i) address an emergency or (ii) conclude the agenda of the electronic communication meeting, shall be made during the meeting prior to adjournment and shall include the date, time, place, and general purpose of the continued meeting. The basis for the emergency shall be stated during the meeting prior to adjournment and included in the minutes of the meeting, if minutes are required by ~~§ 2.1-343~~ [2.2-3707](#).

§ 10. Votes taken during any meeting conducted through electronic communication means pursuant to this act shall be recorded by name in roll-call fashion and included in the minutes of the meeting, if minutes are required by ~~§ 2.1-343~~ [2.2-3707](#).

§ 11. Any public body or the Board, when conducting an electronic communication meeting pursuant to this act, shall make an audio/visual recording of the meeting. The recording shall be preserved by the public body or the Board for a period of three years from the date of the meeting and shall be available to the public for inspection and copying pursuant to the Virginia Freedom of Information Act (~~§ 2.1-340~~ [2.2-3700](#) et seq.).

§ 12. It shall be a violation of this act for any entity listed in § 1, or any members of such entities, to use the provisions of this act to violate the Virginia Freedom of Information Act (~~§ 2.1-340~~ [2.2-3700](#) et seq.) to discuss or act upon any matters over which such entities have supervision, control, jurisdiction, authority, or advisory powers.

§ 13. By April 15, ~~2001~~ 2003, public bodies in the legislative branch of state government which conduct electronic communication meetings pursuant to this act shall file with the Joint Rules Committee, as defined in § [51.1-124.3](#), a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 14. By April 15, ~~2001~~ 2003, public bodies responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § ~~2.1-51.40~~ [2.2-204](#) or the Secretary of Technology pursuant to § ~~2.1-51.46~~ [2.2-225](#), which conduct electronic communication meetings pursuant to this act shall file with the Secretary of Commerce and Trade or the Secretary of Technology, respectively, a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

§ 15. By April 15, ~~2001~~ 2003, the State Board for Community Colleges established in § [23-215](#) shall file with the Secretary of Education a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings; and a summary of any public comment received about the electronic communication meetings.

2. That the third enactment of Chapter 704 of the Acts of the Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000, is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2002~~ 2004.

## **Chapter 439 Alexandria Historical Restoration and Preservation Commission.**

An Act to amend and reenact § 1 of Chapter 481 of the Acts of Assembly of 1962 and § 3 of Chapter 173 of the Acts of the Assembly of 1976, relating to the Alexandria Historical Restoration and Preservation Commission.

### [\[S 211\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 481 of the Acts of Assembly of 1962 and § 3 of Chapter 173 of the Acts of the Assembly of 1976 are amended and reenacted as follows:

§ 1. Definitions. As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Commission". The Alexandria Historical Restoration and Preservation Commission.

(b) "Facilities". Those sites, historic or otherwise, whether residential or commercial situated in the restorable area, whether real, personal or mixed, as to which the Commission desires to exercise the authority granted in this act.

(c) "Restored facilities". Those sites, historic or otherwise, whether residential or commercial, situated in the restorable area, whether real, personal or mixed, which the Commission has acquired and which the Commission desires to restore, preserve, maintain, construct, reconstruct, produce, reproduce and operate for the use, benefit, education, recreation, enjoyment and general welfare of the people of the City of Alexandria the Commonwealth of Virginia and the United States, in accordance with the restoration period.

(d) "Restorable area". The area or areas of the City of Alexandria in which the Commission shall have been given the right to exercise the powers of this chapter by an ordinance duly enacted by the city council of Alexandria.

(e) "Restoration period". The period of time during which the Commission shall seek to conform the design, architecture and construction shall be ~~from the founding of the City~~

~~of Alexandria to and including 1860~~ from the founding of the City of Alexandria to and including *a period extending back fifty years from the date that the Commission makes its determination to restore a facility.*

§ 3. The Commission shall consist of five members, three to be appointed by the city council of Alexandria and two to be appointed by the Governor; they shall be appointed within thirty days after the effective date of this act. Members of the original Commission shall be appointed for terms as follows: One for two years, two for three years and two for four years, provided that the members appointed by the Governor shall be appointed for four years, and thereafter members shall be appointed for four-year terms except appointments to fill vacancies for unexpired terms in which event the appointment shall be for the unexpired term only. The members of the Commission, including the chairman, shall receive no compensation for their services but shall be entitled to be reimbursed for per diem and travel expenses incurred in the performance of their official duties as members of the Commission. Each member shall give a surety bond in the sum of ten thousand dollars, executed by a surety company authorized to do business in this State, payable to the Governor and his successors in office, and conditioned upon the faithful performance of his duties.

The Commission shall be expanded to ~~seven~~*nine* members beginning July ~~one 1, nineteen hundred seventy six~~*2002*. The additional members shall be appointed by the city council of Alexandria. ~~Of the initial appointments, one shall be for a term of three years, and the other shall be for four years.~~ Thereafter members shall be appointed for four-year terms except appointments to fill vacancies for unexpired terms, in which event the appointment shall be for the unexpired term only.

2. That the provisions of this act shall not affect current members of the Alexandria Historical Restoration and Preservation Commission whose terms have not expired as of July 1, 2000.

## **Chapter 538 Workers' compensation; administration of claims.**

An Act relating to workers' compensation payments; administration of claims.

[\[H 761\]](#)

Approved April 5, 2002

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That the Workers' Compensation Commission, by July 1, 2003, shall promulgate*

*rules and regulations instituting an expedited calendar for the administration of claims under the Virginia Workers' Compensation Act in which an employer's denial of benefits satisfies criteria establishing that delays will cause an injured employee to incur severe economic hardship.*

## **Chapter 592 University of Virginia's College at Wise; property transfer.**

An Act to authorize the transfer of certain property of the University of Virginia's College at Wise.

[\[H 1370\]](#)

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Authority to transfer certain property of the University of Virginia's College at Wise.*

*Pursuant to the authority granted by § [23-91.21](#) of the Code of Virginia, the Rector and the Board of Visitors of the University of Virginia may transfer to the University of Virginia Real Estate Foundation no more than twenty acres of property located in the Town of Wise that have been previously given to the University of Virginia's College at Wise. Such property transfer shall (i) only be used for residential or commercial development focused primarily on student- and College-centered endeavors, and (ii) shall be subject to and conditioned upon the approval of a rezoning application by the Town of Wise that is suitable for the proposed development.*

## **Chapter 474 Energy infrastructure; SCC to study effectiveness.**

An Act to require certain electric and gas utilities to furnish information to the State Corporation Commission about Virginia's energy infrastructure.

[\[S 684\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. For purposes of monitoring the adequacy of the energy infrastructure within the*

*Commonwealth, the State Corporation Commission shall convene a work group to study the feasibility, effectiveness, and value of collecting, for the period commencing January 1, 1996, and ending December 31, 2001, and for periods subsequent to December 31, 2001, the following data or any other data pertaining to Virginia's energy infrastructure:*

*A. For every generator of electric energy operating within the Commonwealth, the following electric generation data: (i) an inventory of generating units located within the control area of the utility, including size, location, fuel type, heat rates, and megawatts of each unit, (ii) the historical generating capabilities of each unit compared to actual operating parameters, including hours a unit was offline and reasons therefor, forced and planned curtailment levels, and hourly generation by unit, and (iii) total hourly load in the control area compared to the total hourly load in Virginia;*

*B. For every incumbent electric utility, as defined in § [56-576](#) of the Code of Virginia, the following electric transmission data: (i) individual line transfer capabilities at control area interfaces, (ii) aggregate transfer capabilities, including the degree to which the capabilities were reserved and the actual use of such capabilities, (iii) hours during which bulk transmission facilities were offline and the reasons therefor, (iv) actions taken to relieve transmission overload, and (v) hourly flows into and out of the control areas;*

*C. For every gas transmission company operating within the Commonwealth, the following data: (i) a description and map of each interstate and intrastate gas transmission line and associated facilities in Virginia, (ii) the transmission capability of each facility, including the amount dedicated to Virginia and outside Virginia, (iii) the additional load each pipeline is capable of serving and the aggregate load each company's facilities are capable of carrying, (iv) the actual gas flows into and out of Virginia for each facility and the aggregate flows into and out of Virginia for all facilities, (v) total gas storage capability located in Virginia and outside Virginia that is dedicated to Virginia load, (vi) operational flow orders issued and reasons therefor, and (vii) expansion projects planned and the expected capacity enhancements in Virginia resulting from such expansion; and*

*D. For every public utility authorized to furnish natural gas service in Virginia, the number of requests for curtailment issued by such utility and a description of the reasons therefor.*

*§ 2. The work group shall consist of representatives of electricity generators, incumbent electric utilities, gas transmission companies, gas local distribution companies, State Corporation Commission staff, and other appropriate persons. The Commission shall report the results of the work group's study, not later than December 1, 2002, to the Legislative Transition Task Force established pursuant to § [56-595](#) of the Code of Virginia.-*

*§ 3. The State Corporation Commission shall not release any of the information that may be collected pursuant to this act; however, this prohibition shall not be construed to prohibit the Commission from releasing such information in the aggregate on an industry-wide, statewide or other basis that does not permit the identification of data specific to a single entity.*

## **Chapter 610 Transfer property of University of Virginia's College at Wise.**

An Act to authorize the transfer of certain property of the University of Virginia's College at Wise.

[\[S 270\]](#)

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Authority to transfer certain property of the University of Virginia's College at Wise.*

*Pursuant to the authority granted by § [23-91.21](#) of the Code of Virginia, the Rector and the Board of Visitors of the University of Virginia may transfer to the University of Virginia Real Estate Foundation no more than twenty acres of property located in the Town of Wise that have been previously given to the University of Virginia's College at Wise. Such property transfer shall (i) only be used for residential or commercial development focused primarily on student- and College-centered endeavors, and (ii) shall be subject to and conditioned upon the approval of a rezoning application by the Town of Wise that is suitable for the proposed development.*

## **Chapter 476 Retail Sales & Use Tax; multistate discussion study.**

An Act providing for the appointment of a delegation to participate in multistate discussions regarding the simplification and modernization of tax administration.

[\[S 688\]](#)

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Participation in multistate discussions; definitions.*

*A. Delegates appointed pursuant to subsection B shall enter into multistate discussions on behalf of the Commonwealth to consider whether the Commonwealth should enter into an agreement with one or more other states to:*

- 1. Simplify and modernize tax administration in order to substantially reduce the burden of tax compliance for sellers and for all types of commerce.*
- 2. Establish standards for tax compliance software and service providers.*
- 3. Establish performance standards for multistate sellers.*

*B. For the purposes of this section, delegates shall be appointed as follows:*

- 1. Two members of the Senate, to be appointed by the Senate Committee on Privileges and Elections.*
- 2. Three members of the House of Delegates, to be appointed by the Speaker of the House, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates.*

*C. After meeting with similar delegations from other states, the delegates shall make recommendations, including but not limited to proposed legislation, to the 2003 and 2004 Sessions of the General Assembly regarding the issues the delegates are required to consider under subsection A and any other related issues the delegates deem advisable.*

*D. Delegates shall receive compensation as provided in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses in the discharge of their duties as provided in § [2.2-2825](#).*

*E. In this section, unless the context otherwise requires:*

*"Agreement" means an interstate agreement for simplification and uniformity of taxation among member states in order to reduce the burden of tax compliance for sellers and for all types of commerce.*

*"Seller" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other similar legal entity that sells, leases or rents tangible personal property or services.*

*"State" means a state of the United States and the District of Columbia.*

*"Tax" or "taxes" means sales and use taxes imposed pursuant to Title 58.1 of the Code of Virginia, or a similar tax imposed by a political subdivision of the Commonwealth.*

- 2. That an emergency exists and this act is in force from its passage.*

## **Chapter 543 Oyster grounds.**

An Act to remove a certain area in the waters of the Elizabeth River from the natural oyster rocks, beds, and shoals embraced within the Baylor Survey.

[\[H 921\]](#)

Approved April 5, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Public Ground Number 8, located in the waters of the Elizabeth River and previously set aside in Norfolk County but currently located in the Cities of Portsmouth and Norfolk, shall no longer be a part of the natural oyster rocks, beds, and shoals of the waters of this Commonwealth and shall henceforth be assignable to any person for lawful private usage. Public Ground Number 8 is described as follows:*

*Beginning at a point located in the waters of the Elizabeth River east of the southernmost point of Craney Island and described as corner 1 (point number 421) of the Baylor Survey and located at North American Datum of 1927 - Virginia South Zone coordinates North 207,537.59 East 2,631,565.88; then 185° 09' 32" 1110.43 feet to corner 2 (point number 422) North 206,431.66 East 2,631,466.03; then 184° 38' 24" 1073.74 feet to corner 3 (point number 432) North 205,361.44 East 2,631,379.17; then 224° 29' 36" 735.50 feet to corner 4 (point number 431) North 204,836.78 East 2,630,863.71; then 154° 15' 55" 1157.38 feet to corner 5 (point number 425) North 203,794.20 East 2,631,366.25; then 167° 01' 39" 2854.22 feet to corner 6 (point number 426) North 201,012.83 East 2,632,006.98; then 60° 55' 29" 447.24 feet to corner 7 (point number 427) North 201,230.17 East 2,632,397.86; then 171° 50' 51" 293.35 feet to corner 8 (point number 428) North 200,939.78 East 2,632,439.46; then 115° 30' 53" 1906.94 feet to corner 9 (point number 429) North 200,118.38 East 2,634,160.43; then 64° 46' 37" 2088.93 feet to corner 10 (point number 420) North 201,008.56 East 2,636,050.19; then 327° 18' 33" 6668.87 feet to corner 11 (point number 430) North 206,621.06 East 2,632,448.29; then 316° 05' 12" 1272.27 feet to corner 1 (point number 421) North 207,537.59 East 2,631,565.88, the point of beginning.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 577 Diploma requirements; verified units.**

An Act to provide guidelines for the awarding of standard diplomas for certain public school students.

[\[H 493\]](#)

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The provisions of the Standards of Accreditation (8 VAC [20-131-10](#) et seq.) governing diploma requirements notwithstanding, the Board of Education shall establish guidelines for local school boards to award verified units of credit for standard diplomas to students who have (i) entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003; and (ii) passed the relevant coursework.*

*Such students shall meet such additional criteria established by the Board for the award of such verified units which may include, but shall not be limited to, performance on Standards of Learning assessments or other tests, including subsequent administrations of such assessments or tests; attendance and conduct requirements; and participation in remediation programs.*

*The guidelines shall set forth procedures for the award of such verified units by local school boards and shall be applicable only to the award of the four student-selected verified units of credit required for a standard diploma pursuant to the Standards of Accreditation (8 VAC [20-131-50 B](#)). Students shall be required to earn the two verified units of credit in English for a standard diploma as provided in the Standards of Accreditation. The guidelines issued by the Board shall not be subject to the Administrative Process Act (§ [2.2-4000](#) et seq.) and shall be applicable to students who have entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003.*

## **Chapter 626 Diploma requirements; verified units.**

An Act to provide guidelines for the awarding of standard diplomas for certain public school students.

[\[S 609\]](#)

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The provisions of the Standards of Accreditation (8 VAC [20-131-10](#) et. seq.) governing diploma requirements notwithstanding, the Board of Education shall establish guidelines for local school boards to award verified units of credit for standard diplomas*

*to students who have (i) entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003; and (ii) passed the relevant coursework.*

*Such students shall meet such additional criteria established by the Board for the award of such verified units which may include, but shall not be limited to, performance on Standards of Learning assessments or other tests, including subsequent administrations of such assessments or tests; attendance and conduct requirements; and participation in remediation programs.*

*The guidelines shall set forth procedures for the award of such verified units by local school boards and shall be applicable only to the award of the four student-selected verified units of credit required for a standard diploma pursuant to the Standards of Accreditation (8 VAC [20-131-50 B](#)). Students shall be required to earn the two verified units of credit in English for a standard diploma as provided in the Standards of Accreditation. The guidelines issued by the Board shall not be subject to the Administrative Process Act (§ [2.2-4000](#) et seq.) and shall be applicable to students who have entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003.*

## **Chapter 649 Nontidal wetlands program.**

An Act to amend and reenact the third enactment of Chapters 1032 and 1054 of the Acts of Assembly of 2000, relating to nontidal wetlands.

[\[H 1002\]](#)

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 1032 of the Acts of Assembly of 2000 is amended and reenacted as follows:
3. That the State Water Control Board shall promptly, but no later than July 1, 2002, seek from the U.S. Army Corps of Engineers the issuance to Virginia of a § 404 Clean Water Act State Programmatic General Permit. *Coverage under a Nationwide or Regional Permit promulgated by the U.S. Army Corps of Engineers and certified by the Board in accordance with state law and §§ 401 and 404 of the Clean Water Act shall be deemed coverage under a Virginia Water Protection General Permit upon submission to the Board of proof of coverage under the Nationwide or Regional Permit and any other information required by the Board through the certification process for as long as the*

*Nationwide or Regional Permit remains certified and effective or until such time as the U.S. Army Corps of Engineers issues a State Programmatic General Permit for the covered activity or impact. Nothing herein shall be construed to limit or alter the Board's existing authority to deny, grant or condition certification of Nationwide or Regional Permits. The Board shall report to the Governor, the House Committee on Agriculture, Chesapeake and Its Tributaries Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources at least every six months on its progress in obtaining the State Programmatic General Permit.*

2. That the third enactment of Chapter 1054 of the Acts of Assembly of 2000 is amended and reenacted as follows:

3. That the State Water Control Board shall promptly, but no later than July 1, 2002, seek from the U.S. Army Corps of Engineers the issuance to Virginia of a § 404 Clean Water Act State Programmatic General Permit. *Coverage under a Nationwide or Regional Permit promulgated by the U.S. Army Corps of Engineers and certified by the Board in accordance with state law and §§ 401 and 404 of the Clean Water Act shall be deemed coverage under a Virginia Water Protection General Permit upon submission to the Board of proof of coverage under the Nationwide or Regional Permit and any other information required by the Board through the certification process for as long as the Nationwide or Regional Permit remains certified and effective or until such time as the U.S. Army Corps of Engineers issues a State Programmatic General Permit for the covered activity or impact. Nothing herein shall be construed to limit or alter the Board's existing authority to deny, grant or condition certification of Nationwide or Regional Permits. The Board shall report to the Governor, the House Committee on Agriculture, Chesapeake and Its Tributaries Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources at least every six months on its progress in obtaining the State Programmatic General Permit.*

# Uncodified Acts of Assembly - 2003

## Chapter 4 Bonds; Longwood College.

An Act to authorize the issuance of bonds, in an amount up to \$10,500,000 plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 1536\]](#)

Approved February 18, 2003

Whereas, Article X, Section 9(c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9(c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9(c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2003."*

**§ 2. Authorization of bonds and BANs.**

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ..." in an aggregate principal amount not exceeding \$10,500,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project</i>	<i>Project</i>
<i>No.</i>	<i>Amount</i>	
<i>Longwood University</i>	<i>Renovate Housing Facilities</i>	<i>16874</i>
	<i>\$10,500,000</i>	
<i>Total</i>		
	<i>\$10,500,000</i>	

**§ 3. Application of Proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii)*

*refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9(a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series \_\_\_\_".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs*

*bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may have not been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest for the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the*

*Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

**§ 9. Security for bonds and BANs.**

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

**§ 10. Exemption of interest from tax.**

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free*

*and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

**§ 11. Refunding bonds and BANs.**

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12**

.

**Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9(c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act that can be given effect without the invalid provisions or applications.*

## **Chapter 22 Madison E. Marye Highway.**

An Act to designate a portion of U.S. Route 460 in Montgomery County the "Madison E. Marye Highway."

[\[S 930\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. U.S. Route 460 from its junction with U.S. Route 460 (business) in Christiansburg to its junction with U.S. Route 460 (business) in Blacksburg is hereby designated the "Madison E. Marye Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 100 Property conveyance.**

An Act to authorize the Department of Conservation and Recreation to convey certain property to the Mount Vernon Ladies' Association of the Union.

[\[S 884\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to [§ 10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor, and the Attorney General as to form of the instrument of conveyance, certain parcels of real property containing 15.4 acres more or less, located in Fairfax County adjacent to George Washington's grist mill.*

*§ 2. If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property be maintained for and open to public use. If this condition is not met, the property shall revert to the Department of Conservation and Recreation.*

## **Chapter 171 Peninsula Airport Commission.**

An Act to amend and reenact § 2 of Chapter 22 of the Acts of Assembly of 1946, as amended by Chapter 270 of the Acts of Assembly of 1989, relating to the Peninsula Airport Commission.

[\[S 1231\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 22 of the Acts of Assembly of 1946, as amended by Chapter 270 of the Acts of Assembly of 1989, is amended and reenacted as follows:

§ 2. The Peninsula Airport Commission, hereinafter referred to as the "Commission", shall consist of two members from each of the participating counties and cities, appointed by the governing bodies thereof, respectively. Original appointments of members shall be for terms as follows: From the City of Warwick and the City of Newport News, two years; and from the City of Hampton, three years. Thereafter all appointments shall be for four-year terms, except appointments to fill vacancies which shall be for the unexpired terms. The governing body appointing any member may remove such member at any time and appoint his successor. The members of the Commission so appointed shall constitute the Commission, and the powers of such Commission shall be vested in and exercised by the members in office from time to time. *The chairman of the Commission shall be paid \$200 per month for attendance at meetings and other activities as chairman and members of the Commission shall be paid not more than eighty dollars for each meeting attended, but no member shall receive more than one hundred fifty dollars in any one month \$175 per month for attendance at meetings and other activities.*

Three members of the Commissioners in office shall constitute a quorum. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

The Commissioners shall annually elect a chairman and a vice chairman from their membership, a secretary and a treasurer or a secretary-treasurer from their membership or not as they deem appropriate, and such other officers as they may deem appropriate. The Commissioners may appoint an executive director, who shall not be a commissioner, who shall exercise such powers and duties as may be delegated to him by the Commissioner, including powers and duties involving the exercise of discretion.

The Commission shall hold regular meetings at such times and places as may be established by its bylaws. Special meetings of the Commission may be called by any Commissioner or the Executive Director upon at least ~~twelve~~ 12 hours' written notice to each Commissioner served personally or left at his usual place of business or residence.

The Commissioners may make and from time to time amend and repeal bylaws, not inconsistent with this Act, governing the manner in which the Commission's business

may be transacted and in which the power granted to it may be enjoyed. The Commissioners may appoint such committees as they may deem advisable and fix the duties and responsibilities of such committees.

## **Chapter 188 Treasurer; City of Galax.**

An Act to abolish the office of Treasurer in the City of Galax.

[\[H 1808\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The office of Treasurer in the City of Galax shall be abolished as of January 1, 2006, and all duties of such office shall be assumed by the City's Director of Finance.*

## **Chapter 211 Virginia Retirement System; teachers.**

An Act to amend and reenact § [51.1-155](#) of the Code of Virginia and to amend and reenact the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, relating to the Virginia Retirement System; continuation of retirement benefits for retired teachers who resume teaching.

[\[H 2438\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § [51.1-155](#) of the Code of Virginia is amended and reenacted as follows:

§ [51.1-155](#). Service retirement allowance.

A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than ~~thirty~~ 30 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the

period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of ~~thirty~~30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals ~~thirty~~30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than ~~ninety~~90, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to ~~ninety~~ 90 or more had he remained in service until such date. If the member has less than ~~thirty~~30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least ~~thirty~~30 years of creditable service and his then creditable service plus his then attained age would have been equal to ninety or more. The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3 of this subsection, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated service and deferred retirement to age ~~fifty-five~~55 or (ii) the

actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ [51.1-700](#) et seq.) of this title, his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

2. Active members of the General Assembly who are eligible to receive a retirement allowance under this title, excluding their service as a member of the General Assembly, shall be eligible to receive a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly. Such members of the General Assembly shall continue to be reported as any other members of the retirement system. Upon ceasing to serve in the General Assembly, members of the General Assembly receiving a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly shall have their retirement allowance recomputed prospectively to include their service as a member of the General Assembly. Active members of the General Assembly shall be prohibited from receiving a service retirement allowance under this title based solely on their service as a member of the General Assembly.

3. (Effective if contingency is met and expires July 1, 2006 - See note) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

a. The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education; and

b. The person has been receiving such retirement allowance for a period of at least ~~thirty~~ 30 days preceding his employment; and

c. At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#); and

d. The person is hired pursuant to a contract that does not exceed one year in duration;~~and~~

e. ~~The person hired may only be employed for a single year period.~~

*Nothing in this subdivision shall be construed to restrict the total number of years that any one person may participate under the provisions of this subdivision, provided that all applicable conditions are met.*

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

3. (Effective if contingency is not met and expires July 1, 2006 - See note) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

(a) The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education;

(b) The person has been receiving such retirement allowance for a certain period of time preceding his employment as provided by law;

(c) The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and

(d) At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#).

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

2. That the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001 is amended and reenacted as follows:

5. That the provisions of this act shall expire on July 1, ~~2006~~ 2005.

## Chapter 337 Northern Virginia Transportation District Program.

An Act to amend and reenact §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia, and to amend and reenact § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994 and by Chapters 740 and 761 of the Acts of Assembly of 1998, and as amended by Chapter 538 of the Acts of Assembly of 1999 and by Chapter 799 of the Acts of Assembly of 2002, relating to designating one additional project to be financed by bonds authorized to be issued for certain projects in the Northern Virginia Transportation District Program and reducing the amount designated for another project by an equal amount.

[\[H 2799\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-221.1:3](#) and [58.1-815.1](#) of the Code of Virginia are amended and reenacted as follows:

§ [33.1-221.1:3](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe and efficient transportation network in Northern Virginia which shall be known as the Northern Virginia Transportation District Program (the Program), including, without limitation, environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the following projects: the Fairfax County Parkway, Route 234 Bypass, Metrorail Capital Improvements attributable to Fairfax County including Metro parking expansions, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station and new rail car purchases, Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County, including Ballston Station improvements, Route 15 safety improvements in Loudoun County, Route 28 parallel roads in Loudoun County, Route 1/Route 123 interchange improvements in Prince William County, Lee Highway improvements in the City of Fairfax, Route

123 improvements in Fairfax County, Telegraph Road improvements in Fairfax County, Route 123 Occoquan River Bridge, *Gallows Road in Fairfax County*, Route 1/Route 234 interchange improvements in Prince William County, Potomac-Rappahannock Transportation Commission bus replacement program, and Dulles Corridor Enhanced Transit program.

B. Allocations to this Program from the Northern Virginia Transportation District Fund established by § [58.1-815.1](#) shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality of life in Virginia.

C. Except in the event that the Northern Virginia Transportation District Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in § [33.1-268](#) (2) (s).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E of this section.

E. The Commonwealth Transportation Board is authorized to receive, dedicate or use first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [58.1-815.1](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Northern Virginia Transportation District Fund, consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of

Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under §§ [58.1-802 B](#) and [58.1-814](#). The Fund shall also include any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including but not limited to, any funds distributed pursuant to §§ [33.1-23.3](#), [33.1-23.4](#) or § [33.1-23.5:1](#), which may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly from time to time and designated for this Fund and all interest, dividends and appreciation which may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2, 3 or 4 project or projects may be funded.

B. Allocations from this Fund may be paid (i) to any authority, locality or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program which consists of the following: the Fairfax County Parkway, Route 234 Bypass, Metrorail Capital Improvements attributable to Fairfax County including Metro parking expansions, Metro Capital Improvements, including the Franconia-Springfield Metrorail Station and new rail car purchases, Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County, including Ballston Station improvements, Route 15 safety improvements in Loudoun County, Route 28 parallel roads in Loudoun County, Route 1/Route 123 interchange improvements in Prince William County, Lee Highway improvements in the City of Fairfax, Route 123 improvements in Fairfax County, Telegraph Road improvements in Fairfax County, Route 123 Occoquan River Bridge, *Gallows Road in Fairfax County*, Route 1/Route 234 interchange improvements in Prince William County, Potomac-Rappahannock Transportation Commission bus replacement program, and Dulles Corridor Enhanced Transit program and (ii) for Category 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be

repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

2. That § 2 of Chapter 391 of the Acts of Assembly of 1993, as amended by Chapters 470 and 597 of the Acts of Assembly of 1994 and by Chapters 740 and 761 of the Acts of Assembly of 1998, and as amended by Chapter 538 of the Acts of Assembly of 1999 and by Chapter 799 of the Acts of Assembly of 2002, is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#), at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Contract Revenue Bonds, Series .....", in an aggregate principal amount not exceeding \$500,200,000 to finance the cost of the projects plus an amount for the issuance costs, capitalized interest, reserve funds, and other financing expenses (the Bonds). The proceeds of the Bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying the costs incurred or to be incurred for construction or funding of the projects which comprise the Northern Virginia Transportation District Program as hereinafter defined and as established in Article 5 (§ [33.1-267](#) et seq.) of Chapter 3 of Title 33.1, consisting of environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, construction and related improvements (the projects). Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

The projects shall be classified as Category 1, Category 2, Category 3, and Category 4 projects, each category being subject to different preconditions. Bonds to finance the cost of Category 1 and Category 3 projects may be issued by the Commonwealth Transportation Board. Bonds to finance the cost of Category 2 projects may be issued by the Commonwealth Transportation Board only if the aggregate principal amount of \$495,200,000 in bonds has been issued to finance the cost of Category 1 and Category 3 projects. Category 4 projects shall not be financed through the issuance of bonds; however, after all Bonds authorized have been issued, then to the extent the Northern Virginia Transportation District Fund contains amounts in excess of the amount needed to pay annual debt service on such Bonds in a particular fiscal year, such excess amounts may be expended to pay the cost of the work identified as Category 4 projects.

The projects, and the amount of bonds authorized to be issued for each such project, are as follows and constitute the Northern Virginia Transportation District Program:

## Uncodified Acts of Assembly - 2003

Category 1 projects Amount	Bond
Metro Capital Improvements, including the  Franconia-Springfield Metrorail Station 85,600,000	\$
 Fairfax County Parkway 87,000,000	\$
 Route 234 Bypass 73,400,000	\$
 Route 7 improvements between Route 15 and Route  28 in Loudoun County 15,000,000	\$
 Total \$261,000,000	

Category 2 projects consist of the Route 234 Bypass/Route 28 interchange improvements in Prince William County, in the amount of \$5,000,000.

Category 3 projects Amount	Bond
 Route 50/Courthouse Road interchange \$10,000,000	
 Fairfax County Parkway --	

Uncodified Acts of Assembly - 2003

between Route 1 and Route 7  
~~\$65,000,000~~ 57,400,000

Route 234 Bypass from Route 28 to Route 234  
\$15,300,000

Route 28/Route 625 interchange \$  
7,900,000

Route 28 Parallel Roads in Loudoun County \$  
3,500,000

Metrorail Capital Improvements attributable to  
the City of Alexandria, including the King

Street Metrorail station access \$  
8,600,000

Metrorail Capital Improvements attributable to  
Fairfax County, including Metro Parking

expansions \$  
5,000,000

Metrorail Capital Improvements, including new  
rail car purchases \$  
29,300,000

Route 15 Safety Improvements

Leesburg Town Line

Uncodified Acts of Assembly - 2003

to Potomac River	\$
10,100,000	
Route 1/Route 123 Interchange	\$
8,200,000	
Lee Highway Improvements	
City of Fairfax	\$
3,100,000	
Route 123 Widening Occoquan River to Lee	
Chapel Road	\$
27,000,000	
Route 123 Occoquan River Bridge	\$
5,500,000	
Dulles Corridor Enhanced Transit Program (Fairfax County share)	\$ 6,000,000
Route 7 Improvements-	
Loudoun County Line to Reston Parkway	\$
10,000,000	
Route 7 Improvements-	
Reston Parkway to Dulles Toll Road	\$
3,000,000	
<i>Gallows Road in Fairfax Co.</i>	

Uncodified Acts of Assembly - 2003

<i>between Route 29 and Route 50</i>	\$
7,600,000	
Telegraph Road Improvements- S. Kings Highway to Beulah St.	\$ 5,000,000
Route 1/Route 234 Interchange	\$
4,000,000	
Potomac-Rappahannock Transportation Commission	
Bus Replacement Program	\$
1,500,000	
Metrorail Capital Improvements attributable to	
Arlington County, including Ballston Station	
improvements	\$
6,200,000	
Total	\$
234,200,000	

The Commonwealth Transportation Board shall only issue the bonds for Category 3 projects in an amount or amounts necessary to expedite or complete the Category 3 projects if the following conditions are satisfied: (i) at least two of the jurisdictions participating in the Northern Virginia Transportation District Program have entered into a contract pursuant to § [58.1-815.1](#) and (ii) the governing bodies of at least five of the jurisdictions participating in the Northern Virginia Transportation District Program and comprising a majority of population of the jurisdictions participating in such Program have adopted resolutions endorsing the proposed sale or sales of bonds to support the Category 3 projects. Such contracts and resolutions shall remain in force so long as any debts or obligations for Category 3 projects remain outstanding.

The work identified as Category 4 projects to be funded from the Northern Virginia Transportation District Fund, to the extent there are sums in excess of the amount needed to pay debt service on the Bonds in a given fiscal year, is as follows:

Category 4 projects

Such projects as may be concurred in by the local jurisdictions participating in the Northern Virginia Transportation District Program, as evidenced by resolutions adopted by an affirmative vote of each of the jurisdictions participating in the Northern Virginia Transportation District Program and subject to such guidelines and conditions as may be promulgated by the Commonwealth Transportation Board.

The Bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to the Bonds. The Treasury Board's duties shall include the approval of the terms and structure of the Bonds. In the event the aggregate principal amount of the issuance, for the projects and amounts authorized by the 1994 amendments to Chapter 391 of the Acts of Assembly of 1993, is less than \$127,000,000, the Commonwealth Transportation Board shall cause each Category 1 project to be shared in the reduced issuance by reducing the proceeds of the Bonds for each of the Category 1 projects on a pro rata basis.

## **Chapter 885 Clarifications for certain collegial bodies.**

An Act to amend and reenact §§ [2.2-218](#), [2.2-220](#), [2.2-2424](#), [2.2-2503](#), [2.2-2506](#), [2.2-2628](#), [2.2-2666.1](#), [2.2-2705](#), [2.2-5601](#), 3.1-1108, [10.1-1018](#), [18.2-271.2](#), [20-108.2](#), [22.1-337](#), [22.1-354.1](#), [30-156](#), [30-173](#), [30-182](#), [32.1-73.7](#), [51.5-39.2](#), [56-579](#), [56-581.1](#), [56-585](#), [56-592](#), [56-592.1](#), [56-596](#), [62.1-69.34](#), [62.1-69.35](#), [62.1-69.38](#) and [62.1-69.43](#) of the Code of Virginia; to amend the Code of Virginia by adding in Title 30 a chapter numbered 31, consisting of sections numbered [30-201](#) through [30-209](#), by adding in Title 30 a chapter numbered 32, consisting of sections numbered [30-210](#) through [30-217](#), and by adding in Chapter 5.4 of Title 62.1 sections numbered [62.1-69.35:1](#) and [62.1-69.35:2](#); and to repeal Article 3 (§§ [2.2-2709](#) and [2.2-2710](#)) of Chapter 27 of Title 2.2 of the Code of Virginia and § [56-595](#) of the Code of Virginia; and to repeal Chapter 476 of the Acts of Assembly of 2002 and Chapter 657 of the Acts of Assembly of 2002, relating to certain requirements of collegial bodies; reports.

[\[S 1315\]](#)

Approved March 22, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-218](#), [2.2-220](#), [2.2-2424](#), [2.2-2503](#), [2.2-2506](#), [2.2-2628](#), [2.2-2666.1](#), [2.2-2705](#), [2.2-5601](#), 3.1-1108, [10.1-1018](#), [18.2-271.2](#), [20-108.2](#), [22.1-337](#), [22.1-354.1](#), [30-156](#), [30-173](#), [30-182](#), [32.1-73.7](#), [51.5-39.2](#), [56-579](#), [56-581.1](#), [56-585](#), [56-592](#), [56-592.1](#), [56-596](#), [62.1-69.34](#), [62.1-69.35](#), [62.1-69.38](#) and [62.1-69.43](#) of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 31, consisting of sections numbered [30-201](#) through [30-209](#), by adding in Title 30 a chapter numbered 32, consisting of sections numbered [30-210](#) through [30-217](#), and by adding in Chapter 5.4 of Title 62.1 sections numbered [62.1-69.35:1](#) and [62.1-69.35:2](#) as follows:

§ [2.2-218](#). Development of strategies to restore the water quality and living resources of the Chesapeake Bay and its tributaries.

The Secretary shall coordinate the development of tributary plans designed to improve water quality and restore the living resources of the Chesapeake Bay and its tributaries. Each plan shall be tributary-specific in nature and prepared for the Potomac, Rappahannock, York, and James River Basins as well as the western coastal basins (comprising the small rivers on the western Virginia mainland that drain to the Chesapeake Bay, not including the Potomac, Rappahannock, York and James Rivers) and the eastern coastal basin (encompassing the creeks and rivers of the Eastern Shore of Virginia that are west of U.S. Route 13 and drain to the Chesapeake Bay). Each plan shall (i) address the reduction of nutrients and suspended solids, including sediments, entering the Chesapeake Bay and its tributaries and (ii) summarize other existing programs, strategies, goals and commitments for reducing toxics; the preservation and protection of living resources; and the enhancement of the amount of submerged aquatic vegetation, for each tributary basin and the Bay. The plans shall be developed in consultation with affected stakeholders, including, but not limited to, local government officials; wastewater treatment operators; seafood industry representatives; commercial and recreational fishing interests; developers; farmers; local, regional and statewide conservation and environmental interests; ~~the Virginia Chesapeake Bay Partnership Council~~; and the Virginia delegation to the Chesapeake Bay Commission.

§ [2.2-220](#). Annual reporting.

The Secretary shall report by November 1 of each year to the House Committee on *Agriculture, Chesapeake and Its Tributaries Natural Resources*, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, the Senate Committee on Finance, *and* the Virginia delegation to the

Chesapeake Bay Commission and the Virginia Chesapeake Bay Partnership Council on progress made in the development and implementation of each plan. The annual report shall include, but not be limited to:

1. An analysis of actions taken and proposed and their relation to the timetables and programmatic and environmental benchmarks and indicators.
2. The results and analyses of quantitative or qualitative tests or studies, including but not limited to water quality monitoring and submerged aquatic vegetation surveys, which relate to actual resource improvements in each tributary. The results and analyses are to be clearly related to designated portions of each tributary.
3. A complete summary of public comments received on each plan.
4. The current or revised cost estimates for implementation of the plans.
5. The status of Virginia's strategies as compared to the development, content and implementation of tributary strategies by the other jurisdictions that are signatories to the Chesapeake Bay Agreement.

§ [2.2-2424](#). Virginia-Israel Advisory Board; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary.

A. The Virginia-Israel Advisory Board (the "Board") is established as an advisory board, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Board shall be to advise the Governor on ways to improve economic and cultural links between the Commonwealth and the State of Israel, with a focus on the areas of commerce and trade, art and education, and general government.

B. The Board shall consist of ~~thirty-one~~ 31 members ~~to be appointed~~ *that include 29 citizen members and two ex officio members* as follows: six citizen members appointed by the Speaker of the House of Delegates, who may be members of the House of Delegates or other state or local elected officials; six citizen members appointed by the Senate Committee on Privileges and Elections, who may be members of the Senate or other state or local elected officials; ~~and thirteen~~ 13 members appointed by the Governor who represent business, industry, education, the arts, and government; ~~and the president, or his designee, of each of the four Jewish Community Federations serving the Richmond, Northern Virginia, Tidewater and Peninsula regions;~~ *and the Secretaries* Secretary of Commerce and Trade; *and the Secretary of Education, or their designees,* who shall serve as *ex officio voting* members of the Board.

C. *Nonlegislative* citizen members shall serve for terms of four years. *Legislative members and the Secretaries of Commerce and Trade, and Education, or their designees,* shall serve terms coincident with their terms of office. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. *Vacancies shall be filled in the*

*same manner as the original appointments.* Any member may be reappointed for successive terms.

D. The members of the Board shall elect a chairman and vice chairman annually from among its membership. *The Board shall meet at such times as it deems appropriate or on call of the chairman.* A majority of the members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services. *However, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of the expenses of the members shall be provided by the Office of the Governor.*

F. The Office of the Governor shall serve as staff to the Board.

G. *The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [2.2-2503](#). Special Advisory Commission on Mandated Health Insurance Benefits; membership; terms; meetings; compensation and expenses; staff; chairman's executive summary.

A. The Special Advisory Commission on Mandated Health Insurance Benefits (the "Commission") is established as an advisory commission within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Commission shall be to advise the Governor and the General Assembly on the social and financial impact of current and proposed mandated benefits and providers, in the manner set forth in this article.

B. The Commission shall consist of ~~sixteen~~ 18 members ~~to be appointed~~ *that include six legislative members, 10 nonlegislative citizen members, and two ex officio members as follows: ~~ten~~ one member of the Senate Committee on Education and Health and one member of the Senate Committee on Commerce and Labor appointed by the Senate Committee on Privileges and Elections; two members of the House Committee on Health, Welfare and Institutions and two members of the House Committee on Commerce and Labor appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; 10 nonlegislative citizen members shall be appointed by the Governor including that include one physician, one chief executive officer of a general acute care*

hospital, one allied health professional, one representative of small business, one representative of a major industry, one expert in the field of medical ethics, two representatives of the accident and health insurance industry, and two *nonlegislative* citizen members; and the State Commissioner of Health and the State Commissioner of Insurance, or their designees, who shall serve as *ex officio nonvoting members*. The Senate Committee on Privileges and Elections shall appoint one member from the Senate Committee on Education and Health and one member from the Senate Committee on Commerce and Labor, and the Speaker of the House of Delegates shall appoint one member from the House Committee on Health, Welfare and Institutions and one member from the House Committee on Corporations, Insurance and Banking. The State Commissioner of Health and the State Commissioner of Insurance shall serve as *ex officio, nonvoting members*.

C. All *nonlegislative citizen* members shall be appointed for terms of four years each, except that appointments to fill vacancies shall be made for the unexpired terms. No person shall be eligible to serve for or during more than two successive four-year terms; but after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional four-year terms may be served by such a member if so appointed. *Legislative and ex officio members shall serve terms coincident with their terms of office. All members may be reappointed. However, no House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the manner as the original appointments. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.*

D. The Commission shall meet regularly and at the request of the *chairman, the majority of the voting members or the Governor*. The Commission shall select elect a chairman and a vice chairman, as determined by the membership. A majority of the members of the Commission shall constitute a quorum.

E. *Legislative* members of the Commission shall receive reimbursement such compensation as provided in § [30-19.12](#), and *nonlegislative citizen members* shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the discharge performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding

*for the compensation and costs of expenses of the members shall be provided by the State Corporation Commission.*

F. The Bureau of Insurance, the State Health Department, and such other state agencies as may be considered appropriate by the Commission shall provide staff assistance to the Commission.

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

§ [2.2-2506](#). Virginia Advisory Commission on Intergovernmental Relations; membership; terms; compensation and expenses; reports to Governor and General Assembly; chairman's executive summary.

A. The Virginia Advisory Commission on Intergovernmental Relations (the "Commission") is established as an advisory commission within the meaning of § [2.2-2100](#), in the executive branch of state government.

B. The Commission shall consist of ~~twenty~~22 members *that include eight legislative members, three members of the executive branch, and 11 nonlegislative citizen members* to be appointed as follows: ~~three~~five members shall be appointed from of the House of Delegates *to be appointed* by the Speaker of the House of Delegates *in accordance with the principles of proportional representation contained in the Rules of the House of Delegates*; three members ~~shall of the Senate~~ to be appointed by the Senate Privileges and Elections Committee; and three members ~~from of the executive branch of state government~~;, four elected local government officials upon the recommendation of the Virginia Association of Counties ~~and~~, four elected municipal officers upon the recommendation of the Virginia Municipal League;,, one representative of a planning district commission upon the recommendation of the Virginia Association of Planning Commissions;,, and two citizen members who have no current government affiliation, all of whom shall be appointed by the Governor.

C. ~~Members from the executive branch shall serve at the pleasure of the Governor. All other nonlegislative members, except the three members of the executive branch, shall serve for a four-year term. No member shall serve more than eight consecutive years terms. Legislative members shall serve terms coincident with their terms of office. Members from the executive branch shall serve at the pleasure of the Governor and shall serve no more than eight consecutive years. All members may be reappointed.~~

*However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms and no non-legislative citizen member appointed to a term shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled by the appointing authority to fill for the unexpired term. Vacancies shall be filled in the manner as the original appointments.*

D. A chairman and vice chairman shall be elected annually from the membership. The Commission shall meet at least four times a year. A majority of members of the Commission shall constitute a quorum.

E. ~~The members of the Commission shall be paid their necessary expenses incident to their work on the Commission as provided in § 2.2-2823.~~ *Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.12, and non-legislative members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses shall be provided by the Commission on Local Government.*

F. The Commission shall report its findings as it deems proper and shall submit a biennial report to the Governor and the General Assembly on or before October 1 of each ~~even-numbered~~ *odd-numbered year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports.* The biennial report shall be distributed in accordance with the provisions of § 2.2-1127.

G. *The chairman of the Commission shall submit to the Governor and the General Assembly a biennial executive summary of the interim activity and work of the Commission no later than the first day of each even-numbered year session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ 2.2-2628. Council on Indians; membership; terms; chairman; compensation and expenses; chairman's executive summary.

A. The Council on Indians (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall be composed of ~~thirteen~~ *16* members ~~to be appointed~~ *that include four legislative members, 11 nonlegislative citizen members, and one ex officio member* as follows: (i) the eight Virginia tribes officially recognized by the Commonwealth shall be entitled but not

required to be represented by one member from each tribe, (ii) two members at-large ~~at large~~ from the Indian population residing in Virginia, and (iii) one member from the Commonwealth at large, all of whom shall be appointed by the Governor; ~~and (iv) one member from three members of the House of Delegates appointed by the Speaker of the House of Delegates, and in accordance with the principles of proportional representation contained in the Rules of the House of Delegates;~~ (v) one member ~~from~~ of the Senate of Virginia appointed by the Senate Committee on Privileges and Elections; ~~and (vi) the Secretary of Health and Human Resources, or his designee, shall be an ex officio voting member.~~ If a recognized tribe elects not to be represented, then that seat on the Council shall be filled by appointment of an additional member from the at-large Indian population of Virginia. ~~The Secretary of Health and Human Resources shall be an ex officio member of the Council.~~

B. After the original appointments, all *nonlegislative citizen* appointments shall be for terms of three years except appointments to fill vacancies, which shall be for the unexpired terms. *Legislative and ex officio members shall serve terms coincident with their terms of office. All members may be reappointed. However, no nonlegislative citizen member shall be eligible to serve more than two three successive three-year terms in succession, no member of the Senate shall be eligible to serve more than two successive four-year terms, and no member of the House of Delegates shall be eligible to serve more than four successive two-year terms,* provided that *no appointments to terms commencing prior to July 1, 1988, shall not be considered in determining such limit, nor shall appointments to fill vacancies for an unexpired term shall be included in determining the term limit.*

C. The Governor shall appoint one of the members appointed pursuant to *clause (i) or (ii)* of subsection A as chairman, who shall serve in such position at the pleasure of the Governor. *The Council shall elect a vice chairman from among its membership. The meetings of the Council shall be held at the call of the chairman or whenever the majority of the voting members so request. A majority of the members shall constitute a quorum.*

D. Members of the Council shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the ~~discharge performance~~ of their duties as provided in §§[2.2-2813](#) and [2.2-2825](#). *Funding for the costs of expenses of the members shall be provided by the Office of the Governor.*

E. *The chairman of the Council shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Council no later than the first day of each regular session of the General Assembly. The executive summary*

*shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [2.2-2666.1](#). Council created; composition; compensation and expenses; meetings; chairman's executive summary.

A. The Virginia Military Advisory Council (the "Council") is hereby created as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government, to maintain a cooperative and constructive relationship between the Commonwealth and the leadership of the several Armed Forces of the United States and the military commanders of such Armed Forces stationed in the Commonwealth, and to encourage regular communication on continued military facility viability, the exploration of privatization opportunities and issues affecting preparedness, public safety and security.

B. The Council shall be composed of not more than ~~twenty-five~~ 25 members and shall include the Lieutenant Governor, the Attorney General, the Adjutant General, the Chairman of the House Committee on Militia, Police and Public Safety and the Chairman of the Senate Committee on General Laws, or their designees; four members, one of whom shall be a representative of the Virginia Defense Force, to be appointed by and serve at the pleasure of the Governor; and not more than ~~sixteen~~ 16 members, including representatives of major military commands and installations located in the Commonwealth or in jurisdictions adjacent thereto, who shall be appointed by the Governor from persons nominated by the Secretaries of the Armed Forces of the United States and who shall serve at the pleasure of the Governor. The provisions of § [49-1](#) shall not apply to federal civilian officials and military personnel appointed to the Council.

C. *Legislative members of the Council shall receive such compensation as is set forth in § [30-19.12](#), and nonlegislative members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Department of Military Affairs.*

D. *The Council shall elect a chairman and vice chairman from among its membership. The meetings of the Council shall be held at the call of the chairman or whenever the majority of members so request. A majority of the members shall constitute a quorum.*

E. *The chairman of the Council shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Council no later than the first day of each regular session of the General Assembly. The executive summary*

*shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [2.2-2705](#). Virginia War Memorial Foundation; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary.

A. The Virginia War Memorial Foundation (the Foundation) is established to serve as a policy foundation, within the meaning of § [2.2-2100](#), in the executive branch of state government. The Foundation shall be governed and administered by a board of trustees for the purpose of honoring patriotic Virginians who rendered faithful service and sacrifice in the cause of freedom and liberty for the Commonwealth and the nation in time of war.

~~B. The Foundation board of trustees shall consist of the Secretary of Administration, who shall serve ex officio, and seventeen other persons as follows: four~~ *19 members that include eight legislative members, 10 nonlegislative citizen members, and one ex officio member as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of House of Delegates; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections of the Senate; and ten other persons* *10 nonlegislative citizen members* appointed by the Governor, subject to confirmation by the General Assembly; *and the Secretary of Administration who shall serve ex officio with voting privileges.* A majority of the trustees shall be members or veterans of the armed forces of the United States or the Virginia National Guard. Members appointed should include representatives of some or all of the various veterans organizations active in Virginia, as the Governor deems appropriate.

C. Except for initial appointments, all *nonlegislative citizen member* appointments shall be for a term *terms* of three years. ~~Appointments to fill vacancies shall be made for the unexpired term.~~ *Legislative members and the Secretary of Administration shall serve terms coincident with their terms of office. All members may be reappointed. However, no person-nonlegislative citizen member shall be eligible to serve for more than threefour successive full-three-year terms. However, any person appointed to an initial term of less than three years or to a vacancy shall be eligible to serve three additional successive full three-year terms thereafter.No Senate member shall be eligible to serve more than three successive four-year terms and no member of the House of Delegates shall be eligible to serve more than six successive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies*

*shall be filled in the same manner as the original appointments. Trustees may be removed appointed by the Governor shall serve at his pleasure.*

*D. Trustees shall be reimbursed for their actual expenses incurred while attending meetings of the trustees or performing other duties. However, such reimbursement shall not exceed the per diem rate established for members of the General Assembly pursuant to [§ 30-19.12](#). Legislative members of the Foundation shall receive such compensation as is set forth in [§ 30-19.12](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation of legislative members shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates, as appropriate. Funding for the costs of expenses of all members shall be provided by the Foundation.*

*E. Secretary of Administration shall designate a state agency to The Department of General Services shall provide the Foundation with administrative and other services.*

*F. The trustees shall adopt bylaws governing their organization and procedures and may amend the same. The trustees shall elect from their number a chairman, vice chairman, and such other officers as their bylaws may provide. They shall also appoint an executive committee, composed of not less than five trustees, which committee shall exercise the powers and duties imposed on the Foundation by this section to the extent permitted by the trustees in their bylaws. Meetings of the board of trustees shall be held at the call of the chairman or whenever a majority of the members so request. A majority of members shall constitute a quorum.*

*G. The chairman of the board of trustees shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

[§ 2.2-5601](#). Appointment and term of members of Southern States Energy Board; compensation and expenses.

The Governor, the Senate Committee on Privileges and Elections, and the Speaker of the House of Delegates shall each appoint one member of the Southern States Energy Board as established by Article II of the compact, to serve at the pleasure of their appointive authority for a term of four years. Legislative members shall serve terms coincident with their terms of office. The gubernatorial appointee shall serve at the pleasure of the Governor. If any member appointed is the head of a department or agency of the

Commonwealth, he may designate a subordinate officer or employee of his department or agency to serve in his stead as permitted by Article II A. of the compact and in conformity with any applicable bylaws of the Board.

*Legislative members of the Board shall receive such compensation as is set forth in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). The costs of compensation and expenses of the legislative members shall be paid from appropriations to the Virginia Commission on Intergovernmental Cooperation for the attendance of conferences.*

§ 3.1-1108. Membership; terms; vacancies; compensation and expenses; chairman; chairman's executive summary.

A. The Commission shall be composed of ~~thirty-one~~ 31 members as follows:

1. Six members ~~shall be of the House of Delegates~~ appointed by the Speaker of the House of Delegates ~~from the membership thereof~~ in accordance with the principles of ~~Rule 16 of proportional representation contained in the Rules of the House of Delegates adopted at the 1998 Regular Session of the General Assembly;~~
2. Four members ~~shall be of the Senate~~ appointed by the *Senate Committee on Privileges and Elections* ~~Committee of the Senate from the membership of the Senate;~~
3. The Secretary of Commerce and Trade or his designee;
4. The Secretary of Finance or his designee;
5. The Commissioner of Agriculture and Consumer ~~Affairs~~ *Services* or his designee;
6. Three *nonlegislative citizen* members *who* shall be active flue-cured tobacco producers appointed by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor from a list of six persons provided by the members of the General Assembly appointed to the Commission;
7. Three *nonlegislative citizen* members *who* shall be active burley tobacco producers appointed by the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor from a list of three persons provided by the members of the General Assembly appointed to the Commission;
8. One *nonlegislative citizen* member *who* shall be a representative of the Virginia Farm Bureau Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm Bureau Federation; and
9. Eleven members shall be *nonlegislative citizen* citizens appointed by the Governor. Of the ~~eleven~~ 11 *nonlegislative citizen* members, three shall be appointed by the Governor from a list of nine provided by the members of the General Assembly appointed to the Commission.

With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of Finance or his designee and the Commissioner of Agriculture and Consumer Affairs ~~Services~~ or his designee, all members of the Commission shall reside in the Southside and Southwest regions of the Commonwealth and shall be subject to confirmation by the General Assembly. To the extent feasible, appointments representing the Southside and Southwest regions shall be proportional to the tobacco quota production of each region.

Except as otherwise provided herein, all appointments shall be for terms of four years each. ~~Vacancies shall be filled for the unexpired terms.~~ *Legislative members, the Secretary of Commerce and Trade, the Secretary of Finance, and the Commissioner of Agriculture and Consumer Services shall serve terms coincident with their terms of office.* No *nonlegislative citizen* member shall be eligible to serve more than two successive four-year terms; however, after expiration of a term of three years or less, ~~or after the expiration of the remainder of a term to which he was appointed to fill a vacancy,~~ two additional *four-year* terms may be served by such member if appointed thereto. ~~Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term.~~ *Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms.* Any appointment to fill a vacancy shall be made in the same manner as the original appointment. *The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.*

The initial appointments of the active flue-cured tobacco producers, the active burley tobacco producers, and ~~the other nonlegislative~~ citizen members shall be as follows: one active flue-cured tobacco producer, one active burley tobacco producer and four *nonlegislative* citizen members shall be appointed for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and four *nonlegislative* citizen members shall be appointed for terms of three years; and one active flue-cured tobacco producer, one active burley tobacco producer and three *nonlegislative* citizen members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of four years.

B. The Commission shall appoint from its membership a chairman and a vice chairman, both of whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence, the vice chairman, shall preside at all meetings of the Commission. *The meetings of the Commission shall be held on the call of the chairman or*

*whenever the majority of the members so request. A majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.*

*C. ~~Members of the Commission shall receive compensation for their services at the rate provided in the appropriation act and reimbursement for actual expenses incurred in the performance of their duties on behalf of the Commission~~ Legislative members of the Commission shall receive such compensation as is set forth in § [30-19.12](#), and non-legislative members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Such compensation and expenses shall be paid from the Fund.*

*D. Members and employees of the Commission shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.*

*E. Except as otherwise provided in this chapter, members and employees of the Commission shall be subject to the provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*F. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [10.1-1018](#). Virginia Land Conservation Board of Trustees; membership; terms; vacancies; compensation and expenses; chairman's executive summary.

*A. The Foundation shall be governed and administered by a Board of Trustees. The Board shall ~~include one member from each congressional district, appointed by the Governor, and six members appointed from the Commonwealth at large, four by the Speaker of the House of Delegates and two by the Senate Committee on Privileges and Elections~~ consist of 18 members that include 17 citizen members and one ex officio voting member as follows: four citizen members, who may be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates and, if such members are members of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two citizen members, who may be members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; 11 nonlegislative citizen members, one from each*

*congressional district, to be appointed by the Governor; and the Secretary of Natural Resources, or his designee, to serve ex officio with voting privileges. Such Non-legislative citizen members shall be appointed for four-year terms, except that initial appointments shall be made for terms of one to four years in a manner whereby no more than six members shall have terms which that expire in the same year. Such Legislative members and the ex officio member shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Nonlegislative citizen members shall have experience or expertise, professional or personal, in one or more of the following areas: natural resource protection and conservation, construction and real estate development, natural habitat protection, environmental resource inventory and identification, forestry management, farming, farmland preservation, fish and wildlife management, historic preservation, and outdoor recreation. At least one of the nonlegislative citizen members shall be a farmer. No such member shall be eligible to serve more than two consecutive four-year terms. Such Members of the Board shall post bond in the penalty of \$5,000 with the State Comptroller prior to entering upon the functions of office. Appointments to fill vacancies shall be made for the unexpired term.*

*B. The Secretary of Natural Resources or his designee shall also serve on the Board of Trustees. The term of the Secretary of Natural Resources or his designee shall be coincident with that of the Governor. The Secretary of Natural Resources shall serve as the chairman of the Board of Trustees. The chairman shall serve until his successor is appointed. The members appointed as provided in subsection A shall elect a vice chairman annually from among the members of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The board shall meet at the call of the chairman or whenever a majority of the members so request.*

*C. Trustees of the Foundation shall receive no compensation for their services but shall receive reimbursement for actual. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties on behalf of the*

Foundation as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of expenses of the members shall be provided by the Department of Conservation and Recreation.

D. The chairman of the Board and any other person designated by the Board to handle the funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation for such purpose.

E. The Board shall seek assistance in developing grant criteria and advice on grant priorities and any other appropriate issues from a task force consisting of the following agency heads or their designees: the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, the State Forester, the Director of the Department of Historic Resources, the Director of the Department of Game and Inland Fisheries and the Executive Director of the Virginia Outdoors Foundation. The Board may request any other agency head to serve on or appoint a designee to serve on the task force.

F. The chairman of the Board shall submit to the Governor and the General Assembly a biennial executive summary of the interim activity and work of the Board no later than the first day of each even-numbered year regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ [18.2-271.2](#). Commission on VASAP; purpose; membership; terms; meetings; staffing; compensation and expenses; chairman's executive summary.

A. There is hereby established ~~a~~ *in the legislative branch of state government the Commission on the Virginia Alcohol Safety Action Program (VASAP)* ~~which~~. *The Commission shall administer and supervise the state system of local alcohol and safety action programs, develop and maintain operation and performance standards for local alcohol and safety action programs, and allocate funding to such programs. The Commission shall be composed consist of three- 15 members that include six legislative members and nine nonlegislative citizen members. Members shall be appointed as follows: four current or former members from of the House Committee for Courts of Justice, to be appointed by the Speaker of the House of Delegates and two in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members from of the Senate Committee for Courts of Justice, to be appointed by the Senate Privileges and Elections Committee; three sitting or retired judges, one each from the circuit, general district and juvenile and domestic relations district courts, who regularly hear or heard cases involving driving under the influence and are familiar with*

their local alcohol safety action programs, to be appointed by the Chairman of the Committee on District Courts; two directors of local alcohol safety action programs, to be appointed by the legislative members of the Commission; one representative from the law-enforcement profession, to be appointed by the Speaker of the House and one *non-legislative* citizen at large, to be appointed by the Senate Committee on Privileges and Elections; one representative from the Virginia Department of Motor Vehicles whose duties are substantially related to matters to be addressed by the Commission to be appointed by the Commissioner of the Department of Motor Vehicles, and one representative from the Department of Mental Health, Mental Retardation and Substance Abuse Services whose duties also substantially involve such matters, to be appointed by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. ~~All Commission members, other than those members appointed from the House or Senate Committee for Courts of Justice,~~ *Legislative members shall serve terms coincident with their terms of office. In accordance with the staggered terms previously established, nonlegislative citizen members shall serve two-year terms. However, one-half of such members initially appointed to the Commission shall serve one-year terms and the other one-half shall serve two-year terms. Thereafter, all such appointments shall be for two years. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment.* -

B. The Commission shall meet ~~quarterly~~ *at least four times each year* at such places as it may from time to time designate. *A majority of the members shall constitute a quorum. The Commission shall elect a chairman and vice chairman from among its membership.* The Commission shall be empowered to establish and ~~assure~~ *ensure* the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information and administrative procedures for the various local alcohol safety action programs and shall be responsible for overseeing the administration of the statewide VASAP system. Such programs shall be certified by the Commission in accordance with procedures set forth in the Commission on VASAP Certification Manual. The Commission shall also oversee program plans, operations and performance and a system for allocating funds to cover deficits ~~which~~ *that* may occur in the budgets of local programs.

C. The Commission shall appoint and employ and, at its pleasure, remove an executive director and such other persons as it may deem necessary, and determine their duties and fix their salaries or compensation.

D. The Commission shall appoint a Virginia Alcohol Safety Action Program Advisory Board to make recommendations to the Commission regarding its duties and administrative functions. The membership of such Board shall be appointed in the discretion of the Commission and include personnel from (i) local safety action programs, (ii) state or local boards of mental health and mental retardation and (iii) other community mental health services organizations. An assistant attorney general who provides counsel in matters relating to driving under the influence shall also be appointed to the Board.

E. ~~For the performance of their duties,~~ *Legislative members of the Commission shall receive compensation as provided in § [30-19.12](#). Funding for the costs of compensation of legislative members shall be provided by the Commission. All members shall be reimbursed for their actual all reasonable and necessary expenses as provided in §§ [2.2-2813](#) and [2.2-2825](#) to be paid out of that portion of moneys paid in VASAP defendant entry fees which is forwarded to the Virginia Alcohol Safety Action Program. In addition, per diem compensation shall be allowed for current members of the General Assembly for each day spent in performing their duties.*

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

§ [20-108.2](#). Guideline for determination of child support.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or 63.2, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set forth in this section is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order as set out in § [20-108.1](#), which findings may be incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to the factors set out in §§ [20-107.2](#) and [20-108.1](#). The Department of Social Services shall set child support at the amount resulting from computations using the guidelines set out in this section pursuant to the authority granted to it in Chapter 19 (§ [63.2-1900](#) et seq.) of Title 63.2 and subject to the provisions of § [63.2-1918](#).

B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income

amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, unless one of the following exemptions applies where the sole custody child support obligation as computed pursuant to subdivision G. 1. is less than \$65 per month, there shall be a presumptive minimum child support obligation of \$65 per month payable by the payor parent. Exemptions from this presumptive minimum monthly child support obligation shall include: parents unable to pay child support because they lack sufficient assets from which to pay child support and who, in addition, are institutionalized in a psychiatric facility; are imprisoned with no chance of parole; are medically verified to be totally and permanently disabled with no evidence of potential for paying child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily unable to produce income. "Number of children" means the number of children for whom the parents share joint legal responsibility and for whom support is being sought.

SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED FOUR CHILDREN	MONTHLY FIVE CHILDREN	GROSS SIX CHILDREN	ONE INCOME CHILDREN	TWO CHILD 0-599	THREE CHILDREN
65	65	65	65	65	600
110	111	113	114	115	116
650	138	140	142	143	145
146	700	153	169	170	172
174	176	750	160	197	199
202	204	206	800	168	226
228	231	233	236	850	175
254	257	260	263	266	900
182	281	286	289	292	295
950	189	292	315	318	322
325	1000	196	304	344	348
351	355	1050	203	315	373
377	381	385	1100	210	326
402	406	410	415	1150	217
337	422	435	440	445	1200
225	348	436	465	470	475
1250	232	360	451	497	502

Uncodified Acts of Assembly - 2003

507	1300	241	373	467	526
536	542	1350	249	386	483
545	570	576	1400	257	398
499	563	605	611	1450	265
411	515	581	633	645	1500
274	426	533	602	656	680
1550	282	436	547	617	672
714	1600	289	447	560	632
689	737	1650	295	458	573
647	705	754	1700	302	468
587	662	721	772	1750	309
479	600	676	738	789	1800
315	488	612	690	752	805
1850	321	497	623	702	766
819	1900	326	506	634	714
779	834	1950	332	514	645
727	793	848	2000	338	523
655	739	806	862	2050	343
532	666	751	819	877	2100
349	540	677	763	833	891
2150	355	549	688	776	846
905	2200	360	558	699	788
860	920	2250	366	567	710
800	873	934	2300	371	575
721	812	886	948	2350	377
584	732	825	900	963	2400
383	593	743	837	913	977
2450	388	601	754	849	927
991	2500	394	610	765	862
940	1006	2550	399	619	776
874	954	1020	2600	405	627
787	886	967	1034	2650	410
635	797	897	979	1048	2700
415	643	806	908	991	1060

# Uncodified Acts of Assembly - 2003

2750	420	651	816	919	1003
1073	2800	425	658	826	930
1015	1085	2850	430	667	836
941	1027	1098	2900	435	675
846	953	1039	1112	2950	440
683	856	964	1052	1125	3000
445	691	866	975	1064	1138
3050	450	699	876	987	1076
1152	3100	456	707	886	998
1089	1165	3150	461	715	896
1010	1101	1178	3200	466	723
906	1021	1114	1191	3250	471
732	917	1032	1126	1205	3300
476	740	927	1044	1139	1218
3350	481	748	937	1055	1151
1231	3400	486	756	947	1067
1164	1245	3450	492	764	957
1078	1176	1258	3500	497	772
967	1089	1189	1271	3550	502
780	977	1101	1201	1285	3600
507	788	987	1112	1213	1298
3650	512	797	997	1124	1226
1311	3700	518	806	1009	1137
1240	1326	3750	524	815	1020
1150	1254	1342	3800	530	824
1032	1163	1268	1357	3850	536
834	1043	1176	1283	1372	3900
542	843	1055	1189	1297	1387
3950	547	852	1066	1202	1311
1402	4000	553	861	1078	1214
1325	1417	4050	559	871	1089
1227	1339	1432	4100	565	880
1101	1240	1353	1448	4150	571
889	1112	1253	1367	1463	4200

# Uncodified Acts of Assembly - 2003

577	898	1124	1266	1382	1478
4250	583	907	1135	1279	1396
1493	4300	589	917	1147	1292
1410	1508	4350	594	926	1158
1305	1424	1523	4400	600	935
1170	1318	1438	1538	4450	606
944	1181	1331	1452	1553	4500
612	954	1193	1344	1467	1569
4550	618	963	1204	1357	1481
1584	4600	624	972	1216	1370
1495	1599	4650	630	981	1227
1383	1509	1614	4700	635	989
1237	1395	1522	1627	4750	641
997	1247	1406	1534	1641	4800
646	1005	1257	1417	1546	1654
4850	651	1013	1267	1428	1558
1667	4900	656	1021	1277	1439
1570	1679	4950	661	1028	1286
1450	1582	1692	5000	666	1036
1295	1460	1593	1704	5050	671
1043	1305	1471	1605	1716	5100
675	1051	1314	1481	1616	1728
5150	680	1058	1323	1492	1628
1741	5200	685	1066	1333	1502
1640	1753	5250	690	1073	1342
1513	1651	1765	5300	695	1081
1351	1524	1663	1778	5350	700
1088	1361	1534	1674	1790	5400
705	1096	1370	1545	1686	1802
5450	710	1103	1379	1555	1697
1815	5500	714	1111	1389	1566
1709	1827	5550	719	1118	1398
1576	1720	1839	5600	724	1126
1407	1587	1732	1851	5650	729

# Uncodified Acts of Assembly - 2003

1133	1417	1598	1743	1864	5700
734	1141	1426	1608	1755	1876
5750	739	1148	1435	1619	1766
1888	5800	744	1156	1445	1629
1778	1901	5850	749	1163	1454
1640	1790	1913	5900	753	1171
1463	1650	1801	1925	5950	758
1178	1473	1661	1813	1937	6000
763	1186	1482	1672	1824	1950
6050	768	1193	1491	1682	1836
1962	6100	773	1201	1501	1693
1847	1974	6150	778	1208	1510
1703	1859	1987	6200	783	1216
1519	1714	1870	1999	6250	788
1223	1529	1724	1882	2011	6300
792	1231	1538	1735	1893	2023
6350	797	1238	1547	1745	1905
2036	6400	802	1246	1557	1756
1916	2048	6450	807	1253	1566
1767	1928	2060	6500	812	1261
1575	1777	1940	2073	6550	816
1267	1583	1786	1949	2083	6600
820	1272	1590	1794	1957	2092
6650	823	1277	1597	1801	1965
2100	6700	827	1283	1604	1809
1974	2109	6750	830	1288	1610
1817	1982	2118	6800	834	1293
1617	1824	1990	2127	6850	837
1299	1624	1832	1999	2136	6900
841	1304	1631	1839	2007	2145
6950	845	1309	1637	1847	2016
2154	7000	848	1315	1644	1855
2024	2163	7050	852	1320	1651
1862	2032	2172	7100	855	1325

# Uncodified Acts of Assembly - 2003

1658	1870	2041	2181	7150	859
1331	1665	1878	2049	2190	7200
862	1336	1671	1885	2057	2199
7250	866	1341	1678	1893	2066
2207	7300	870	1347	1685	1900
2074	2216	7350	873	1352	1692
1908	2082	2225	7400	877	1358
1698	1916	2091	2234	7450	880
1363	1705	1923	2099	2243	7500
884	1368	1712	1931	2108	2252
7550	887	1374	1719	1938	2116
2261	7600	891	1379	1725	1946
2124	2270	7650	895	1384	1732
1954	2133	2279	7700	898	1390
1739	1961	2141	2288	7750	902
1395	1746	1969	2149	2297	7800
905	1400	1753	1977	2158	2305
7850	908	1405	1758	1983	2164
2313	7900	910	1409	1764	1989
2171	2320	7950	913	1414	1770
1995	2178	2328	8000	916	1418
1776	2001	2185	2335	8050	918
1423	1781	2007	2192	2343	8100
921	1428	1787	2014	2198	2350
8150	924	1432	1793	2020	2205
2357	8200	927	1437	1799	2026
2212	2365	8250	929	1441	1804
2032	2219	2372	8300	932	1446
1810	2038	2226	2380	8350	935
1450	1816	2045	2232	2387	8400
937	1455	1822	2051	2239	2395
8450	940	1459	1827	2057	2246
2402	8500	943	1464	1833	2063
2253	2410	8550	945	1468	1839

# Uncodified Acts of Assembly - 2003

2069	2260	2417	8600	948	1473
1845	2076	2266	2425	8650	951
1478	1850	2082	2273	2432	8700
954	1482	1856	2088	2280	2440
8750	956	1487	1862	2094	2287
2447	8800	959	1491	1868	2100
2294	2455	8850	962	1496	1873
2107	2300	2462	8900	964	1500
1879	2113	2307	2470	8950	967
1505	1885	2119	2314	2477	9000
970	1509	1891	2125	2321	2484
9050	973	1514	1896	2131	2328
2492	9100	975	1517	1901	2137
2334	2498	9150	977	1521	1905
2141	2339	2503	9200	979	1524
1909	2146	2344	2509	9250	982
1527	1914	2151	2349	2514	9300
984	1531	1918	2156	2354	2520
9350	986	1534	1922	2160	2359
2525	9400	988	1537	1926	2165
2365	2531	9450	990	1541	1930
2170	2370	2536	9500	993	1544
1935	2175	2375	2541	9550	995
1547	1939	2179	2380	2547	9600
997	1551	1943	2184	2385	2552
9650	999	1554	1947	2189	2390
2558	9700	1001	1557	1951	2194
2396	2563	9750	1003	1561	1956
2198	2401	2569	9800	1006	1564
1960	2203	2406	2574	9850	1008
1567	1964	2208	2411	2580	9900
1010	1571	1968	2213	2416	2585
9950	1012	1574	1972	2218	2421
2590	10000	1014	1577	1977	2222

2427

2596

For gross monthly income between \$10,000 and \$20,000, add the amount of child support for \$10,000 to the following percentages of gross income above \$10,000:

ONE	TWO	THREE	FOUR	FIVE
SIX CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN
CHILDREN	3.1%	5.1%	6.8%	7.8%
				8.8%
	9.5%			

For gross monthly income between \$20,000 and \$50,000, add the amount of child support for \$20,000 to the following percentages of gross income above \$20,000:

ONE	TWO	THREE	FOUR	FIVE
SIX CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN
CHILDREN	2%	3.5%	5%	6%
				6.9%
	7.8%			

For gross monthly income over \$50,000, add the amount of child support for \$50,000 to the following percentages of gross income above \$50,000:

ONE	TWO	THREE	FOUR	FIVE
SIX CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN
CHILDREN	1%	2%	3%	4%
				5%
	6%			

C. For purposes of this section, "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her ongoing basic child support obligation for any such amounts,

and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business.

"Gross income" shall not include benefits from public assistance and social services programs as defined in § [63.2-100](#), federal supplemental security income benefits, or child support received. For purposes of this subsection: (i) spousal support received shall be included in gross income and spousal support paid shall be deducted from gross income when paid pursuant to an order or written agreement and (ii) one-half of any self-employment tax paid shall be deducted from gross income.

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

D. Any extraordinary medical and dental expenses for treatment of the child or children shall be added to the basic child support obligation. For purposes of this section, extraordinary medical and dental expenses are uninsured expenses in excess of \$100

for a single illness or condition and shall include but not be limited to eyeglasses, prescription medication, prostheses, and mental health services whether provided by a social worker, psychologist, psychiatrist, or counselor.

E. Any costs for health care coverage as defined in § [63.2-1900](#) and dental care coverage, when actually being paid by a parent, to the extent such costs are directly allocable to the child or children, and which are the extra costs of covering the child or children beyond whatever coverage the parent providing the coverage would otherwise have, shall be added to the basic child support obligation.

F. Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source. When requested by the noncustodial parent, the court may require the custodial parent to present documentation to verify the costs incurred for child care under this subsection. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive.

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B, (ii) all extraordinary medical expenses, (iii) costs for health care coverage to the extent allowable by subsection E, and (iv) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § [20-108.1](#). The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent.

2. Split custody support. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1, with the noncustodial parent owing the larger amount paying the difference to the other parent.

For the purpose of this section and § [20-108.1](#), split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the

purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

### 3. Shared custody support.

(a) Where a party has custody or visitation of a child or children for more than ~~ninety~~90 days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(i) Income share. "Income share" means a parent's percentage of the combined monthly gross income of both parents. The income share of a parent is that parent's gross income divided by the combined gross incomes of the parties.

(ii) Custody share. "Custody share" means the number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year. The actual or anticipated "custody share" of the parent who has or will have fewer days of physical custody shall be calculated for a one-year period. The "custody share" of the other parent shall be presumed to be the number of days in the year less the number of days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in subdivision G 3 (c).

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(iv) Sole custody support. "Sole custody support" means the support amount determined in accordance with subdivision G 1.

(b) Support to be paid. The shared support need of the shared child or children shall be calculated pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody share. To that sum for each parent shall be added the other parent's cost of health care coverage to the extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent allowable by subsection F. This total for each parent shall be multiplied by that parent's income share. The support amounts thereby calculated that each parent owes the other shall be subtracted one from the other and the difference shall be the shared custody support one parent owes to the other, with the payor parent being the one whose shared support is the larger. Any extraordinary medical and dental expenses, to the extent allowable by subsection D, shall be shared directly by the parents in accordance with their income shares, and shall not be adjusted by the custody share. The parents shall pay their respective shares of these extraordinary medical expenses as they are incurred, and they are not added to each party's shared custody support owed to the other party. The method of payment of said allowable expenses shall be contained in the support order. When the shared support is compared to the sole custody support to determine which is the lesser support, pursuant to subdivision G 3 (a), the extraordinary medical expenses shall not enter into either calculation.

(c) Definition of a day. For the purposes of this section, "day" means a period of ~~twenty-four~~24 hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than ~~twenty-four~~24 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.

(d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. If the gross income of either party is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(e) Support modification. When there has been an award of child support based on the shared custody formula and one parent consistently fails to exercise custody or visitation in accordance with the parent's custody share upon which the award was based, there shall be a rebuttable presumption that the support award should be modified.

(f) In the event that the shared custody support calculation indicates that the net support is to be paid to the parent who would not be the parent receiving support pursuant to the sole custody calculation, then the shared support shall be deemed to be the lesser support.

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every three years thereafter, by a ~~panel~~ *the Child Support Guidelines Review Panel, consisting of 15 members that includes* ~~a~~ *include four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Senate Committee on Privileges and Elections; and one representative of a juvenile and domestic relations district court and* ~~a~~ *one representative of a circuit court, a* ~~one representative of the executive branch, a member of the House of Delegates, a member of the Senate to be appointed by the chairmen of the House and Senate Committees for Courts of Justice, Department of Social Services' Division of Child Support Enforcement, three members of the bar Virginia State Bar, two custodial and two parents, two noncustodial parents, and a~~ *one child advocate, upon the recommendation of the Secretary of Health and Human Resources, to be appointed by the Governor. The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The Panel shall report its findings to the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before* ~~it~~ *the General Assembly next convenes following such review.*

*Legislative members shall serve terms coincident with their terms of office. Non-legislative citizen members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.*

*Legislative members shall receive such compensation as provided in § [30-19.12](#), and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all*

*reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Department of Social Services. The Department of Social Services shall provide staff support to the Panel. All agencies of the Commonwealth shall provide assistance to the Panel, upon request.*

*The chairman of the Panel shall submit to the Governor and the General Assembly a triennial executive summary of the interim activity and work of the Panel no later than the first day of 2005 regular session of the General Assembly and every three years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [22.1-337](#). Virginia representatives on Education Commission of the States; membership; terms; compensation and expenses; chairman's executive summary.

*In accordance with the Compact for Education of 1968, which established the Education Commission of the States, there shall be seven member commissioners representing Virginia on the Education Commission of the States. ~~These~~ *The Virginia* commissioners shall consist of ~~the Governor, one member selected from the body of the House of Delegates, to be appointed by the Speaker thereof, one of the House of Delegates; one member selected from the body of the Senate of Virginia, to be appointed by the Senate Committee on Privileges and Elections of the Senate, and;~~ four *nonlegislative citizen* members, *of whom one shall be the Superintendent of Public Instruction, to be appointed by the Governor. The term of the member from the House shall be two years; the term of the member from the Senate shall terminate at the end of his current term as Senator. The terms of the members appointed by the Governor; and the Governor. The commissioners representing Virginia shall by virtue of their training, experience, knowledge, or affiliations, collectively reflect the broad interests of state government, the state's system of education, public and higher education, nonprofessional and professional public and nonpublic educational leadership.**

*Legislative members shall serve terms coincident with their terms of office. Non-legislative citizen members shall be for four years each except that appointments serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. The Governor, the Committee on Privileges and Elections of the Senate and the Speaker shall have the authority to fill all vacancies in the manner of the original appointment. Vacancies shall be filled in the same manner as the original appointments.*

The Governor shall designate one member commissioner to serve as chairman of the ~~group~~ *Virginia commissioners* for a two-year term. The commissioners shall meet on the call of the chairman or at the request of a majority of the members. A majority of the member-commissioners shall constitute a quorum ~~for any meeting~~. The commissioners may consider any and all matters related to recommendations of the Education Commission of the States or the general activities and business of the organization and shall have the authority to represent the Commonwealth in all actions of the Commission.

The commissioners shall serve without compensation ~~but shall be paid their actual and~~. *All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, such expenses to be paid from funds appropriated to the General Assembly as provided in §§ [2.2-2813](#) and [2.2-2825](#). The costs of expenses of the legislative commissioners incurred in the performance of their duties shall be paid from appropriations to the Virginia Commission on Intergovernmental Cooperation for the attendance of conferences. The costs of expenses of nonlegislative citizen commissioners incurred in the performance of their duties shall be paid from such funds as may be provided for this purpose in the appropriations act.*

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

§ [22.1-354.1](#). Western Virginia Public Education Consortium and board created; region defined; governing board; chairman's executive summary.

A. The Western Virginia Public Education Consortium is hereby established and shall be referred to ~~in this chapter~~ as the Consortium. For the purposes of this chapter and the work of the Consortium, "Western Virginia" shall include the Counties of Alleghany, Bath, Bland, Botetourt, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Patrick, Pulaski, Roanoke, and Wythe, and the Cities of Covington, Clifton Forge, Martinsville, Radford, Roanoke, and Salem. The governing board of the Consortium shall consist of *34 members that include 15 legislative members and the 19 school superintendents of the named localities. The region's legislators shall serve as nonvoting, advisory members of the board as follows: 11 members of the House of Delegates representing the Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Sixteenth, Seventeenth, and Nineteenth House Districts; four members of the Senate representing the Twentieth, Twenty-first, Twenty-second, and Twenty-fifth Senatorial Districts, all serving as ex*

*officio nonvoting members; and the school superintendents of Alleghany and Clifton Forge, Bath, Bland, Botetourt, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Patrick, Pulaski, Roanoke County, Wythe, Covington, Martinsville, Radford, Roanoke City, and Salem.*

*B. Legislative members and school superintendents shall serve terms coincident with their terms of office. The board shall elect a chairman and a vice chairman from among its members.*

*C. Members of the board shall serve without compensation. All members shall be reimbursed for their actual all reasonable and necessary expenses incurred in the performance of their duties in the work of the Consortium. ~~The board shall elect a chairman and a vice chairman from among its members.~~ as provided in §§ [2.2-2813](#) and [2.2-2825](#). All such expenses shall be paid from existing appropriations to or received by the Consortium or, if unfunded, shall be approved by the Joint Rules Committee.*

*D. A majority of the members of the board shall constitute a quorum. The board shall meet at the call of the chairman or whenever a majority of the members so request.*

*E. The chairman of the board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [30-156](#). Virginia State Crime Commission; purpose; membership; terms; compensation and expenses; voting on recommendations; chairman's executive summary.

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

cooperate with the Commission. The Commission will cooperate with governments and governmental agencies of other states and the United States.

B. The Commission shall consist of ~~thirteen~~ 13 members ~~to be appointed~~ *that include nine legislative members, three nonlegislative citizen members, and one state official* as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates *in accordance with the principles of proportional representation contained in the Rules of the House of Delegates*; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; three *nonlegislative* citizen members to be appointed by the Governor; and the Attorney General or his designee. *Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. Unless otherwise approved by the chairman of the Commission, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings.*

C. The term of each appointee shall be for ~~four~~ two years, except that the Attorney General *and legislative members* shall serve ~~a term~~ *terms* coincident with ~~his term~~ *their terms* of office. ~~Whenever any legislative member fails to retain his membership in the house from which he was appointed, his membership on the Commission shall become vacated and the appointing authority who appointed such vacating member shall make an appointment from his respective house to fulfill the vacated term. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.~~

D. The Commission shall elect ~~its own~~ a chairman *and vice chairman* annually, *who shall be members of the General Assembly.*

E. Members of the Commission shall receive compensation as provided in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses incurred in the ~~discharge~~ *performance* of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). All such expense payments, however, shall come from existing appropriations to the Virginia Crime Commission.

*F. At the option of a majority of Senate members appointed to the Commission or a majority of the members of the House of Delegates appointed to the Commission, no recommendation of the Commission shall be adopted without the approval of a majority of such members of the Senate and a majority of such members of the House of Delegates. For the purpose of this provision, a "majority" constitutes a majority of members present and voting at the meeting of the Commission.*

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

§ [30-173](#). Commission of Senate and Commission of House of Delegates on Interstate Cooperation; membership; compensation and expenses.

A. There is established a Commission on Interstate Cooperation of the Senate, to consist of six senators. The members *shall be appointed* and the chairman of ~~this~~ *the* Commission shall be designated *from among the membership of the Commission* by the Senate Committee on Privileges and Elections.

B. There is established a Commission on Interstate Cooperation of the House of Delegates, also to consist of six members; and the members *shall be appointed* and the chairman of ~~this~~ *the* Commission shall be designated ~~in the same manner as is customary in the case of the members and chairmen of standing committees of the House of Delegates~~ *from among the membership of the Commission by the Speaker of the House of Delegates in accordance with the principles of proportional representation as contained in the Rules of the House of Delegates.*

C. Such bodies of the Senate and of the House of Delegates shall function during the regular sessions of the General Assembly and also during the interim periods between such sessions. ~~Their members shall serve until their successors are designated~~ *Members appointed and designated shall serve terms coincident with their terms of office.*

*D. Members of the commissions shall receive such compensation as provided in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties pursuant to § [30-171](#) and this section as provided in §§ [2.2-2813](#) and [2.2-2825](#).*

§ [30-182](#). Small Business Commission; purpose; membership; terms; compensation and expenses; staff; voting on recommendations; chairman's executive summary.

A. The Small Business Commission (the "Commission") is established in the legislative branch of state government. The purpose of the Commission shall be to study, report and make recommendations on issues of concern to small businesses in the Commonwealth.

B. The Commission shall consist of ~~fourteen~~ 14 members ~~to~~ *that include 10 legislative members and four nonlegislative citizen members. Members shall be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the*

*House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; four members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and four nonlegislative citizen members, each of whom shall have previously demonstrated small business experience or expertise, to be appointed by the Governor. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the Commission and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings.*

*All gubernatorial appointments to the Commission shall be for terms of ~~four~~two years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any member may be reappointed for successive terms. Legislative members shall serve terms coincident to their terms of office. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.*

C. *The members of the Commission shall elect a chairman and a vice chairman annually, who shall be members of the General Assembly. A majority of the members of the Commission shall constitute a quorum. The Commission shall meet at the call of the chairman or whenever a majority of the members so request.*

D. *Legislative members of the Commission shall receive such compensation as is set forth in § [30-19.12](#), and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the discharge-performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). However, all such compensation and expenses shall be paid from existing appropriations to the Commission and, if unfunded, shall be approved by the Joint Rules Committee.*

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

*F. At the option of a majority of Senate members appointed to the Commission or a majority of the members of the House of Delegates appointed to the Commission, no recommendation of the Commission shall be adopted without the approval of a majority of such members of the Senate and a majority of such members of the House of Delegates. For the purpose of this provision, a "majority" constitutes a majority of members present and voting at the meeting of the Commission.*

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

CHAPTER 31 .

COMMISSION ON ELECTRIC UTILITY RESTRUCTURING.

§ [30-201](#). *Commission on Electric Utility Restructuring; purpose.*

*The Commission on Electric Utility Restructuring (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to work collaboratively with the State Corporation Commission in conjunction with the phase-in of retail competition within the Commonwealth.*

§ [30-202](#). *Membership; terms; vacancies; chairman and vice chairman.*

*The Commission shall consist of 10 legislative members. Members shall be appointed as follows: four members of the Senate to be appointed by the Senate Committee on Privileges and Elections and six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates.*

*Members of the Commission shall serve terms coincident with their terms of office. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.*

*The Commission shall elect a chairman and vice chairman from among its membership. The chairman of the Commission shall be authorized to designate one or more members of the Commission to observe and participate in the discussions of any work group convened by the State Corporation Commission in furtherance of its duties under the Virginia Electric Utility Restructuring Act (§ [56-576](#) et seq.) and this chapter. Members participating in such discussions shall be entitled to compensation and*

reimbursement provided in § [30-204](#), if approved by the Joint Rules Committee or its Budget Oversight Subcommittee.

§ [30-203](#). Quorum; meetings; voting on recommendations.

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

At the option of a majority of the Senate members appointed to the Commission or a majority of the members of the House of Delegates appointed to the Commission, no recommendation of the Commission shall be adopted without the approval of a majority of such members of the Senate and a majority of such members of the House of Delegates. For the purpose of this provision, a "majority" constitutes a majority of members present and voting at the meeting of the Commission.

§ [30-204](#). Compensation; expenses.

Members of the Commission shall receive such compensation as provided in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). However, all such compensation and expenses shall be paid from existing appropriations to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.

§ [30-205](#). Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Monitor the work of the State Corporation Commission in implementing Chapter 23 (§ [56-576](#) et seq.) of Title 56, receiving such reports as the Commission may be required to make pursuant thereto, including reviews, analyses, and impact on consumers of electric utility restructuring programs in other states;
2. Determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates established pursuant to § [56-582](#);
3. Monitor, after the commencement of customer choice and with the assistance of the State Corporation Commission and the Office of Attorney General, the incumbent electric utilities, suppliers, and retail customers, whether the recovery of stranded costs, as provided in § [56-584](#), has resulted or is likely to result in the overrecovery or underrecovery of just and reasonable net stranded costs;
4. Examine (i) utility worker protection during the transition to retail competition, (ii) generation, transmission and distribution systems reliability concerns, and (iii) energy assistance programs for low-income households;

5. Establish one or more subcommittees of its membership, to meet at the direction of the chairman of the Commission, for any purpose within the scope of the duties prescribed to the Commission by this section; and

6. Report annually to the General Assembly and the Governor on the progress of each stage of the phase-in of retail competition and offer such recommendations as may be appropriate for legislative and administrative consideration in order to maintain the Commonwealth's position as a low-cost electricity market and ensure that residential customers and small business customers benefit from competition.

§ [30-206](#). Staffing.

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

§ [30-207](#). Chairman's executive summary of activity and work of the Commission.

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

§ [30-208](#). Consumer Advisory Board; purpose; membership; compensation and expenses; staffing.

A. There shall be established a Consumer Advisory Board to assist the Commission on Electric Utility Restructuring in its work as prescribed in § [30-205](#) and on other issues as may be directed by the Commission. The Board shall consist of eight members as follows: three nonlegislative citizen members appointed by the Senate Committee on Privileges and Elections; four nonlegislative citizen members appointed by the Speaker of the House of Delegates and one member of the Commission designated by the chairman to serve as a nonvoting liaison member. Appointed members shall be from all classes of consumers and with geographical representation of the regions of the Commonwealth and shall be citizens of the Commonwealth. The chairman of the Commission shall select the chairman of the Board.

B. The Board shall be limited to meeting on the call of the chairman of the Commission.

*C. The legislative member of the Board shall receive compensation as provided in § [30-19.12](#), and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). However, all such compensation shall be paid from existing appropriations to the Commission or, if unfunded, shall be approved by the Joint Rules Committee. Unless otherwise approved in writing by the chairman of the Commission, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings.*

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

*§ [30-209](#). Sunset.*

*This chapter shall expire on July 1, 2008.*

*CHAPTER 32.*

*VIRGINIA DELEGATION TO MULTISTATE TAX ADMINISTRATION DISCUSSIONS.*

*§ [30-210](#). Virginia Delegation to Multistate Tax Administration Discussions; purpose. There is hereby created the Virginia Delegation to the Multistate Tax Administration Discussions, in the legislative branch of government, to consider whether the Commonwealth should enter into an agreement with one or more other states to simplify and modernize tax administration.*

*§ [30-211](#). Definitions.*

*"Agreement" means an interstate agreement for simplification and uniformity of taxation among member states in order to reduce the burden of tax compliance for sellers and for all types of commerce.*

*"Seller" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other similar legal entity that sells, leases or rents tangible personal property or services.*

*"State" means a state of the United States and the District of Columbia.*

*"Tax" or "taxes" means sales and use taxes imposed pursuant to Title 58.1, or a similar tax imposed by a political subdivision of the Commonwealth.*

§ [30-212](#). *Membership; terms; vacancies; chairman and vice chairman; quorum; meetings.*

*The Virginia delegation shall consist of five legislative members. Members shall be appointed as follows: two members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; and three members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. Members shall serve terms coincident with their terms of office. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.*

*The Delegation shall elect a chairman and a vice chairman from among its membership. A majority of the members shall constitute a quorum. The Delegation shall meet at least four times each year. The meetings of the Delegation shall be held at the call of the chairman or whenever the majority of the members so request.*

§ [30-213](#). *Powers and duties of the Delegation.*

*A. The Virginia Delegation to the Multistate Tax Administration Discussions regarding the simplification and modernization of tax administration shall consider whether to enter into agreement with one or more states to:*

- 1. Simplify and modernize tax administration in order to substantially reduce the burden of tax compliance for sellers and for all types of commerce;*
- 2. Establish standards for tax compliance software and service providers; and*
- 3. Establish performance standards for multistate sellers.*

*B. After meeting with similar delegations from other states, the delegates shall make recommendations, including but not limited to proposed legislation, to the 2004 and 2005 Sessions of the General Assembly regarding the issues the delegates are required to consider pursuant to this section and any other related issues the delegates deem advisable.*

§ [30-214](#). *Compensation and expenses.*

*Members shall receive such compensation as provided in § [30-19.12](#) and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). All such compensation and expenses shall be paid from existing appropriations to the Delegation or, if unfunded, shall be approved by the Joint Rules Committee.*

§ [30-215](#). *Staff Support.*

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

§ [30-216](#). *Chairman's executive summary of activity and work of the Delegation.*

*The chairman of the Delegation shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Delegation no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted to the General Assembly's website.*

§ [30-217](#). *Sunset.*

*This chapter shall expire on July 1, 2006.*

§ [32.1-73.7](#). Department to be lead agency for youth suicide prevention.

With such funds as may be appropriated for this purpose, the Department, in consultation with the Department of Education, the Department of Mental Health, Mental Retardation and Substance Abuse Services, ~~the Virginia Council on Coordinating Prevention~~, community services boards, and local departments of health, shall have the lead responsibility for the youth suicide prevention program within the Commonwealth. This responsibility includes coordination of the activities of the agencies of the Commonwealth pertaining to youth suicide prevention in order to develop a comprehensive youth suicide prevention plan addressing the promotion of health development, early identification, crisis intervention, and support to survivors. The plan shall be targeted to the specific needs of children and adolescents. The Department shall cooperate with federal, state and local agencies, private and public agencies, survivor groups and other interested individuals in order to prevent youth suicide within the Commonwealth. The Department shall report annually by December 1 of each year to the Governor and the General Assembly on its youth suicide prevention activities.

The provisions of this section shall not limit the powers and duties of other state agencies.

§ [51.5-39.2](#). The Virginia Office for Protection and Advocacy established; governing board; terms.

A. The Department for Rights of Virginians with Disabilities is hereby reestablished as an independent state agency; *to be known as* the Virginia Office for Protection and

Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to subdivision 5 of § [2.2-510](#), to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office and its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5 (§ [2.2-1832](#) et seq.) of Chapter 18 of Title 2.2, counsel shall be appointed pursuant to subdivision 4 of § [2.2-510](#). The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.

~~B. The Office shall be governed by an eleven 11-member board. The Board shall be composed of members who broadly represent or are knowledgeable about the needs of persons with disabilities served by the Office. Two or more members shall have experience in the fields of developmental disabilities and mental health. Persons with mental, cognitive, sensory or physical disabilities or family members, guardians, advocates, or authorized representatives of such persons shall be included. No elected official shall serve on the Board. No current employee of the Departments of Mental Health, Mental Retardation and Substance Abuse Services, Health, Rehabilitative Services or for the Blind and Vision Impaired or a community services board, behavioral health authority, or local government department with a policy advisory community services board shall serve as a member. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically,~~

developmentally and mentally disabled. The Governor and General Assembly shall not be limited in their appointments to persons so nominated; however, the Governor and General Assembly shall seriously consider the persons nominated and appoint such persons whenever feasible.

C. The Governor shall appoint three members of the Board who shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Speaker of the House of Delegates shall appoint five members, and the Senate Committee on Privileges and Elections shall appoint three members of the Board. No such appointments shall be members of the General Assembly. The Board appointments shall be made to give representation insofar as feasible to various geographic areas of the Commonwealth.

D. The terms of the initial members of the Board shall be as follows:

1. Two legislative appointees shall be appointed for a term of one year each;
2. One gubernatorial and two legislative appointees shall be appointed for a term of two years each;
3. One gubernatorial and two legislative appointees shall be appointed for a term of three years each; and
4. One gubernatorial and two legislative appointees shall be appointed for a term of four years each. *consisting of 11 nonlegislative citizen members. The members shall be appointed as follows: five citizens at large, of whom one shall be a person with a developmental disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a physical disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with cognitive disabilities, one shall be a person who represents persons with developmental disabilities, and one shall be a person who represents persons with sensory or physical disabilities, to be appointed by the Speaker of the House of Delegates; three citizens at large, of whom one shall be a person with a cognitive disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with mental illnesses, and one shall be a person who represents people with mental or neurological disabilities, to be appointed by the Senate Committee on Privileges and Elections; and three citizens at large, of whom one shall be a person with a mental illness or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a sensory disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, and one shall be a person with a mental or neurological disability or the parent,*

*family member, guardian, advocate, or authorized representative of such an individual, to be appointed by the Governor. Persons appointed to the board to represent individuals with a disability shall be knowledgeable of the broad range of needs of such persons served by the Office. Persons appointed to the board who have a disability shall be individuals who are eligible for, are receiving, or have received services through the state system that protects and advocates for the rights of individuals with disabilities. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally, and mentally disabled. The Speaker of the House of Delegates, the Senate Committee on Privileges and Elections and the Governor shall not be limited in their appointments to persons so nominated; however, such appointing authorities shall seriously consider the persons nominated and appoint such persons whenever feasible.*

*No member of the General Assembly, elected official, or current employee of the Department of Mental Health, Mental Retardation and Substance Abuse Services, State Health Department, Department of Rehabilitative Services, Department for the Blind and Vision Impaired, Virginia Department for the Deaf and Hard-of-Hearing, a community services board, a behavioral health authority, or a local government department with a policy-advisory community services board shall be appointed to the Board.*

*C. Appointments of nonlegislative citizen members shall be staggered as follows: two members for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years appointed by the Speaker of the House of Delegates; one member for a term of two years, one member for a term of three years, and one member for a term of four years appointed by the Senate Committee on Privileges and Elections; and one member for a term of two years, one member for a term of three years, and one member for a term of four years appointed by the Governor. Thereafter, nonlegislative citizen members shall be appointed for four-year terms. ~~E. a term of four years. Appointments to fill vacancies shall be for the unexpired terms. A vacancy of a legislatively appointed member shall be filled by either the Speaker of the House of Delegates or the Senate Committee on Privileges and Elections, and any such appointee shall enter upon and continue in office.~~ All members may be reappointed, except that any member appointed initially to a four-year term shall not be eligible for reappointment for two years after the expiration of his term. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms.*

*Vacancies shall be filled in the same manner as the original appointments. All appointments and reappointments shall be subject to confirmation at the next session of the General Assembly. If the General Assembly fails to confirm his appointment, such person shall not be eligible for reappointment. Members shall continue to serve until such time as their successors have been appointed and duly qualified to serve.*

~~F. A member who has been appointed to a four-year term shall not be eligible for reappointment during the two-year period beginning on the date on which such four-year term expired. However, upon the expiration of an appointment to an unexpired term, or an appointment described in subdivision D 1, D 2, or D 3, a member may be reappointed to a four-year term.~~

~~G. D. The Board shall elect a chairman and a vice chairman from *among* its members and appoint a secretary who may or may not be a member of the Board. A majority of the members of the Board shall constitute a quorum. The chairman shall preside over meetings of the Board and perform additional duties as may be set by resolution of the Board.~~

~~H. The Board shall meet at least four times each year. *The meetings of the Board shall be held at the call of the chairman or whenever the majority of the voting members so request. The chairman shall perform such additional duties as may be established by resolution of the Board.*~~

*E. Members shall serve without compensation for their services; however, all members shall be reimbursed for their all reasonable and necessary and actual expenses incurred in the performance of their official duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of expenses of the members shall be provided by the Virginia Office for Protection and Advocacy.*

~~I. F. Members of the Board shall be subject to removal from office only as set forth in Article 7 (§ [24.2-230](#) et seq.) of Chapter 2 of Title 24.2. The Circuit Court of the City of Richmond shall have exclusive jurisdiction over all proceedings for such removal.~~

*G. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted to the General Assembly's website.*

§ [56-579](#). Regional transmission entities.

A. As set forth in § [56-577](#), on or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall

join or establish a regional transmission entity (RTE) to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

a. Promote:

(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and

(2) Policies for the pricing and access for service over such systems, which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

c. Be effectuated on terms that fairly compensate the transferor;

d. Generally promote the public interest, and are consistent with (i) ensuring the successful development of interstate regional transmission entities and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity.

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such intervention as is permitted state utility regulators under FERC rules and procedures.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ [56-265.1](#) et seq.) of this title;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ [56-257](#) et seq.) of Chapter 10 of this title; however, on and after January 1, 2002, a petition may not be filed to exercise the right of eminent domain in conjunction with the construction or enlargement of any utility facility whose purpose is the generation of electric energy; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § [56-587](#).

E. For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any binding federal precedents.

F. On or after January 1, 2002, the Commission shall report to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring* its assessment of the success in the practices and policies of the RTE facilitating the orderly development of competition in the Commonwealth.

§ [56-581.1](#). Competitive retail electric billing and metering.

A. Effective January 1, 2002, (i) distributors shall offer consolidated billing services to licensed suppliers, aggregators, and retail customers, and (ii) licensed suppliers and aggregators shall be permitted to bill all retail customers separately for services rendered on and after the first regular meter reading date after January 1, 2002, subject to conditions, regulations, and licensing requirements established by the Commission.

B. Effective January 1, 2003, licensed suppliers and aggregators may offer consolidated billing service to distributors and retail customers for services rendered on and after the first regular meter reading date after January 1, 2003, subject to conditions, regulations, and licensing requirements established by the Commission.

C. Upon application by a distributor or upon its own motion, the Commission may delay any element of the competitive provision of billing services to retail customers for the period of time necessary, but no longer than one year, to resolve issues arising from considerations of billing accuracy, timeliness, quality, consumer readiness, or adverse effects upon development of competition in electric service. The Commission shall report any such delays and the underlying reasons therefor to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring* within a reasonable time.

D. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section in a manner that is consistent with its Recommendation and Draft Plan filed with the Legislative Transition Task Force, *the predecessor of the Commission on Electric Utility Restructuring*, on December 12, 2000, to facilitate the development of effective competition in electric service for all customer classes, and to ensure reasonable levels of billing accuracy, timeliness, and quality, and adequate consumer readiness and protection. Such rules and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive billing services, pursuant to the licensure requirements of § [56-587](#).

E. The Commission shall implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2002, and may approve such services for residential and small business customers of investor-owned distributors on or after January 1, 2003, as determined to be in the public interest by the Commission. Such implementation and approvals shall:

1. Be consistent with the goal of facilitating the development of effective competition in electric service for all customer classes;
2. Take into account the readiness of customers and suppliers to buy and sell such services;
3. Take into account the technological feasibility of furnishing any such services on a competitive basis;
4. Take into account whether reasonable steps have been or will be taken to educate and prepare customers for the implementation of competition for any such services;
5. Not jeopardize the safety, reliability or quality of electric service;
6. Consider the degree of control exerted over utility operations by utility customers;
7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates;
8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth; and
9. Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the provision of competitive metering services for its customers.

Upon the reasonable request of a distributor, the Commission shall delay the provision of competitive metering service in such distributor's service territory until January 1, 2003, for large industrial and large commercial customers, and after January 1, 2004, for residential and small business customers.

F. The Commission shall promulgate such rules and regulations as may be necessary to implement the authorization related to competitive metering services provided for in subsection E. Such rules and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive metering services, pursuant to the licensure requirements of § [56-587](#).

G. An incumbent electric utility shall coordinate with persons licensed to provide competitive metering service, billing services, or both, as the Commission deems reasonably necessary to the development of such competition. The foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate controls a resource that is necessary to the coordination required of the incumbent electric utility by this subsection.

H. Notwithstanding the provisions of § [56-582](#), the Commission shall allow a distributor to recover its costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, but not those that would be incurred by such utilities in any event as part of the restructuring under this Act. The Commission shall also determine the most appropriate method of recovering such costs through a tariff for such licensed suppliers; however, such method shall not unreasonably affect any customer for which the service is not made competitive.

I. The Commission shall adjust the rates for any noncompetitive services provided by a distributor so that such rates do not reflect costs associated with or properly allocable to the service made subject to competition. Such adjustment may be accomplished through unbundled rates, bill credits, the distributor's tariffs for licensed suppliers, or other methods as determined by the Commission.

J. Municipal electric utilities shall not be required to provide consolidated billing services to licensed suppliers, aggregators or retail customers. Municipal electric utilities and utility consumer services cooperatives shall not be required to undertake coordination of the provision of consolidated or direct billing services by suppliers and aggregators; however, the exemptions set forth in this subsection shall not apply if any such municipal electric utility or utility consumer services cooperative, or its affiliate, offers competitive electric energy supply to retail customers in the service territory of any other Virginia incumbent electric utility. The Commission may permit any municipal electric utility or utility consumer services cooperative that pursues such competitive activity to maintain such exemption upon application to the Commission demonstrating good cause for relief. In addition, upon petition by a utility consumer services cooperative, the Commission may approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of such cooperative on or after January 1, 2002, and for residential and small business customers of such

cooperative on or after January 1, 2003, as determined to be in the public interest by the Commission consistent with the criteria set forth in subsection E.

§ [56-585](#). Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § [56-577](#). For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. From time to time, the Commission shall designate one or more providers of default service. In doing so, the Commission:

1. Shall take into account the characteristics and qualifications of prospective providers, including proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services, and other factors deemed necessary to ensure the reliable provision of such services, to prevent the inefficient use of such services, and to protect the public interest;
2. May periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and, upon a finding that the public interest will be served, designate one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers;
3. To the extent that default service is not provided pursuant to a designation under subdivision 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates determined pursuant to subsection C and for periods specified by the Commission; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service; and
4. Notwithstanding imposition on a distributor by the Commission of the requirement provided in subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served, designate through the competitive bidding process established in subdivision 2 one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers.

C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice and opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates, terms and conditions for default services, taking into account the characteristics and qualifications set forth in subdivision B 1, as follows:

1. Until the expiration or termination of capped rates, the rates for default service provided by a distributor shall equal the capped rates established pursuant to subdivision A 2 of § [56-582](#). After the expiration or termination of such capped rates, the rates for default services shall be based upon competitive market prices for electric generation services.

2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ [56-232](#) et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon a plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved plan, based upon prices for generation capacity and energy in competitive regional electricity markets.

3. Prior to a distributor's provision of default service, and upon request of such distributor, the Commission shall review any plan filed by the distributor to procure electric generation services for default service. The Commission shall approve such plan if the Commission determines that the procurement of electric generation capacity and energy under such plan is adequately based upon prices of capacity and energy in competitive regional electricity markets. If the Commission determines that the plan does not adequately meet such criteria, then the Commission shall modify the plan, with the concurrence of the distributor, or reject the plan.

4. a. For purposes of this subsection, in determining whether regional electricity markets are competitive and rates for default service, the Commission shall consider (i) the liquidity and price transparency of such markets, (ii) whether competition is an effective regulator of prices in such markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v) such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity market" means a market in which competition, and not statutory or regulatory price constraints, effectively regulates the price of electricity.

b. If, in establishing a distributor's default service generation rates, the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates, then the Commission shall establish such distributor's default service generation rates by setting rates that would approximate those likely to be produced in a

competitive regional electricity market. Such proxy generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such additional factors as the Commission deems necessary to produce such proxy generation rates.

D. In implementing this section, the Commission shall take into consideration the need of default service customers for rate stability and for protection from unreasonable rate fluctuations.

E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination of default service for particular customers, particular classes of customers or particular geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall report its findings and recommendations concerning modification or termination of default service to the General Assembly and to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring*, not later than December 1, 2004, and annually thereafter.

F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and right to be the supplier of default services in its certificated service territory. A distribution electric cooperative's rates for such default services shall be the capped rate for the duration of the capped rate period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter. Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default services, for the purposes of this subsection, shall include the supply of electric energy and all services made competitive pursuant to § [56-581.1](#). If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

§ [56-592](#). Consumer education and protection; Commission report to Commission Electric Utility Restructuring.

A. The Commission shall develop a consumer education program designed to provide the following information to retail customers during the period of transition to retail competition and thereafter:

1. Opportunities and options in choosing (i) suppliers and aggregators of electric energy and (ii) any other service made competitive pursuant to this chapter;
2. Marketing and billing information suppliers and aggregators of electric energy will be required to furnish retail customers;
3. Retail customers' rights and obligations concerning the purchase of electric energy and related services; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring* on or before December 1, 1999, and as frequently thereafter as may be required by the ~~Task Force~~ *such Commission* concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;
2. Materials and media required to effectuate any such program;
3. State agency and nongovernmental entity participation;
4. Program duration;
5. Funding requirements and mechanisms for any such program; and
6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. The Commission shall develop regulations governing marketing practices by public service companies, licensed suppliers, aggregators or any other providers of services made competitive by this chapter, including regulations to prevent unauthorized switching of suppliers, unauthorized charges, and improper solicitation activities. The Commission shall also establish standards for marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter, which information shall include standards concerning:

1. Pricing and other key contract terms and conditions;
2. To the extent feasible, fuel mix and emissions data on at least an annualized basis;
3. Customer's rights of cancellation following execution of any contract;
4. Toll-free telephone number for customer assistance; and
5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.

D. The Commission shall also establish standards for billing information to be furnished by public service companies, suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter. Such billing information standards shall require that billing formation:

1. Distinguishes between charges for regulated services and unregulated services;
2. Itemizes any and all nonbypassable wires charges;

3. Is presented in a format that complies with standards to be established by the Commission;

4. Discloses, to the extent feasible, fuel mix and emissions data on at least an annualized basis; and

5. Includes such other billing information as the Commission deems necessary and appropriate in the public interest.

E. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers of any services made competitive under this chapter. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

F. The Commission shall establish reasonable limits on customer security deposits required by public service companies, suppliers, aggregators or any other persons providing competitive services pursuant to this chapter.

§ [56-592.1](#). Consumer education program; scope and funding.

A. The Commission shall establish and implement a consumer education program in conjunction with the implementation of this chapter. In establishing such a program, the Commission shall take into account findings and recommendations in the Commission's December 1, 1999, report to the Legislative Transition Task Force ~~made pursuant to §~~ [56-592](#), *the predecessor of the Commission on Electric Utility Restructuring*.

B. The program shall be designed to (i) enable consumers to make rational and informed choices about energy providers in a competitive retail market, (ii) help consumers reduce transaction costs in selecting energy suppliers, and (iii) foster compliance with the consumer protection provisions of this chapter, and those contained in other laws of this Commonwealth, by all participants in a competitive retail market.

C. The Commission shall regularly consult with representatives of consumer organizations, community-based groups, state agencies, incumbent utilities, competitive suppliers and other interested parties throughout the program's implementation and operation.

D. Pursuant to the provisions of § ~~56-595~~ [30-205](#), the Commission shall provide periodic updates to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring* concerning the program's implementation and operation.

E. The Commission shall fund the establishment and operation of such consumer education program through the special regulatory revenue tax currently authorized by § [58.1-2660](#) and the special regulatory tax authorized by Chapter 29 (§ [58.1-2900](#) et seq.) of Title 58.1.

§ [56-596](#). Advancing competition.

A. In all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goals of advancement of competition and economic development in the Commonwealth.

B. By September 1 of each year, the Commission shall report to the ~~Legislative Transition Task Force~~ *Commission on Electric Utility Restructuring* and the Governor information on the status of competition in the Commonwealth, the status of the development of regional competitive markets, and its recommendations to facilitate effective competition in the Commonwealth as soon as practical. This report shall include any recommendations of actions to be taken by the General Assembly, the Commission, electric utilities, suppliers, generators, distributors and regional transmission entities it considers to be in the public interest. Such recommendations shall include actions regarding the supply and demand balance for generation services, new and existing generation capacity, transmission constraints, market power, suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

§ [62.1-69.34](#). Virginia Roanoke River Basin Advisory Committee established; purpose; membership; terms; meetings.

A. The Virginia Roanoke River Basin Advisory Committee, *hereinafter referred to as the "Committee,"* is hereby established *in the executive branch of state government* as an advisory committee to the Virginia delegation to the Roanoke River Basin Bi-State Commission, ~~to~~. *The Committee shall* assist the delegation in fulfilling ~~the~~*its* duties and carrying out the objectives of the Commission, pursuant to § [62.1-69.35](#) [62.1-69.39](#). The advisory committee shall be composed of ~~eighteen~~<sup>21</sup> members ~~that include six legislative members and 11 nonlegislative citizen members, and four ex officio members.~~ *Members shall* be appointed as follows: two members of the Senate, whose districts include a part of the Virginia portion of the Roanoke River Basin, to be appointed by the Senate Committee on Privileges and Elections; four members of the House of Delegates, whose districts include a part of the Virginia portion of the Roanoke River Basin, to be appointed by the Speaker of the House, ~~of Delegates~~ in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; ~~the Virginia member of the U.S. House of Representatives, whose district includes the largest portion of the Basin, or his designee, if he elects to serve on the advisory~~

~~committee; ten- 11 nonlegislative citizen members selected by the legislative members of the advisory committee such that two are chosen from recommendations of whom each of the following: the two each shall be members of the Central Virginia Planning District Commission; and the West Piedmont Planning District Commission, and one shall be a member of the New River Valley Planning District Commission, from among recommendations submitted by the respective planning district commissions, to be appointed by the Senate Committee on Privileges and Elections; two each shall be members of the Southside Planning District Commission, the Piedmont Planning District Commission, and the Roanoke Valley Alleghany Planning District Commission; and one member selected by the legislative members of the advisory committee from among recommendations submitted by the New River Valley Planning District Commission, from among recommendations submitted by the respective planning district commissions, to be appointed by the Speaker of the House of Delegates; and the Virginia member of the United States House of Representatives, whose district includes the largest portion of the Basin, or his designee, and three representatives of the State of North Carolina appointed in a manner as the General Assembly of North Carolina may determine appropriate. Except for the representatives of North Carolina, all nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. The Virginia member of the United States House of Representatives and the representatives of North Carolina shall serve ex officio without voting privileges. Of the recommendations submitted by planning district commissions authorized to recommend two members, one member shall be a nonlegislative citizen who resides within the respective planning district. However, the New River Valley Planning District Commission may recommend either a one nonlegislative citizen at large or a one member, who at the time of the recommendation, is serving as an elected member or an employee of a local governing body, or a one member of the board of directors or an employee of the planning district commission. All persons recommended by the planning district commissions to serve as members of the advisory committee shall reside within the Basin's watershed, represent the diversity of interests in the jurisdictions comprising the respective planning district commissions, and demonstrate interest, experience, or expertise in water-related Basin issues. In addition, persons representing the interests of the State of North Carolina who may be appointed to the advisory committee shall serve as non-voting ex officio members.~~

~~The advisory committee shall elect a chairman and a vice-chairman from among its members.~~

B. State and federal legislative members *and local government officials* appointed to the advisory committee shall serve terms coincident with their terms of office. ~~Members recommended by planning district commissions to serve on the advisory committee and ex officio members representing the State of North Carolina shall serve a term of two years. Initially, planning district commissions authorized to recommend two members to the advisory committee~~ *Initial appointments of nonlegislative citizen members shall recommend one member for a term of two years and one member for a term of one year. However, the member recommended to serve on the advisory committee by the New River Valley Planning District Commission shall serve a term of one year. be staggered as follows: two members for a term of two years and three members for a term of one year appointed by the Senate Committee on Privileges and Elections; and three members for a term of two years and three members for a term of one year appointed by the Speaker of the House of Delegates.* Thereafter, ~~the nonlegislative citizen members shall be appointed for a term of office of members recommended by planning district commissions shall be for two years.~~ *All members may be reappointed. Nonlegislative citizen members recommended by planning district commissions shall be eligible for reappointment, if such members shall have attended at least one-half of all meetings of the Commission during their current term of service. However, no member recommended by a planning district commission shall serve more than three consecutive two-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointment.*

*The advisory committee shall elect a chairman and a vice chairman from among its voting members. A majority of the voting members shall constitute a quorum. The meetings of the advisory committee shall be held at the call of the chairman or whenever the majority of the voting members so request.*

§ [62.1-69.35](#). Compensation and expenses.

Legislative members of the advisory committee shall receive such compensation as provided in § [30-19.12](#), and *nonlegislative members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#).* All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). *Funding for the costs of compensation and expenses of members shall be paid from such funds as may be provided to the Department of Environmental Quality in the appropriations act for this purpose.*

§ [62.1-69.35:1](#). Staffing.

*The Department of Environmental Quality shall provide staff support to the advisory committee. All agencies of the Commonwealth shall provide assistance to the advisory committee, upon request.*

§ [62.1-69.35:2](#). *Chairman's executive summary of activity and work of the advisory committee.*

*The chairman of the advisory committee shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the advisory committee no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [62.1-69.38](#). Membership; terms.

A. The Commission shall be composed of ~~eighteen~~ 18 voting members ~~with each state appointing nine~~ that include nine members representing the Commonwealth of Virginia and nine members representing the State of North Carolina. The Virginia delegation shall consist of the ~~state~~ six legislative members *appointed to the Virginia Roanoke River Basin Advisory Committee, and three nonlegislative citizen members* appointed to the Virginia Roanoke River Basin Advisory Committee ~~by the Senate Committee on Privileges and Elections and the Speaker of the House of Delegates, and three non-legislative members of the Virginia Roanoke River Basin Advisory Committee, who represent different geographical areas of the Virginia portion of the Roanoke River Basin, to be appointed by the Governor of Virginia. The North Carolina delegation to the Commission shall be appointed as determined by the State of North Carolina. All members appointed to the Commission by the Commonwealth of Virginia and the State of North Carolina shall reside within the Basin's watershed. Members of the Virginia House of Delegates and the Senate of Virginia, the North Carolina House of Representatives and Senate, and federal legislators, who have not been appointed to the Commission and whose districts include any portion of the Basin, may~~ shall serve as nonvoting ex officio members of the Commission.

B. ~~The terms of office for appointed~~ *Legislative members of the Virginia delegation, federal legislators, and local government officials, whether appointed or ex officio, shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be* ~~two years~~ *appointed to serve two-year terms, unless the member is reappointed by the appointing authorities of each state. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointment. State and federal legislators and local*

~~government officials, whether appointed or ex officio, shall serve terms coincident with their terms of office.~~

C. Each state's delegation to the Commission may meet separately to discuss Basin-related issues affecting their state, and may report their findings independently of the Commission. *A majority of the voting members shall constitute a quorum.*

§ [62.1-69.43](#). Compensation and expenses.

A. Legislative members of the Virginia delegation to the Commission shall receive such compensation as provided in § [30-19.12](#), and *nonlegislative members shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All voting members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). However, all such expenses shall be paid from existing appropriations and funds provided to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.*

*Members of the Virginia House of Delegates and the Senate of Virginia, and members of the Virginia Congressional delegation, who have not been appointed to the Commission, whose districts include any portion of the Basin, and who serve as nonvoting ex officio members of the Commission shall serve without compensation and expenses.*

*Nonlegislative citizen members appointed to any standing committees or ad hoc committees shall serve without compensation and expenses.*

B. The North Carolina members of the Commission shall receive per diem, subsistence, and travel expenses as follows:

1. Ex officio legislative members who are members of the General Assembly at the rate established in North Carolina G.S. 138-6;

2. Commission members who are officials or employees of the State or of local government agencies at the rate established in North Carolina G.S. 138-6; and

3. All other members at the rate established in North Carolina G.S. 138-5.

2. That Article 3 (§§ [2.2-2709](#) and [2.2-2710](#)) of Chapter 27 of Title 2.2 of the Code of Virginia and § [56-595](#) of the Code of Virginia are repealed.

3. That Chapter 476 of the Acts of Assembly of 2002 is repealed.

4. That Chapter 657 of the Acts of Assembly of 2002 is repealed.

5. That the current members of the Legislative Transition Task Force appointed pursuant to § [56-595](#) of the Code of Virginia and members appointed to fill vacancies may continue to serve as members of the Commission on Electric Utility Restructuring until July 1, 2008, if such members retain their legislative seats.

6. That whenever any reference is made in law or other provision approved by the General Assembly to the former Legislative Transition Task Force, such reference shall be construed to apply mutatis mutandis to the Commission on Electric Utility Restructuring.

7. That all current members of the collegial bodies whose terms have been modified by this act shall be eligible, if reappointed, to the full number of terms provided by this act regardless of prior service.

8. That notwithstanding the provisions of § [2.2-2424](#) of the Code of Virginia, beginning July 1, 2004, the Governor shall stagger the terms of his appointments to the Virginia-Israel Advisory Board as follows: three members shall serve initial terms of one year; three members shall serve initial terms of two years; three members shall serve initial terms of three years; and four members shall serve initial terms of four years. Thereafter, all members appointed by the Governor shall serve terms of four years.

9. That the current term of the members appointed to the governing board of the Virginia Office for Protection and Advocacy prior to July 1, 2003, shall continue and not be affected by this act.

## **Chapter 895 Procurement of information technology; reverse auctioning.**

An Act to amend and reenact §§ [2.2-1119](#), [2.2-1303](#), [2.2-4304](#) and [53.1-52](#) of the Code of Virginia and to repeal the second enactment of Chapter 395 of the Acts of Assembly of 2001, relating to information technology procurement; reverse auctioning.

[\[H 1927\]](#)

Approved March 22, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1119](#), [2.2-1303](#), [2.2-4304](#) and [53.1-52](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-1119](#). Cases in which purchasing through Division not mandatory.

A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies and nonprofessional services through the Division shall not be mandatory in the following cases:

1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor and materials;

2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state funds;
3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be considered perishable within the meaning of this subdivision, unless so classified by the Division;
4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
5. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;
7. Printing of the records of the Supreme Court; and
8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

*B. Telecommunications and information technology goods and services of every description shall be procured as provided in § [2.2-1303](#).*

§ [2.2-1303](#). Additional powers and duties relating to communications equipment and services and information technology equipment and services.

A. The Department shall have the following additional powers and duties concerning the planning, budgeting, acquiring, using and disposing of communications equipment and services:

1. Formulate specifications for telecommunications, automated data and word processing, and management information systems.
2. Analyze and approve all procurements of interconnective telecommunications facilities, telephones, automated data and word processing, and other communications equipment and goods.
3. Review and approve all agreements and contracts for communications services prior to execution between a state agency and another public or private agency.
4. Develop and administer a system to monitor and evaluate executed contracts and billing and collection systems.

5. Exempt from review requirements, but not from the state's competitive procurement process, any state agency that establishes, to the satisfaction of the Department, (i) its ability and willingness to administer efficiently and effectively the procurement of communications services or (ii) that it has been subjected to another review process coordinated through or approved by the Department.

B. The Department shall have the following powers and duties concerning the development, operation and management of communications services:

1. Manage and coordinate the various communications facilities, centers, and operations used by the Commonwealth.

2. Acquire, lease, or construct such facilities and equipment as necessary to deliver comprehensive communications services; and to maintain such facilities and equipment owned or leased.

3. Provide technical assistance to state agencies in such areas as: (i) designing management information systems; (ii) performing systems development services, including design, application programming, and maintenance; (iii) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications; (iv) effecting economies in telephone systems and equipment; (v) planning and forecasting for future needs in communications services; and (vi) management studies and surveys of organizational structure, management practices and systems and procedures.

4. Develop and implement information, billing and collections systems that will aid state agencies in forecasting their needs and managing their operations.

C. Notwithstanding § [2.2-1110](#), ~~telecommunications goods and services of every description may and~~ information technology goods and services of every description shall be procured by (i) the Department for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by the Department. Procurements made in accordance with this subsection shall be made in accordance with the regulations specified in § [2.2-1111](#), unless the Department has adopted alternative regulations governing these procurements ~~pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.)~~.

D. All statewide contracts and agreements made and entered into by the Department for the purchase of computers, software, supplies, and related peripheral equipment and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Administration may disapprove the inclusion from a specific contract or agreement. Notwithstanding the provisions of § [2.2-4301](#), the Department may enter into multiple vendor contracts for the referenced hardware, software, and services.

E. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § [2.2-803](#). § [2.2-4304](#). Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § [2.2-4343](#) shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ [2.2-1110](#), [2.2-1111](#) ~~and~~, [2.2-1120](#), and [2.2-1303](#), any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply. *Pursuant to § [2.2-1303](#), such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Director of the Department of Information Technology.* However, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

§ [53.1-52](#). Procedure for purchases.

All purchases, *except for those of telecommunications and information technology as provided in § [2.2-1303](#),* made by departments, institutions and agencies of the Commonwealth shall be made as provided by the Division of Purchases and Supply of the Department of General Services. *All purchases of telecommunications and information technology made by departments, institutions and agencies of the Commonwealth shall be made as provided by the Department of Information Technology.* All other purchases

shall be upon requisition by the proper authority of the county, district, city or town requiring such articles.

2. That the provisions of this act shall not in any way amend or affect the Commonwealth's institutions of higher education as such institutions may be delegated the authority for the purchase of information technology facilities and services pursuant to the 2002-2004 Appropriation Act adopted by the General Assembly.

3. That the provisions of this act shall not in any way amend or affect existing delegations of telecommunications procurement authority granted by the Department of Information Technology to public bodies or inhibit the ability of the Department to grant future delegations of such authority.

4. That the second enactment of Chapter 395 of the Acts of Assembly of 2001 is repealed.

## **Chapter 900 Administration of government; long-term planning; Roadmap Va's Future.**

An Act to amend and reenact §§ [2.2-1501](#), [2.2-1509](#), [2.2-1511](#), and [2.2-2101](#) of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 26 of Title 2.2 an article numbered 28, consisting of sections numbered [2.2-2681](#) through [2.2-2687](#), and by adding in Title 2.2 a chapter numbered 55.1, consisting of sections numbered [2.2-5510](#) and [2.2-5511](#); and to repeal the second enactment of Chapter 424 of the Acts of Assembly of 2000, relating to the administration of government; long-term planning; Roadmap for Virginia's Future.

[\[H 2097\]](#)

Approved March 22, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1501](#), [2.2-1509](#), [2.2-1511](#) and [2.2-2101](#) of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 26 of Title 2.2 an article numbered 28, consisting of sections numbered [2.2-2681](#) through [2.2-2687](#), and by adding in Title 2.2 a chapter numbered 55.1, consisting of sections numbered [2.2-5510](#) and [2.2-5511](#), as follows:

§ [2.2-1501](#). Duties of Department.

The Department shall have the following duties:

1. Development and direction of an integrated policy analysis, planning, and budgeting process within state government.
2. Review and approval of all sub-state district systems boundaries established or proposed for establishment by state agencies.
3. Formulation of an executive budget as required in this chapter. In implementing this provision, the Department shall utilize the resources and determine the manner of participation of any executive agency as the Governor may determine necessary to support an efficient and effective budget process notwithstanding any contrary provision of law. The budget shall include reports, or summaries thereof, provided by agencies of the Commonwealth pursuant to subsection E of § [2.2-603](#).
4. Conduct of policy analysis and program evaluation for the Governor.
5. Continuous review of the activities of state government focusing on budget requirements in the context of the goals and objectives determined by the Governor and the General Assembly and monitoring the progress of agencies in achieving goals and objectives.
6. Operation of a system of budgetary execution to ensure that agency activities are conducted within fund limitations provided in the appropriation act and in accordance with gubernatorial and legislative intent. The Department shall make an appropriate reduction in the appropriation and maximum employment level of any state agency or institution in the executive branch of government that reports involuntary separations from employment with the Commonwealth due to budget reductions, agency reorganizations, or workforce down-sizings, or voluntary separations from employment with the Commonwealth as provided in the second and third enactments of the act of the General Assembly creating the Workforce Transition Act of 1995 (§ [2.2-3200](#)). In the event an agency reduces its workforce through privatization of certain functions, the funds associated with such functions shall remain with the agency to the extent of the savings resulting from the privatization of such functions.
7. Development and operation of a system of standardized reports of program and financial performance for management.
8. Coordination of statistical data by reviewing, analyzing, monitoring, and evaluating statistical data developed and used by state agencies and by receiving statistical data from outside sources, such as research institutes and the federal government.
9. Assessment of the impact of federal funds on state government by reviewing, analyzing, monitoring, and evaluating the federal budget, as well as solicitations, applications, and awards for federal financial aid programs on behalf of state agencies.

10. Review and verify the accuracy of agency estimates of receipts from donations, gifts or other nongeneral fund revenue.

11. Development, coordination and implementation of a performance management system involving strategic planning, performance measurement, evaluation, and performance budgeting within state government. The Department shall ensure that information generated from these processes is useful for managing and improving the efficiency and effectiveness of state government operations, and is available to citizens and public officials. ~~The Department shall submit annually on or before the second Tuesday in January to the Chairman of the House Appropriations Committee and the Chairman of the Senate Finance Committee a report that sets forth state agencies' strategic planning information and performance measurement results pursuant to this subdivision for the immediately preceding fiscal year.~~

12. Development, implementation and management of an Internet-based information technology system to ensure that citizens have access to performance information.

13. Development, implementation and management of an Internet-based information technology system to ensure that citizens have access to meeting minutes and information pertaining to the development of regulatory policies.

§ [2.2-1509](#). Budget bill.

A. On or before December 20 of the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year, the Governor also shall submit to the presiding officer of each house of the General Assembly, at the same time he submits "The Executive Budget," copies of a tentative bill for all proposed appropriations of the budget, for each year in the ensuing biennial appropriation period, which shall be known as "The Budget Bill." "The Budget Bill" shall be organized by function, primary agency, and proposed appropriation item and shall include (i) an identification of, and authorization for, common programs and (ii) the appropriation of funds according to programs. *Strategic plan information and performance measurement results developed by each agency shall be made available to the General Assembly as it considers "The Budget Bill."* Except as expressly provided in an appropriation act, whenever the amounts in a schedule for a single appropriation item are shown in two or more lines, the portions of the total amount shown on separate lines are for information purposes only and are not limiting. No such bill shall contain any appropriation the expenditure of which is contingent upon the receipt of revenues in excess of funds unconditionally appropriated.

B. The salary proposed for payment for the position of each cabinet secretary and administrative head of each agency and institution of the executive branch of state government

shall be specified in "The Budget Bill," showing the salary ranges and levels proposed for such positions.

C. "The Budget Bill" shall include all proposed capital appropriations, including each capital project to be financed through revenue bonds or other debt issuance, the amount of each project, and the identity of the entity that will issue the debt.

D. Concurrently with the submission of "The Budget Bill," the Governor shall submit a tentative bill involving a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in "The Budget Bill."

E. On or before December 20 of the year immediately prior to the beginning of each regular session held in an odd-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of all gubernatorial amendments proposed to the general appropriation act adopted in the immediately preceding even-numbered year session. In preparing the amendments, the Governor may obtain estimates in the manner prescribed in §§ [2.2-1504](#), [2.2-1505](#), and [2.2-1506](#). On the same date he shall also submit a tentative bill during the second year of the appropriation period, a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in the proposed gubernatorial amendments.

F. The proposed capital appropriations or capital projects described in, or for which proposed appropriations are made pursuant to, this section shall include the capital outlay projects required to be included in "The Budget Bill" pursuant to § [2.2-1509.1](#). The Governor shall propose appropriations for such capital outlay projects in "The Budget Bill" in accordance with the minimum amount of funding and the designated sources of funding for such projects as required under § [2.2-1509.1](#).

§ [2.2-1511](#). Consideration of budget by committees.

The standing committees of the House of Delegates and of the Senate in charge of appropriation measures shall begin consideration of the budget within five calendar days after the convening of the regular session of the General Assembly to which the budget is submitted. The committees or subcommittees thereof, may meet jointly on matters concerning the budget at such times as the chairmen of the two committees deem appropriate. The committees or subcommittees may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the Commonwealth to furnish such information and answer such questions as they require.

*The committees shall consider strategic plan information and performance-measurement results developed by each agency pursuant to Chapter 55.1 (§ [2.2-5510](#) et seq.) of this*

*title and submitted by the Governor pursuant to § [2.2-1509](#).* All persons interested in the matters under consideration shall be admitted to the meetings and shall have the right to be heard.

§ [2.2-2101](#). Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § [54.1-901](#); to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § [2.2-2421](#); to members of the Council on Indians, who shall be appointed as provided for in § [2.2-2628](#); to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § [23-231.3](#); to members of the Maternal and Child Health Council, who shall be appointed as provided for in § [2.2-2642](#); to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § [2.2-5204](#); to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § [2.2-2600](#); to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided for in § [53.1-45.3](#); to members appointed to the Virginia Veterans Cemetery Board pursuant to § [2.2-2438](#); to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § [23-231.15](#); to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § [2.2-2621](#); to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § [2.2-2423](#); to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § [22.1-346.1](#); to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; to members of the Criminal Justice Services Board, who shall be appointed as provided in § [9.1-108](#); *to members of the Council on Vir-*

ginia's Future, who shall be appointed as provided in § [2.2-2683](#); or to members of the Virginia Workforce Council, who shall be appointed as provided for in § [2.2-2669](#).

Article 28.

Council on Virginia's Future.

§ [2.2-2681](#). Definitions.

As used in this article:

"Long-term objective" means a measurable standard of desired performance achievement extending at least five years into the future.

"Performance budgeting" means a systematic incorporation of planning, strategic performance and productivity measurement, and program evaluation information into the budgetary process.

"Performance management" means a management system consisting of strategic planning, strategic performance and productivity measurement, program evaluation, and performance budgeting.

"Program evaluation" means an evaluation of the progress made toward the achievement of long-term objectives, current initiatives, and increased productivity.

"Roadmap" or "Roadmap for Virginia's Future" means a planning process that may include some or all of the following sequential steps: (i) developing a set of guiding principles that are reflective of public sentiment and relevant to critical decision-making; (ii) establishing a long-term vision for the Commonwealth; (iii) conducting a situation analyses of core state service categories; (iv) setting long-term objectives for state services; (v) aligning state services to the long-term objectives; (vi) instituting a planning and performance management system consisting of strategic planning, performance measurement, program evaluation, and performance budgeting; and (vii) performing plan adjustments based on public input and evaluation of the results of the Roadmap.

"Situational analyses" means the assessment of state agency performance in core service areas.

"Strategic planning" means the systematic clarification and documentation of what a state agency wishes to achieve and how to achieve it. The objective of strategic planning is a set of goals, action steps, and measurements constructed to guide performance.

"Strategic performance and productivity measures" means the use of data to review the current performance, improvement in productivity, and progress against the long-term objectives.

*"Vision" means an aspirational expression of a future condition for the Commonwealth that is both essential and desirable and extends at least 10 years into the future.*

*§ 2.2-2682. Council on Virginia's Future; purpose.*

*The Council on Virginia's Future (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise the Governor and the General Assembly on the implementation of the Roadmap for Virginia's Future process.*

*§ 2.2-2683. Membership; terms; chairman and vice chairman; quorum; meetings.*

*The Council shall be composed of 18 members that include eight legislative members and 10 nonlegislative members as follows:*

- 1. The Governor;*
- 2. The Speaker of the House;*
- 3. The majority and minority leaders of the House of Delegates;*
- 4. The Chairman of the House Committee on Appropriations;*
- 5. The President Pro Tempore of the Senate;*
- 6. The majority and minority leaders of the Senate;*
- 7. The Chairman of the Senate Finance Committee;*
- 8. One nonlegislative citizen member appointed by the Speaker of the House;*
- 9. One nonlegislative citizen member appointed by the Senate Committee on Privileges and Elections;*
- 10. Two Cabinet Secretaries appointed by the Governor; and*
- 11. Five nonlegislative citizen members appointed by the Governor.-*

*B. Legislative members and the two Cabinet Secretaries appointed by the Governor shall serve terms coincident with their terms of office. In the event that a legislative member holds more than one of the positions listed in subsection A, such legislative member shall designate another legislative member or members, as applicable, to serve as the representative for the other position or positions. The initial appointments of nonlegislative citizen members shall be staggered as follows: one member for a term of three years appointed by the Speaker of the House of Delegates; one member for a term of three years appointed by the Senate Committee on Privileges and Elections; one member for a term of one year, two members for a term of two years, and two members for a term of three years appointed by the Governor. Thereafter, nonlegislative citizen members appointed by the Speaker of the House of Delegates or the Senate Committee on Privileges and Elections shall be appointed for a term of two years, and nonlegislative citizen members appointed by the Governor shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for*

*the unexpired terms. All members may be reappointed. No nonlegislative citizen member appointed by the Speaker of the House of Delegates or the Senate Committee on Privileges and Elections shall serve more than four consecutive two-year terms and no nonlegislative citizen member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.*

*The Governor shall serve as the chairman of the Council. The Council shall elect a vice chairman from its membership. A majority of members of the Council shall constitute a quorum. The Council shall meet at least four times each year. The meetings of the Council shall be held at the call of the chairman or whenever four or more members so request.*

*§ [2.2-2684](#). Duties of the Council.*

*A. The Council shall have the following duties:*

- 1. Recommend a timetable for phasing in and establishing guiding principles for the Roadmap;*
- 2. Recommend long-term objectives for the Commonwealth and monitor and advise the Governor and the General Assembly regarding the progress toward the objectives;*
- 3. Provide advice on the implementation of the performance-management system across state government;*
- 4. Disseminate information to the public on the Commonwealth's performance-management system;*
- 5. Recommend a systematic process for the periodic evaluation of the Roadmap and adherence to the long-term goals and recommend improvements to the Governor and the General Assembly. The periodic evaluation process shall provide for enhanced opportunities for public participation and input;*
- 6. Beginning November 1, 2004, develop and submit annually to the General Assembly and the Governor and publish to the public a balanced accountability scorecard containing an assessment of (i) current service performance, (ii) productivity improvement, and (iii) progress against long-term objectives. The balanced scorecard shall also contain other evaluative recommendations that will enhance the provision of state services and suggested measures to evaluate progress against long-term objectives; and*
- 7. Solicit public input on appropriate aspects of the Roadmap as determined by the Council.*

*B. By January 1, 2004, the Council shall recommend to the Governor and the General Assembly legislation defining the vision, long-term objectives, and appropriate performance measures for state government. The Council shall review the long-term objectives for state government every two years.*

*§ [2.2-2685](#). Advisory committees.*

*The Council may form such advisory committees as it deems necessary, convenient, or desirable to advise and assist in performing the duties conferred by this article. The disclosure requirements of subsection B of § [2.2-3114](#) of the State and Local Government Conflict of Interests Act shall apply to members of the advisory committees.*

*§ [2.2-2686](#). Staff; cooperation and assistance.*

*A. The Department of Planning and Budget shall provide staff assistance to the Council. Additional assistance as needed shall be provided by the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the staffs of the House Committee on Appropriations and the Senate Finance Committee. All agencies, authorities, and institutions of the Commonwealth shall cooperate and provide such assistance to the Commission as the Commission may request.*

*B. The Chairman, in consultation with the Council, may hire or appoint an Executive Director for the Council if deemed appropriate.*

*§ [2.2-2687](#). Chairman's executive summary of activity and work of the Council.*

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

*CHAPTER 55.1.*

*GOVERNMENT PERFORMANCE AND RESULTS ACT.*

*§ [2.2-5510](#). Strategic plan.*

*A. Each agency shall develop and maintain a strategic plan for its operations. The plan shall include:*

- 1. A statement of the mission, goals, strategies, and performance measures of the agency that are linked into the performance management system directed by long-term objectives;*
- 2. Identification of priority and other service populations under current law and how those populations are expected to change within the time period of the plan; and*

*3. An analysis of any likely or expected changes in the services provided by the agency.*

*B. Strategic plans shall also include the following information:*

*1. Input, output, and outcome measures for the agency;*

*2. A description of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs; and*

*3. A description of the activities of the agency that have received either a lesser priority or have been eliminated from the agency's mission or work plan over the previous year because of changing needs, conditions, focus, or mission.*

*C. The strategic plan shall cover a period of at least two years forward from the fiscal year in which it is submitted and shall be reviewed by the agency annually.*

*D. Each agency shall post its strategic plan on the Internet.*

*§ [2.2-5511](#). Review of strategic plan information.*

*The Governor shall develop an implementation plan providing for each agency to develop a strategic plan. Such implementation plan shall provide for agency submission of individual strategic plans over a three-year period beginning December 1, 2003, and ending December 1, 2006, and require, at a minimum, one-third of state agencies each year to so submit. Thereafter, each agency shall submit, on a biennial basis by December 1 in even-numbered years, its strategic plan including goals, strategies, and performance measures for consideration and review by the Council on Virginia's Future. After review, the Council may submit comments to the Governor regarding any concerns about the strategic plan or recommendations to improve the plan.*

*2. That the second enactment of Chapter 424 of the Acts of the Assembly of 2000 is repealed.*

*3. That the provisions of this act shall expire on July 1, 2008.*

## **Chapter 1036 Real estate appeals to Boards of Equalization and circuit court.**

An Act to amend and reenact §§ [15.2-717](#), [58.1-3256](#), [58.1-3260](#), [58.1-3374](#), [58.1-3378](#), [58.1-3379](#), [58.1-3380](#), [58.1-3384](#), and [58.1-3984](#) of the Code of Virginia; to amend and reenact § 2 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § [58.1-3260](#) of the Code of Virginia) as amended by Chapter 339 of the Acts of Assembly of 1958; to amend and reenact § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by §

[58.1-3260](#) of the Code of Virginia), as amended by Chapter 422 of the Acts of Assembly of 1950, and as amended by Chapter 339 of the Acts of Assembly of 1958; relating to appeals of real estate assessments.

[\[H 2503\]](#)

Approved May 1, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-717](#), [58.1-3256](#), [58.1-3260](#), [58.1-3374](#), [58.1-3378](#), [58.1-3379](#), [58.1-3380](#), [58.1-3384](#), and [58.1-3984](#) of the Code of Virginia are amended and reenacted as follows:

§ [15.2-717](#). Time in which to contest real property assessments.

~~Notwithstanding any other provision of law and instead of any other right to apply to court,~~ Any person aggrieved by an assessment of real estate made by the department of real estate assessments may apply for relief to the circuit court of the county within one year from December 31 of the year in which such assessment is made *for assessments made prior to January 1, 2005; within two years from December 31 of the year in which such assessment is made for assessments made on and after January 1, 2005, but prior to January 1, 2007; and within the time frame as provided by general law pursuant to § [58.1-3984](#) for assessments made on and after January 1, 2007. No person may make such application for a year other than the current year unless such person has provided to the assessor, commissioner of the revenue, or the governing body, written notice of disagreement with the assessment, during the applicable tax year.* The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be on the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has taken place. The proceedings shall be conducted as an action at law before the court, sitting without a jury, and the court shall act with the authority granted by §§ [58.1-3987](#) and [58.1-3988](#).

§ [58.1-3256](#). Reassessment in towns; appeals of assessments.

In any incorporated town there may be for town taxation and debt limitation, a general reassessment of the real estate in any such town in the year designated, and every fourth year thereafter, that the council of such town shall declare by ordinance or resolution the necessity therefor. Every such general reassessment of real estate in any such town shall be made by a board of assessors consisting of three ~~resident~~

*freeholders residents, a majority of whom shall be freeholders, who hold no official office or position with the town government, appointed by the council of such town for each general reassessment and the compensation of the person so designated shall be prescribed by the council and paid out of the town treasury. The assessors so designated shall assess the property in accordance with the general law and Constitution of Virginia. If for any cause the board is unable to complete an assessment within the year for which it is appointed, the council shall extend the time therefor for three months. Any vacancy in the membership of the board shall be filled by the council within ~~thirty~~30 days after the occurrence thereof, but such vacancy shall not invalidate any assessment. The assessments so made shall be open for public inspection after notice of such inspection shall have been advertised in a newspaper of general circulation within the town at least five days prior to such date or dates of inspection. Within ~~thirty~~30 days after the final date of inspection the assessors shall file the completed reassessments in the office of the town clerk and at the same time forward to the Department of Taxation a copy of the recapitulation sheets of such assessments.*

*Any person, firm, or corporation claiming to be aggrieved by any assessment may, within ~~thirty~~30 days after the filing of reassessments in the office of the town clerk, apply to the town board of equalization for a correction of such assessment by filing with the town clerk a written statement setting forth his grievances. The board of equalization of every such town shall, within ~~thirty~~30 days of the filing of such complaint, fix a date for a hearing on such application and, after giving the applicant at least ~~ten~~ 10 days' notice of the time fixed, shall hear such evidence as may be introduced by interested parties and correct the assessment by increasing or reducing the same. The circuit court having jurisdiction within the town shall, in each tax year immediately following the year in which a general reassessment was conducted, appoint for such town a board of equalization of real estate assessments made up of three to five citizens of the town. *Any such town board of equalization shall be subject to the same member composition requirements and limits on terms of service as provided for boards of equalization pursuant to § [58.1-3374](#). In addition, at least once in every four years of service on a town board of equalization, each member of such board shall take continuing education instruction provided by the Tax Commissioner pursuant to § [58.1-206](#). In equalizing real property tax assessments, such board of equalization shall hear complaints, including but not limited to, that real property is assessed at more than fair market value. In hearing complaints, the board shall establish the value of real property as provided in § [58.1-3378](#). The provisions of § [58.1-3379](#) shall apply to all complaints heard by any town board of equalization.**

Town taxes for each year on real estate subject to reassessment shall be extended on the basis of the last general reassessment made prior to such year subject to such changes as may have been lawfully made. The town tax assessor shall make changes required by new construction, subdivision and disaster loss. The council of any town may provide by ordinance that it will have a general reassessment of real estate in the town in the year designated by the town council and every year thereafter. The town council may declare the necessity for such general reassessment by such ordinance, but in all other respects this section shall be controlling. No county or district levies shall be extended on any assessments made under the provisions of this section.

Any town which has failed to conduct a general reassessment within five years shall use only those assessed values assigned by the county.

§ [58.1-3260](#). Acts authorizing, in certain cities and counties, provision for the annual general reassessment of real estate and equalization of assessments, by continuing assessors, conferring upon assessors certain duties of commissioners of the revenue, etc.

The following acts are continued in effect *as amended from time to time*:

1. Chapter 261 of the Acts of Assembly of 1936, approved March 25, 1936, as amended by Chapter 64 of the Acts of Assembly of 1938, approved March 4, 1938, Chapter 234 of the Acts of Assembly of 1942, approved March 14, 1942, Chapter 422 of the Acts of Assembly of 1950, and Chapter 339 of the Acts of Assembly of 1958, *and as amended by the 2003 Regular Session of the General Assembly*, authorizing provision for the annual general reassessment of real estate and the election of assessors in cities of more than 175,000; transferring to the assessors in such cities the duties in regard to the assessment of real estate formerly devolved upon the commissioners of the revenue; repealing all provisions of law relating to the equalization of real estate assessments insofar as they applied to such cities; and relating to other connected matters.

2. Chapter 29 of the Acts of Assembly of 1947, approved January 29, 1947, authorizing provision for the annual general reassessment of real estate, the appointment of assessors, and the appointment of boards of review, in cities of not less than 125,000 nor more than 190,000; conferring on such boards of review the powers exercised by boards of equalization; and relating to other connected matters.

3. Chapter 211 of the Acts of Assembly of 1944, amended by Chapter 167 of the Acts of Assembly of 1946 (Repealed by Acts of Assembly of 1952, Chapter 636).

4. Chapter 65 of the Acts of Assembly of 1944, approved February 26, 1944, as amended by Chapter 80 of the Acts of Assembly of 1954, and Chapter 624 of the Acts of Assembly of 1968, authorizing, in cities of not less than 40,000 nor more than 50,000,

provision for the general reassessment of real estate and equalization of assessments every ~~1~~*one*, ~~2~~*two*, ~~3~~*three* or ~~4~~*four* years, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

5. Chapter 17 of the Acts of Assembly of 1947, approved January 29, 1947, as amended by Chapter 29 of the Acts of Assembly of 1952, Ex. Sess., authorizing, in cities having a population of not less than 30,000 nor more than 31,000, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

6. Chapter 146 of the Acts of Assembly of 1942, approved March 9, 1942, authorizing, in any city adjoining a county having a density of more than 1,000 per square mile, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

7. Chapter 189 of the Acts of Assembly of 1946, approved March 15, 1946, as amended by Chapter 325 of the Acts of Assembly of 1950, authorizing, in any county adjoining a county having a population density of 1,000 or more per square mile, provision for the annual general reassessment of real estate and equalization of assessments, and the appointment of assessors to perform these duties; conferring on the assessors certain duties formerly imposed upon commissioners of the revenue; and relating to other connected matters.

8. Chapter 237 of the Acts of Assembly of 1942, amended by Chapter 44 of the Acts of Assembly of 1946 and Chapter 59 of the Acts of Assembly of 1948.

9. Chapter 345 of the Acts of Assembly of 1942, approved March 31, 1942, authorizing, in any county adjoining a city of more than 190,000, and any county with an area of less than ~~seventy~~*70* square miles of highland, provision for the annual general reassessment of real estate and the equalization of assessments, and the appointment of assessors to perform such duties; conferring upon the assessors certain duties imposed by general law on commissioners of the revenue; and relating to other connected matters.

10. Chapter 237 of the Acts of Assembly of 1946, approved March 25, 1946, authorizing, in counties having an area of more than 135 square miles but less than 152 square miles, and a population of more than 4,000 but less than 8,000, provision for boards for the annual general reassessment of real estate and equalization of assessments; con-

ferring on the assessors certain duties imposed by general law upon commissioners of the revenue; and relating to other connected matters.

11. Chapter 85 of the Acts of Assembly of 1948, approved March 3, 1948, codified in Michie Supplement 1948 as Tax Code § 348b, as amended by Chapter 266 of the Acts of Assembly of 1952, providing, in counties of not more than 30,000 adjoining cities of not less than 100,000 and not more than 150,000, for continuing boards of assessors to meet annually and perform the duties imposed upon boards of assessors of real estate assessments by general law, and relating to other connected matters, is incorporated in this Code by this reference.

§ [58.1-3374](#). Qualifications of members; vacancies; maximum terms.

Except as provided in § [58.1-3371](#) or § [58.1-3373](#), every board of equalization shall be composed of not less than three nor more than five members ~~who shall be freeholders in the county or city for which they are to serve and who shall be selected by the court or judge from the citizens of the county or city.~~ *All members of every board of equalization shall be residents, a majority of whom shall be freeholders, in the county or city for which they are to serve and shall be selected from the citizens of the county or city. Appointments to the board of equalization shall be broadly representative of the community. Thirty percent of the members of the board shall be commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multi-family residential property, unless waived by the taxpayer.* No member of the board of assessors shall be eligible for appointment to the board of equalization for the same reassessment. In order to be eligible for appointment, each prospective member of such board shall attend and participate in the basic course of instruction given by the Department of Taxation under § [58.1-206](#). *In addition, at least once in every four years of service on a board of equalization, each member of a board of equalization shall take continuing education instruction provided by the Tax Commissioner pursuant to § [58.1-206](#).* Any vacancy occurring on any board of equalization shall be filled for the unexpired term by the authority making the original appointment.

*In no case shall a person serve as a member of a board of equalization for more than nine consecutive years, and upon the expiration of such nine consecutive years such person shall not be eligible for reappointment for a period of three years.*

§ [58.1-3378](#). Sittings; notices thereof.

Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least ~~ten~~ 10 days beforehand by publication in

a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each public library, voting precinct or both. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of equalizing real estate assessments in such county or city and for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or errors in acreage in such real estate assessments. *The board also shall hear complaints that real property is assessed at more than fair market value. Except as otherwise provided by the Code of Virginia:*

1. *The fair market value of real property shall be established by the board as of January 1 of the applicable year; or*

2. *If a county or city has adopted July 1 as its tax day for real property pursuant to § [58.1-3011](#), then, for other than public service corporation property, the fair market value of real property shall be established by the board as of July 1 of the applicable year.*

The governing body of any county or city may provide by ordinance the date by which applications must be made by property owners or lessees for relief. Such date shall not be earlier than ~~thirty~~30 days after the termination of the date set by the assessing officer to hear objections to the assessments as provided in § [58.1-3330](#). If no applications for relief are received by such date, the board of equalization shall be deemed to have discharged its duties. Such governing body may also provide by ordinance the deadline by which all applications must be finally disposed of by the board of equalization. All such deadlines shall be clearly stated on the notice of assessment.

§ [58.1-3379](#). Hearing complaints and equalizing assessments.

A. The board shall hear and give consideration to such complaints and *shall adjust and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city.*

B. *In all cases brought before the board, there shall be a presumption that the valuation determined by the assessor is correct, and the board shall be advised that it is not necessary that the taxpayer show that the assessment is a result of manifest error or disregard of controlling evidence, but rather that the standard of proof is in accordance with subsection C.*

C. *The burden of proof shall be upon a taxpayer seeking relief to show that the property in question is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. In order to*

*receive relief, the taxpayer must produce substantial evidence that the valuation determined by the assessor is erroneous and was not arrived at in accordance with generally accepted appraisal practice. Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.*

*D. The commissioner of the revenue or other local assessing officer of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him.*

*E. Every board of equalization may go upon and inspect any real estate subject to adjustment or equalization by it.*

*F. The burdens and standards set out in subsections B and C shall apply in hearings before the board and nothing contained in this section shall be construed to change or have any effect upon the burdens and standards applicable to applications to correct erroneous assessments filed with circuit courts pursuant to §§ [58.1-3984](#) through [58.1-3987](#).*

§ [58.1-3380](#). Taxpayer or local authorities may apply for equalization.

Any taxpayer may apply to the board of equalization for the *adjustment to fair market value* and equalization of his assessment, including errors in acreage, and any county or city through its appointed representative or attorney may apply to the board of equalization to *adjust an assessment of real property to its fair market value* and to equalize the assessment of any taxpayer.

§ [58.1-3384](#). Minutes and copies of orders.

The board shall keep minutes of its meetings and enter therein all orders made and transmit promptly copies of such orders as relate to the increase or decrease of assessments to the taxpayer and commissioner of the revenue. *The orders shall be recorded on forms prepared by the Tax Commissioner and provided to localities by the Department of Taxation or on forms prepared by the board that contain, at a minimum, all the information required on the forms prepared by the Tax Commissioner.*

§ [58.1-3984](#). Application to court to correct erroneous assessments of local levies generally.

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (*including, but not limited to, as provided under (i) § [15.2-717](#) and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § [58.1-3260](#))*), as amended by Chapter 422 of the Acts of Assembly of 1950, as

*amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (ia) within three years from the last day of the tax year for which any such assessment is made, (ib) within one year from the date of the assessment, (ic) within one year from the date of the Tax Commissioner's final determination under § [58.1-3703.1](#) A 5 or § [58.1-3983.1](#) D, or (id) within one year from the date of the final determination under § [58.1-3981](#), whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made. The proceedings shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.*

B. In the event it comes or is brought to the attention of the commissioner of the revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, and he is not able to correct it under § [58.1-3981](#), the commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.

2. That § 2 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § [58.1-3260](#) of the Code of Virginia) as amended by Chapter 339 of the Acts of Assembly of 1958 is amended and reenacted as follows:

§ 2. All duties now devolved upon the commissioner of the revenue with respect to the assessment of real estate and making up the land books in such cities, shall be transferred to and devolved upon the assessor or assessors to be appointed pursuant to this act, *including the duty and power to assess omitted real estate taxes for the then current year or any tax year of the three tax years last past as provided in § [58.1-3904](#) of the Code of Virginia.* All such real estate shall be assessed at its fair market value, and taxes for each year on such real estate shall be extended by such assessor or assessors on the basis of the last assessment made prior to such year, subject to such changes as may have been lawfully made. The assessor or assessors, upon completion of each annual assessment and final recordation thereof in the land book, shall certify thereon in

writing on oath that all real estate subject to taxation by such cities has been assessed by him or them at the fair market value thereof and that there are no errors on the face of the land book. In case of the absence, incapacity, death, resignation or removal from office of the assessor or assessors or failure, refusal or neglect so to do, and because thereof, the land book is not so certified when or after such assessment is finally recorded therein, the governing body of such cities shall designate a person in the office of the assessor or assessors who can make such certification on oath to make the certification within ~~thirty~~30 days from the final recordation of such annual assessment in the land book.

3. That § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § [58.1-3260](#) of the Code of Virginia), as amended by Chapter 422 of the Acts of Assembly of 1950, and as amended by Chapter 339 of the Acts of Assembly of 1958, is amended and reenacted as follows:

§ 3. The ~~corporation or hustings~~ *circuit* court of any such city or the judge thereof in vacation shall before the first day of July in each year appoint for such city a board of review of real estate assessments, to be composed of three members, who shall be ~~freeholders residents, a majority of whom shall be freeholders~~, of the city for which they serve, any two of whom shall have authority to act for the board. One member of the board shall be a real estate broker as defined by § ~~54-730~~ [54.1-2100](#) of the Code of Virginia, one member of the board shall be a contractor as defined in § ~~58-297~~ [58.1-3714](#) of the Code of Virginia, and one member of the board shall be a person who shall have had at least five years' experience in appraising the value of real estate. The terms of such members shall commence on the date of their appointment and shall expire on the thirtieth day of November of the year in which they are appointed unless such terms are extended. The *circuit* court or the judge thereof in vacation may extend the terms of the members of the said board of review and shall fill any vacancy therein for the unexpired term. The members of the board shall receive per diem compensation for the time actually engaged in the duties of the board, to be fixed by the *circuit* court or the judge thereof in vacation and to be paid out of the treasury of such city; provided, however, the said *circuit* court or judge may limit the per diem compensation to such number of days as in its or his judgment is sufficient for the completion of the work of the board. Such board of review shall have and may exercise the power to review any assessment of real estate made by the assessor or assessors appointed pursuant to § 1 of this chapter in the year in which they serve upon the complaint of the owner of the real estate, and to change, revise, correct

and amend any such assessment, and to that end shall have all the powers conferred upon the said assessor or assessors. The board may adopt any regulations providing for the oral presentation, without formal petition or other pleadings or request for review, and looking to the further facilitation and simplification of proceedings before the board. The assessor or one of the assessors appointed pursuant to § 1 of this chapter shall attend and participate in the proceedings of, but shall not vote in, the meetings of the board. Any person or any such city aggrieved by any assessment made by the assessor or assessors appointed pursuant to § 1 of this chapter or by the board of review may apply for relief to the ~~corporation or hustings~~ *circuit* court of such city within one year from the thirty-first day of December of the year in which such assessment is made, ~~and the procedure in such cases shall be in the manner prescribed by §§ 58-1145 to 58-1151, both inclusive, of the Code of Virginia for assessments made prior to January 1, 2005; within two years from December 31 of the year in which such assessment is made for assessments made on and after January 1, 2005, but prior to January 1, 2007; and within the timeframe as provided by general law pursuant to § 58.1-3984 of the Code of Virginia for assessments made on and after January 1, 2007. No person may make such application for a year other than the current year unless such person has provided to the assessor, commissioner of the revenue, or the governing body, written notice of disagreement with the assessment, during the applicable tax year. All other procedures in such cases shall be in the manner prescribed by §§ 58.1-3984 through 58.1-3989, both inclusive, of the Code of Virginia.~~

4. That the provisions of this act shall apply to complaints filed with a board of equalization beginning with each county's, city's and town's first tax year commencing on or after January 1, 2004.

5. That the Tax Commissioner, pursuant to § [58.1-3384](#) of the Code of Virginia, shall, by no later than January 1, 2004, design order forms to be used by boards of equalization. The provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) shall not apply to the development of such order forms.

6. That the Tax Commissioner shall, by no later than January 1, 2004, update his basic course of instruction for board of equalization members to incorporate the provisions of this act, including, but not limited to, what constitutes evidence of generally accepted appraisal practice and fair market value.

7. That the Tax Commissioner shall monitor the results of appeals of assessments of real property to boards of equalization and shall provide a report to the General

Assembly by October 1, 2006, and such report shall be posted on the General Assembly's website. For purposes of such report, every board of equalization shall provide, upon request of the Tax Commissioner, information as necessary to evaluate the impact of the provisions of this act. The Tax Commissioner shall meet with interested parties to determine the elements to be included in such report to the General Assembly.

**In addition, each board of equalization shall prepare an annual written report of their actions and shall make such report available, upon request, to the public, the local governing body of the respective county, city, or town and to the Tax Commissioner.**

8. That any member of a board of equalization who, as of January 1, 2004, has not met continuing education requirements as provided under this act shall take such educational courses as soon as practical.

9. That, subject to the provisions of the tenth enactment clause of this act, any current member of a board of equalization who has served at least nine consecutive years immediately prior to January 1, 2004, shall be allowed to complete his current term of service, and upon completion of such term, shall not be eligible for reappointment for a period of three years.

10. That in any county, city or town where less than 30 percent of the members of the board of equalization are commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, the appointing authority shall ensure that at least one member of such board so qualifies no later than January 1, 2004, and shall thereafter, as soon as possible, in accordance with prevailing law, change the membership of such board of equalization to meet this 30 percent requirement.

11. That in any locality in which, prior to July 1, 2003, a person aggrieved by a real estate tax assessment was required to make an application for correction of such assessment to the board of equalization of such locality and in which the board was required to make a final determination on such application, both as a prerequisite for jurisdiction of the circuit court of such locality in any application for relief of such assessment, such requirements shall continue in effect in such locality as a prerequisite for jurisdiction of the circuit court.

12. That the fifth, sixth, and tenth enactments of this act are effective July 1, 2003. All other provisions of this act are effective January 1, 2004.

## **Chapter 213 Lighting level regulation; Augusta County.**

An Act to allow lighting level regulation in Augusta County.

[\[H 2647\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the County of Augusta may provide by ordinance for the regulation of maximum upward exterior illumination levels of buildings and property zoned or used for commercial or business purposes. Such ordinance shall only apply to lighting installed after the effective date of the ordinance and shall not affect or be applied to agricultural or silvicultural operations. Further, such ordinance shall not apply to (i) any outdoor advertising signs owned by a person in the business of outdoor advertising licensed by the Department of Transportation pursuant to § [33.1-361](#), (ii) temporary construction or maintenance activities performed by the Department of Transportation or its agents or contractors, (iii) utility companies, (iv) facilities owned by the Department of Corrections, (v) lighting regulated by the Uniform Statewide Building Code, or (vi) premise security lighting used for properties whose primary usage is for multi-family residential or commercial office purposes.*

2. That if Augusta County has not adopted an ordinance pursuant to this act prior to July 1, 2005, the provisions of this act shall expire on July 1, 2005.

## **Chapter 230 Conveyance of easement.**

An Act to authorize the appropriate officials of the Commonwealth to take actions regarding an alleyway that extends from 8th Street to 9th Street between the Supreme Court of Virginia Building and St. Paul's Episcopal Church in Richmond, Virginia.

[\[S 1305\]](#)

Approved March 16, 2003

Whereas, the Commonwealth is in the process of updating and improving its security plans for the Capitol Square area; and

Whereas, acquiring title to the alley running between 8th and 9th Streets, separating the Supreme Court of Virginia Building and St. Paul's Episcopal Church in downtown Richmond, is one possible component of such a plan; and

Whereas, if title to such alley is acquired by the Commonwealth through negotiations with St. Paul's Episcopal Church and the City of Richmond, the Commonwealth intends to grant an easement over such alley to St. Paul's Episcopal Church; and

Whereas, it is prudent for the General Assembly to grant to the Department of General Services any authority it may need to negotiate such a transaction to enhance the security of buildings in the Capitol Square area; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of General Services is hereby authorized to negotiate with all necessary parties regarding the security of the alley running between 8th and 9th Streets, separating the Supreme Court of Virginia Building and St. Paul's Episcopal Church, and if determined appropriate, to acquire said alley and to convey to St. Paul's Episcopal Church, located at 9th and Grace Streets, Richmond, Virginia, an easement to the alley to permit vehicles parked in the church's parking garage to enter and exit the parking garage through such alley. This transaction shall be on such terms and conditions as may be negotiated between the parties, with the approval of the Governor and in a form approved by the Attorney General. The appropriate officials of the Commonwealth, including those ordinarily delegated signature authority for such transactions pursuant to [§ 2.2-1148](#) of the Code of Virginia, are hereby authorized to prepare, execute, and deliver such deeds and other documents as may be necessary to accomplish such transactions.*

## **Chapter 235 Albert G. Horton, Jr. Memorial Veterans' Cemetery.**

An Act to designate the state veterans' cemetery to be established in Hampton Roads the "Albert G. Horton, Jr. Memorial Veterans' Cemetery."

[\[H 1528\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the state veterans' cemetery to be established in Hampton Roads is hereby*

*designated the "Albert G. Horton, Jr. Memorial Veterans' Cemetery." The Department of Veterans' Affairs shall place and maintain appropriate markers indicating this designation.*

## **Chapter 244 Veterans Care Center; named after certain Medal of Honor recipients.**

An Act to name the second Veterans Care Center after certain Medal of Honor recipients.

[\[H 1793\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the second Virginia Veterans Care Center, to be constructed on the property of the McGuire Veterans Administration Hospital, shall be named in the honor of Richmond-area Medal of Honor recipients Colonel Carl Sitter, U.S. Marine Corps, Retired and Colonel Van Barfoot, U.S. Army, Retired. The Virginia Veterans Care Center Board of Trustees shall place and maintain appropriate markers indicating this designation.-*

## **Chapter 276 Old Colchester Road.**

An Act to designate a portion of Old Colchester Road in Fairfax County a Virginia byway.

[\[S 747\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, Old Colchester Road in Fairfax County between U.S. Route 1 and the old town of Colchester on the Occoquan River is hereby designated a Virginia byway.*

## **Chapter 284 Darrell Green Boulevard.**

An Act to designate a portion of Virginia Route 28 the "Darrell Green Boulevard."

[\[S 1004\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 28 located within Loudoun County is hereby designated the "Darrell Green Boulevard." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

### **Chapter 285 D. Woodrow Bird Memorial Highway.**

An Act to designate a portion of Interstate Route 77 the "D. Woodrow Bird Memorial Highway."

[\[S 1177\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Interstate Route 77 located within Bland County is hereby designated the "D. Woodrow Bird Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

### **Chapter 296 World War II Veterans Memorial Hwy.; W.W. II Veterans Memorial Bridge.**

An Act to designate the entire length of Virginia Route 288 the "World War II Veterans Memorial Highway," to designate the Virginia Route 288 bridge across the James River the "World War II Veterans Memorial Bridge" and to designate the Virginia Route 5 bridge across the Chickahominy River the "Judith Stewart Dresser Memorial Bridge."

[\[H 1381\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The entire length of Virginia Route 288 is hereby designated the "World War II Veterans Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

*§ 2. The Virginia Route 288 bridge across the James River is hereby designated the "World War II Veterans Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

*§ 3. The Virginia Route 5 bridge across the Chickahominy River is hereby designated the "Judith Stewart Dresser Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

## **Chapter 388 Property conveyance; National Guard Armory.**

An Act to authorize the Commonwealth to convey certain property in the Town of Richlands.

[\[S 1180\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth of Virginia is hereby authorized to convey by gift, with the approval of the Governor and in a form approved by the Attorney General, to the Town of Richlands, the organizational maintenance shop (OMS) and the land within the fenced-in area around the OMS located at the former National Guard Armory building in the Town of Richlands, such property identified as Parcel "B" and those portions of the adjacent parcel and Parcel "D" that are within the chain link fence that surrounds the motor pool as shown on the "Plat of Survey of the Richlands National Guard Armory Properties and the adjoining properties of the Town of Richlands, showing various exchanges of Parcels A, B, C, & D," by Andrew W. Cecil, Land Surveyor, dated June 8, 1990, revised June 14, 1991, (recorded in the Clerk's Office of Tazewell County Circuit Court, Virginia in DB 631 PG 858, PB 32 PG 22, and PC 6723). The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other*

*documents as may be necessary to accomplish such conveyance. The Town of Richlands shall pay all costs and expenses incurred in the transfer, including but not limited to environmental costs.*

### **Chapter 392 Alexandria Port Commission.**

An Act to repeal Chapter 392 of the Acts of Assembly of 1962, as amended, relating to the Alexandria Port Commission.

[\[H 1471\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That Chapter 392 of the Acts of Assembly of 1962, as amended, is repealed.

### **Chapter 396 Richmond-Henrico Metropolitan Area Commission.**

An Act to repeal Chapter 586 of the Acts of Assembly of 1960, relating to the Richmond-Henrico Metropolitan Area Commission.

[\[H 1475\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That Chapter 586 of the Acts of Assembly of 1960 is repealed.

### **Chapter 346 Va. Freedom of Information Act; electronic communication meetings.**

An Act to amend and reenact §§ 1 and 13 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002; § 11 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapter 429 of the Acts of Assembly of 2002; § 2 of the first enactment of Chapter 704 of the Acts of Assembly of 1999; to amend and reenact the third enactment of Chapter 704 of the 1999 Acts of Assembly, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002; and to repeal §§ 14 and 15 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by

Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002, relating to the Freedom of Information Act; electronic communication meetings.

[\[S 1203\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 and 13 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002; § 11 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapter 429 of the Acts of Assembly of 2002; § 2 of the first enactment of Chapter 704 of the Acts of Assembly of 1999; and the third enactment of Chapter 704 of the 1999 Acts of Assembly, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002 are amended and reenacted as follows:

§ 1. That, in lieu of the provisions of § [2.2-3708](#), ~~(i) any public body, as defined in § [2.2-3701](#), (a) in the legislative branch of state government or (b) responsible to or under the supervision, direction, or control of the Secretary of Commerce and Trade pursuant to § [2.2-204](#) or the Secretary of Technology pursuant to § [2.2-225](#), or (ii) the State Board for Community Colleges established in § [23-215](#) any authority, board, bureau, commission, district or agency of the Commonwealth whose membership includes persons who reside or work more than 55 miles from the meeting location as stated in the required notice for such meeting,~~ shall be authorized to hold meetings via electronic communication means pursuant to this act.

§ 2. "Electronic communication means" means any combined audio and visual communication method ~~which~~ *that* consists of, pertains to, is based on, is operated by, or otherwise involves the control of electrons or other charge carriers to exchange, send, receive, or in any way transmit the public business in a meeting.

§ 11. Any public body ~~or the Board, when conducting an electronic communication meeting pursuant to this act,~~ *authorized by § 1 of this act to conduct electronic communication meetings* shall make an *audio or audio/visual* recording of ~~the any such meeting.~~ *The, which* recording shall be preserved by ~~the such~~ public body ~~or the Board~~ for a period of three years from the date of the meeting ~~and.~~ *Such recording* shall be available to the public for inspection and copying pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

~~§ 13. By April 15, 2003 September 15 of each year, public bodies in the legislative branch of state government which authorized by § 1 of this act to conduct electronic communication meetings pursuant to this act shall file with the Joint Rules Committee, as defined in § [51.1-124.3](#), the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science a report on the total number of electronic communication meetings held; the dates and purposes of the meetings; the number of sites for each meeting; the types of electronic communication means by which the meetings were held; the number of participants, including the members of the public, at the meetings each meeting; the number of remote participants; and a summary of any public comment received about the electronic communication meetings; and a written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience. The chairman of the public body authorized by § 1 to conduct electronic communication meetings shall make an announcement of the report required by this section during the course of any such meeting.~~

2. That the third enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002, is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2004~~2005.

3. That §§ 14 and 15 of the first enactment of Chapter 704 of the Acts of Assembly of 1999, as amended by Chapters 910 and 983 of the Acts of Assembly of 2000 and Chapter 429 of the Acts of Assembly of 2002, are repealed.

4. That an emergency exists and this act is in force from its passage.

## **Chapter 490 Health professions; pharmacy technicians.**

An Act to amend and reenact the second enactment of Chapter 317 of the Acts of Assembly of 2001, relating to registration by pharmacy technicians.

[\[H 1824\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 317 of the Acts of Assembly of 2001 is amended and reenacted as follows:

2. That, notwithstanding the provisions of this act, persons engaging in acts that are restricted to pharmacy technicians pursuant to § [54.1-3321](#) shall not be required to be registered as pharmacy technicians until ~~six months~~ *one year* after the effective date of the final regulations promulgated by the Board of Pharmacy for such registration.

## **Chapter 460 Medical assistance services; consumer-directed care.**

An Act relating to medical assistance services; consumer-directed care.

[\[S 1008\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Medical assistance services; consumer-directed care waiver.*

*A. The Department of Medical Assistance Services shall prepare and may seek approval of an application for (i) a revision of the consumer-directed personal care services waiver to allow spouses, parents, adult children, and guardians to direct care on behalf of the waiver recipient, when such recipient is incapable of directing such care on his own behalf and (ii) a new waiver for home- and community-based services, as soon as such waiver template shall become available. Any such waiver revision or new waiver shall be cost-neutral and shall expand consumer-directed care in so far as practicable. Any such waiver application shall protect the health and safety of recipients as well as the fiscal integrity of the Commonwealth. Such waiver shall provide for a fiscal agent to handle tax issues and payment of personal attendants on the part of recipients. In addition, any such waiver application shall (i) provide recipients with flexible choices and personal independence in so far as possible and (ii) include provisions for family members to deliver the covered services when consistent with and not prohibited by federal law and regulation.*

*B. Neither this act nor any new or revised project that may be, but is not required to be, implemented pursuant to this act shall be construed as creating any legally enforceable right or entitlement to consumer-directed care, the Virginia Plan for Medical Assistance Services, or Title XIX of the Social Security Act, as amended, on the part of any person or to create any legally enforceable right or entitlement to participation in any consumer-directed care by any person.*

2. That, upon the approval by the Centers for Medicare and Medicaid Services of any application for revision of the consumer-directed personal care services waiver or for any new waiver that may be submitted by the Department of Medical Assistance Services pursuant to this act, expeditious implementation of any revised or new consumer-directed care services shall be deemed to be an emergency situation pursuant to § [2.2-4002](#) of the Administrative Process Act; therefore, to meet this emergency situation, the Board shall promulgate emergency regulations to implement the provisions of this act.

3. That, in order to avoid costs as much as possible during the regulatory process, the Board of Medical Assistance Services shall, when in compliance with the Administrative Process Act (§ [2.2-4000](#) et seq.), notify, distribute, and provide public access and opportunity for comment via electronic media, including, but not limited to, posting documents to and receiving comments via the Department's website, by e-mail and fax. The Board shall, however, continue to provide public notice and participation to those persons who do not have access to the Internet or other forms of electronic media.

## **Chapter 486 Certificate of public need; authorization of certain amendment.**

An Act relating to authorization for amendment of certain certificate of public need.

[\[H 1747\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision 10 of § [32.1-102.3:2](#) as in effect on June 30, 1996, or the provisions of Chapter 868 of the Acts of Assembly of 2000, the Commissioner of Health may accept and approve a request, pursuant to this act, to amend the conditions of a certificate of public need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds for three years from the date of issuance of a certificate of occupancy for the third mid-rise residential unit building associated with such facility or June 30, 2006, whichever shall occur first, when such facility (i) is operated by an association described in § [55-458](#); (ii) was created in connection with a real estate cooperative; (iii) offers its residents a level*

*of nursing services consistent with the definition of continuing care in Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2; and (iv) was issued a certificate of public need prior to October 3, 1995.*

## **Chapter 494 Schools of optometry; enrollment funding.**

An Act to ensure support for enrollments at certain accredited schools of optometry.

[\[H 1899\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any funds provided by the General Assembly to support enrollments of Virginia students in accredited schools of optometry shall be allocated first to support enrollments of such students at accredited schools of optometry in the Commonwealth and then to Virginia students attending schools of optometry outside the Commonwealth.*

*In the event no such accredited school of optometry exists in the Commonwealth, this act shall not be construed to prohibit the allocation of funds to support enrollments of Virginia students attending schools of optometry outside the Commonwealth.*

## **Chapter 475 Electronic meetings; UVA Board of Visitors; video broadcast meetings.**

An Act to amend and reenact § [2.2-3709](#) of the Code of Virginia and to amend and reenact the second enactment of Chapter 777 of the Acts of Assembly of 1998, as amended by Chapter 909 of the Acts of Assembly of 2000 and Chapter 297 of the Acts of Assembly of 2002, relating to electronic meetings of the Board of Visitors of the University of Virginia.

[\[S 1344\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-3709](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-3709](#). (Effective until July 1, 2004) Meetings of Board of Visitors of the University of Virginia.

A. Members of the Board of Visitors of the University of Virginia may participate by video, telephone, or video and telephone at their meetings or meetings of their committees, *including closed meetings convened in accordance with the procedures of § 2.2-3712*, where (i) ~~at least two-thirds of the membership~~ *a quorum* of such board or its committees is physically assembled at its regular ~~or~~, primary location *or other location*, (ii) any such meeting is duly convened with advance public notice in accordance with § 2.2-3707, *including advance public notice of the location of the physically assembled quorum*, and (iii) a speaker phone is provided *at the location* where ~~at least two-thirds~~ *the quorum* of such membership is physically present.

No more than ~~twenty-five~~ 25 percent of all meetings held annually by such board or its ~~committee~~ *committees*, including meetings of any ad hoc committees, may be held by telephonic or video means.

B. ~~Where at least two-thirds~~ *When the required quorum* of such board or its committees is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such board or its committees may participate in the meeting through telephonic means ~~provided if~~ the public is permitted to hear ~~and observe~~ such participation *during any open meeting*. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the *open* meeting until repairs are made and public access *is* restored.

C. Except as otherwise provided in this section, all meetings shall be conducted in accordance with this chapter. Any meeting conducted pursuant to this section shall not be considered an "electronic communication meeting" for purposes of § 2.2-3708, ~~provided; however,~~ such board or its committees *shall* comply with the provisions of subsection D of § 2.2-3708, requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. Votes taken by those participating by telephone or video shall also be publicly recorded by name in roll-call fashion and shall be included in the minutes, which shall be approved by such board or its committees in public session.

2. That the second enactment of Chapter 777 of the Acts of Assembly of 1998, as amended by Chapter 909 of the Acts of Assembly of 2000, and Chapter 297 of the Acts of Assembly of 2002, is amended and reenacted as follows:

2. That the provisions of this act shall expire on July 1, ~~2004~~ 2005. From July 1, 1998, to July 1, ~~2004~~ 2005, the Board of Visitors of the University of Virginia shall record the date and name of each board or committee meeting held pursuant to this chapter and, for each meeting, record the name of each board member who participates by video or

telephone. The Board of Visitors also shall record any complaints about telephonic or video participation at meetings expressed by board members, members of the public, or members of the media. No later than January 1, ~~2004~~ 2005, the Board shall provide the Secretary of Education and the General Assembly a written report containing the information required to be recorded as well as a narrative summary of the positive and negative experiences of employing telephonic and video meetings.

## **Chapter 586 Space Radiation Effects Laboratory.**

An Act to repeal Chapter 604 of the Acts of Assembly of 1962, as amended by Chapter 705 of the Acts of Assembly of 1966, authorizing The College of William and Mary, the University of Virginia, Virginia Polytechnic Institute and State University, and the Medical College of Virginia to enter into a joint agreement and to contract with the National Aeronautics and Space Administration for the operation and management of a space radiation effects laboratory in the area of Hampton Roads.

[\[H 1478\]](#)

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That Chapter 604 of the Acts of Assembly of 1962, as amended by Chapter 705 of the Acts of Assembly of 1966, is repealed.

## **Chapter 601 State travel guidelines.**

An Act to establish uniformity in state travel guidelines.

[\[H 2079\]](#)

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing bodies of the Virginia Economic Development Partnership, the Virginia Tourism Authority, and the Virginia Port Authority shall establish policies on travel expenses that are substantially consistent with the policies on travel expenses established by the State Comptroller pursuant to § [2.2-2825](#). If a particular travel situation is not covered by the policies established pursuant to this act or the amount of expense or*

*reimbursement is greater than 10 percent of what is allowed by such policies, then the traveler must get the approval of the cabinet secretary to which his agency reports as indicated in Chapter 2 (§ [2.2-200](#) et seq.) of Title 2.2.*

## **Chapter 489 Medicaid-Buy-In.**

An Act relating to the development of a Medicaid Buy-In Program for Virginia.

[\[H 1822\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Medical Assistance Services shall seek a waiver pursuant to § 1115 of the Social Security Act (42 U.S.C. § 1315) from the Centers for Medicaid and Medicare Services to establish a Medicaid Buy-In Program. The Medicaid Buy-In Program shall be for those working persons with disabilities whose earnings are too high to qualify for traditional Medicaid. Eligible individuals shall include those with income not in excess of 175 percent of the federal poverty level as determined by the United States Department of Health and Human Services. The waiver enrollment for the first year of such program shall be limited to an enrollment of 200 individuals. In addition, the Department of Medical Assistance Services shall seek authorization in the waiver for earned and unearned income requirements.*

*Except for the requirement that the Department of Medical Assistance Services seek a waiver pursuant to § 1115 of the Social Security Act (42 U.S.C. § 1315), the provisions of this act providing benefits under a Medicaid Buy-In Program shall not become effective until (i) the Department of Medical Assistance Services receives a waiver pursuant to § 1115 of the Social Security Act from the Centers for Medicaid and Medicare Services to establish such program and (ii) an appropriation of moneys effectuating benefits under such program is included in a general appropriation act passed during a regular session of the General Assembly. The waiver proposal described herein shall be developed by October 1, 2003, and presented to the Governor and the Disability Commission by October 15, 2003, in order that the fiscal impact of such Medicaid Buy-In Program can be considered in the development of the 2004-2006 biennial budget.*

## Chapter 523 Civil commitment procedures.

An Act to review the procedures for implementation of temporary detention orders.

[\[H 2698\]](#)

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Civil commitment procedures.*

*A. In order to assist the courts and other participating parties in the uniform and effective operation of the Commonwealth's involuntary civil commitment statutes, except those statutes governing the civil commitment of sexually violent predators, the Secretary of Public Safety, in consultation with the Secretary of Health and Human Resources and the Executive Secretary of the Supreme Court, shall appoint a committee on civil commitment procedures to establish statewide policies and guidelines that identify the party or parties responsible for the safety and security of individuals who are the subject of or who participate in involuntary detention and admission activities. These activities include transportation; custody of persons under judicial orders; medical evaluation, screening and treatment; and detention services. Such policies and guidelines shall recognize the varying resources of localities and the varying conditions and needs of individuals subject to temporary detention orders and protect their security; protect the security of patients, staff and employees of facilities providing emergency medical evaluation, treatment or detention services; and be consistent with the requirements of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd, as amended, and its implementing regulations.*

*B. The committee shall include representatives of the agencies in the secretariats that are involved in these activities; community services boards; general district courts, including magistrates and special justices; law-enforcement agencies, including police and sheriffs' departments; facilities and practitioners providing emergency medical evaluations, treatment or temporary detention; state mental health facilities; local governments; and other entities, as necessary.*

*C. The committee shall report these policies and guidelines to the Secretaries by October 1, 2003, and include recommendations for any legislative actions needed to implement the policies and guidelines. These policies and guidelines shall be used by the applicable local representatives or counterparts of the agencies and organizations*

*represented on the committee to develop local procedures. Such representatives or counterparts shall review the local procedures at least annually and revise them as necessary.*

2. That the provisions of this act shall expire on July 1, 2004.

## **Chapter 689 Use of rifles in King George County.**

An Act to repeal Chapter 448 of the Acts of Assembly of 1958, as amended by Chapter 235 of the Acts of Assembly of 1993, relating to the use of certain rifles while hunting in King George County.

[\[H 1491\]](#)

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1. That Chapter 448 of the Acts of Assembly of 1958, as amended by Chapter 235 of the Acts of Assembly of 1993, is repealed.

## **Chapter 734 Waterfowl sanctuaries and blinds.**

An Act to repeal Chapter 680 of the Acts of Assembly of 1956, Chapters 152 and 463 of the Acts of Assembly of 1958, and Chapter 342 of the Acts of Assembly of 1962, relating to waterfowl sanctuaries and duck blinds in certain localities.

[\[H 1481\]](#)

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1. That Chapter 680 of the Acts of Assembly of 1956, Chapters 152 and 463 of the Acts of Assembly of 1958, and Chapter 342 of the Acts of Assembly of 1962 are repealed.

## **Chapter 644 Virginia Public Procurement Act; reverse auctioning.**

An Act to amend and reenact § [2.2-4303](#) of the Code of Virginia and to repeal the second enactment of Chapter 395 of the Acts of Assembly of 2001, relating to the Virginia Public Procurement Act; reverse auctioning.

[\[H 2192\]](#)

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-4303](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-4303](#). Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § [2.2-4301](#). The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § [2.2-4306](#);
2. By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;
3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
4. As otherwise provided in § [2.2-4308](#).

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall

document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors.

H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$30,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

J. (~~Expires July 1, 2003~~) The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. *However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.*

2. That the second enactment of Chapter 395 of the Acts of Assembly of 2001 is repealed.

## **Chapter 653 Virginia Research and Technology Advisory Commission (VRTAC); plan.**

An Act to direct the Virginia Research and Technology Advisory Commission, in conjunction with the Secretaries of Technology, Commerce and Trade, and Education, to develop strategies for research and development in the Commonwealth.

[\[H 2760\]](#)

Approved March 18, 2003

Whereas, the Virginia Research and Technology Advisory Commission was established to advise the Governor on appropriate research and technology strategies for the Commonwealth with emphasis on policy recommendations that will enhance the global competitive advantage of both research institutions and technology-based commercial endeavors within the Commonwealth; and

Whereas, maximizing the amount of basic and applied federal research and development (R&D) and subsequent commercialization of related intellectual property would benefit the research institutions and technology-based commercial endeavors within the Commonwealth and industry-supported R&D at these institutions would provide unique educational opportunities and spur economic development; and

Whereas, a rigorous strategic planning process should lead to current and accurate information resources that support strategic decision-making and establish criteria to measure success; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Research and Technology Advisory Commission (VRTAC), in conjunction with the Secretaries of Technology, Commerce and Trade, and Education, shall develop strategies for research and development in the Commonwealth. The strategies should consider the areas the federal government will emphasize within the next five*

*years, the Commonwealth's R&D assets and capabilities, the current and future growth industries in the Commonwealth, and the means to strengthen the Commonwealth's position in global research and development competition. The Commission shall provide the strategies to the Governor and the General Assembly by November 30, 2003.*

*§ 2. The Innovative Technology Authority, Virginia Economic Development Partnership, and State Council of Higher Education shall provide staff support to the Commission.*

## **Chapter 746 Buckingham Correctional Center.**

An Act to authorize the Department of Corrections to exchange a certain parcel of land adjacent to the Buckingham Correctional Center.

[\[H 2719\]](#)

Approved March 19, 2003

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding any law to the contrary, with the approval of the Governor and in a form approved by the Attorney General, the Department of Corrections is hereby authorized to make an equal exchange of a parcel of land 11.61 acres more or less which is a portion of a 37.45 acre tract owned by E. E. Talbott, Jr., for a parcel of land 11.61 acres more or less which is a portion of lands owned by the Virginia Department of Corrections adjacent to the lands known as the Buckingham Correctional Center.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to execute and receive such deed or other documents as may be necessary to accomplish the conveyance.*

## **Chapter 747 Transferring property of unincorporated area; to board of supervisors.**

An Act to provide for the transfer of the property, duties, rights, and contractual obligations of trustees of unincorporated areas to the supervisors of the counties in which the areas are situated and dissolving the position of trustee for certain unincorporated areas.

[\[H 2807\]](#)

Approved March 19, 2003

Whereas, in colonial times, various statutes provided for trustees for certain unincorporated areas, commonly called towns, established for governmental purposes such as the oversight of ports and regulation of commerce (see, e.g., 3 Hening's Statutes, page 53 (1691), and 3 Hening's Statutes, page 186 (1699)); and

Whereas, the Codes of Virginia from 1819 to 1873 recognized the existence of boards of trustees but references to boards of trustees in the Codes of Virginia disappeared thereafter; and

Whereas, the General Assembly has enacted laws relating to trustees for an unincorporated portion of York County, e.g. Chapter 286 of the Acts of Assembly of 1926, as amended; and

Whereas, the colonial practice of relying on appointed trustees for limited governmental purposes has been replaced generally by reliance on elected councils for incorporated towns and elected supervisors for counties and the unincorporated areas in counties; and

Whereas, Article VII, Section 5, of the Constitution of Virginia now requires that the governing bodies of counties, cities, and towns be elected by the people; and

Whereas, the affairs of local government are best addressed and administered by the people's elected representatives and any unincorporated areas located within a county should be governed by the county's elected governing body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The property, duties, rights, and contractual obligations of the trustees of any unincorporated area commonly referred to as a town or township are hereby transferred to the board of supervisors of the county in which the unincorporated area is located. Any such unincorporated area is confirmed to be part of the county in which it is located. Any trustees heretofore appointed to serve as trustees for such an unincorporated area are deemed to have completed their service as trustees on the effective date of this act, and any trust shall be dissolved thereafter. Any such property transferred to the board of supervisors of the county may be used, sold, leased, or otherwise disposed of in the public interest as the board of supervisors shall determine, consistent with the general laws applicable to counties.*

## **Chapter 890 Federal campaign and political committees; comity.**

An Act to provide for the regulation of federal campaign and political committees to the extent that federal law regulates Virginia campaign and political committees.

[\[H 1644\]](#)

Approved March 22, 2003

Whereas, federal agencies have imposed requirements of federal law and regulations on Virginia campaign and political committees with respect to taxation, reporting, and filings; and

Whereas, comity justifies the regulation by the Commonwealth of federal campaign and political committees to the same extent that Virginia campaign and political committees are regulated by federal agencies; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any campaign committee, political party committee, or political committee established to participate in federal elections and solicit contributions or make expenditures in Virginia in connection with a federal election or an election for office in Virginia shall be subject to requirements of Virginia law and regulations as provided herein to the same extent that Virginia campaign committees are subject to regulation under federal law.*

*Any such committee shall be subject to the laws and regulations pertaining to the regulation and registration of business entities pursuant to Chapters 9 (§ [13.1-601](#) et seq.), 10 (§ [13.1-801](#) et seq.) and 12 (§ [13.1-1000](#) et seq.) of Title 13.1 of the Code of Virginia. The State Corporation Commission shall enforce registration and filing requirements applicable to such committees.*

*Any such committee shall be subject to the laws and regulations pertaining to the taxation of the income of individuals or entities pursuant to Chapter 3 (§ [58.1-300](#) et seq.) of Title 58.1 of the Code of Virginia. The Virginia Department of Taxation shall enforce the application of Chapter 3 to such committees.*

## **Chapter 953 U.S. Route 460 improvements.**

An Act to require the Virginia Department of Transportation to solicit proposals for improvements to U.S. Route 460 between Hampton Roads and the Richmond-Petersburg metropolitan area under the Public-Private Transportation Act of 1995.

[\[H 2543\]](#)

Approved March 24, 2003

Whereas, improvements to the U.S. Route 460 corridor between Hampton Roads and the Richmond-Petersburg metropolitan area would facilitate evacuation of Hampton Roads in the event of a hurricane, other natural disaster, or act of terrorism; and  
Whereas, improvements to this corridor would also facilitate movement of freight and military forces and supplies to and from the ports of Hampton Roads; and  
Whereas, state funds adequate to undertake the needed improvements in the U.S. Route 460 corridor are not likely to be available in the foreseeable future; and  
Whereas, it is thus highly desirable that the Department of Transportation solicit proposals to construct the improvements to the U.S. Route 460 corridor between Hampton Roads and the Richmond-Petersburg metropolitan area under the Public-Private Transportation Act of 1995; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Within 90 days of the Commonwealth Transportation Board's approval of the Draft Environmental Impact Statement on the U.S. Route 460 Corridor and related projects between Hampton Roads and the Richmond-Petersburg metropolitan area, the Department of Transportation shall solicit proposals for improvements to U.S. Route 460 between Hampton Roads and the Richmond-Petersburg metropolitan area under the Public-Private Transportation Act of 1995.*

*The Department of Transportation shall submit to the Division of Legislative Automated Systems an executive summary and report of its progress in completing the Draft Environmental Impact Statement and in soliciting the proposals as required above no later than the first day of the 2005 and 2006 Regular Sessions of the General Assembly. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

# Uncodified Acts of Assembly - 2004

## Chapter 1 James Madison University; facilitates ability to begin construction needed as result of fire damage.

An Act to facilitate restorations at James Madison University due to fire damage.

[\[H 1296\]](#)

Approved February 19, 2004

**Be it enacted by the General Assembly of Virginia:**

1.

*§ 1. A. James Madison University is authorized to proceed immediately on building construction, renovations and repairs made necessary by the November 16, 2003, fire.*

*B. In order to address replacement of the facility as expeditiously as possible, James Madison University is hereby granted certain special administrative authority. This special authority is granted for the duration of the emergency or for a time period not to exceed 60 months.*

*C. During the emergency, James Madison University is exempted from provisions of the Public Procurement Act. James Madison University, with guidance from the Department of General Services, shall develop emergency procurement procedures that provide for reasonable competition in the purchase of goods and services.*

*D. During the emergency period, the Art and Architectural Review Board will exempt James Madison University from review.*

*E. The Secretary of Finance is authorized to provide James Madison University anti-anticipation loans of sufficient monies to finance construction, repairs, and renovations. This loan will provide cash to perform work in anticipation of reimbursement from insurance carriers and other funds generated by James Madison University.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 2 Higher Educational Institutions Bond Bill of 2004; created.

An Act to authorize the issuance of bonds to finance \$137,700,600 in previously authorized projects and \$117,616,000 in new projects for a total of up to \$255,316,600, plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying

costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 31\]](#)

Approved February 25, 2004

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c), Constitution of Virginia; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Bill of 2004."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate*

*principal amount not exceeding \$255,316,600 for \$137,700,600 previously authorized projects and \$117,616,000 in new projects, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution Amount</i>	<i>Project Title</i>	<i>Project Code</i>
<i>Christopher Newport University</i>	<i>Residence Hall</i>	<i>16418</i>
<i>\$951,000</i>		
<i>George Mason University</i>	<i>Renovate Commonwealth and Dominion Housing Facilities</i>	<i>16690</i>
<i>3,100,000</i>		
<i>George Mason University</i>	<i>Renovate Student Housing, President's Park I</i>	<i>17050</i>
<i>3,340,000</i>		
<i>George Mason University</i>	<i>Construct Student</i>	

Uncodified Acts of Assembly - 2004

	<i>Housing VII</i>	<i>17056</i>
<i>63,778,000</i>		
<i>James Madison</i>	<i>Renovate Bluestone Residence</i>	
<i>University</i>	<i>Hall, Phase 3</i>	<i>16687</i>
<i>6,810,000</i>		
<i>Longwood University</i>	<i>Renovate Housing Facilities</i>	<i>16874</i>
<i>10,500,000</i>		
<i>Mary Washington College</i>	<i>Seacobeck Dining Hall</i>	<i>16096</i>
<i>5,000,000</i>		
<i>Mary Washington College</i>	<i>Acquisition of Student</i>	
	<i>Residence Facilities</i>	<i>16686</i>
<i>10,000,000</i>		
<i>Old Dominion University</i>	<i>Renovate Housing, Phase I</i>	<i>16688</i>
<i>5,100,000</i>		
<i>The College Of William</i>		
<i>and Mary In Virginia</i>	<i>Renovate Dormitories</i>	<i>16340</i>
<i>6,105,000</i>		
<i>The College Of William</i>	<i>Renovate Commons</i>	
<i>and Mary In Virginia</i>	<i>Dining Hall</i>	<i>16647</i>
<i>11,493,000</i>		

Uncodified Acts of Assembly - 2004

<i>University Of Virginia</i>	<i>Construct Alderman</i>	<i>16650</i>
<i>22,500,000</i>		
	<i>Road Housing</i>	
<i>University of Virginia</i>	<i>Construct Observatory</i>	
	<i>Hill Dining Facility</i>	<i>16094</i>
<i>10,000,000</i>		
<i>University of Virginia's</i>		
<i>College at Wise</i>	<i>Construct Residence Hall</i>	<i>16151</i>
<i>6,400,000</i>		
<i>Virginia Military</i>	<i>Renovate and Enlarge</i>	
<i>Institute</i>	<i>Crozet Hall and Parking</i>	<i>16684</i>
<i>10,447,000</i>		
<i>Virginia Commonwealth</i>	<i>Gladding Residence</i>	
<i>University</i>	<i>Hall Addition</i>	<i>16338</i>
<i>6,365,000</i>		
<i>Virginia Commonwealth</i>		
<i>University</i>	<i>MCV Campus Housing</i>	<i>16402</i>
<i>14,506,000</i>		
<i>Virginia Commonwealth</i>		
<i>University</i>	<i>Academic Campus Housing</i>	<i>16405</i>
<i>15,346,000</i>		

Uncodified Acts of Assembly - 2004

<i>Virginia Polytechnic</i>		
<i>Institute and State</i>	<i>Improve Major Residence and</i>	
<i>University</i>	<i>Dining Hall</i>	<i>17008</i>
<i>4,000,000</i>		
<i>Virginia Polytechnic</i>		
<i>Institute and</i>	<i>Major Repairs</i>	
<i>State University</i>	<i>Dorm &amp; Dining</i>	<i>14303</i>
<i>1,078,900</i>		
<i>Virginia Polytechnic</i>		
<i>Institute and State</i>		
<i>University</i>	<i>Parking Auxiliary Projects</i>	<i>14815</i>
<i>4,942,700</i>		
<i>Virginia Polytechnic</i>		
<i>Institute and State</i>	<i>Renovate Dietrick Servery,</i>	
<i>University</i>	<i>Phase II</i>	<i>16681</i>
<i>5,000,000</i>		
<i>Virginia Polytechnic</i>		
<i>Institute and State</i>	<i>Construct New</i>	
<i>University</i>	<i>Residence Hall</i>	<i>16682</i>
<i>15,000,000</i>		
<i>Virginia Polytechnic</i>		

<i>Institute and State</i>	<i>Construct Dining and</i>	
<i>University</i>	<i>Student Union Facility</i>	<i>16683</i>
<i>6,250,000</i>		
<i>Virginia State</i>	<i>Construct Student Village</i>	
<i>University</i>	<i>240 Bed Residence Hall</i>	<i>16685</i>
<i>7,304,000</i>		
<i>Total</i>		
<i>\$255,316,600</i>		

**§ 3. Application of Proceeds**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs*

*issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which*

*the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager*

*with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the*

*refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapters 808 and 815 of the Acts of Assembly of 2002 and Chapters 4 and 157 of the Acts of Assembly of 2003 are repealed; however, such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such acts.

### **Chapter 3 Parking Facilities Bond Bill of 2004; created.**

An Act to authorize the issuance of bonds, in an amount up to \$5,700,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring a revenue-producing capital project to be administered by the Department of General Services, to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital project and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 32\]](#)

Approved February 25, 2004

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing

capital projects, including their enlargement or improvement, of institutions and agencies administered solely by the executive branch of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of the capital project identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that the capital project complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This bill shall be known and may be cited as the "Commonwealth of Virginia Parking Facilities Bond Bill of 2004."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Parking Facilities Bonds, Series....." in an aggregate principal amount not exceeding \$5,700,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring a revenue-producing capital project of the Commonwealth as follows:*

<i>Department of</i>	<i>Acquire Virginia Retirement</i>	
<i>General Services</i>	<i>System Parking Deck</i>	<i>16996</i>
<i>\$5,700,000</i>		

Total  
\$5,700,000

*§ 3. Application of Proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital project, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series....."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the agency for which the capital project was authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. The Department of General Services is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of the capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The Department of General Services is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of*

*bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§9. Security for bonds and BANs. The net revenues of the Department of General Services Parking Facilities System and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the*

*timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the Department of General Services to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

## **Chapter 82 Inmate Data System; maint. by Compensation Board, recouping costs assoc. with incarcerating aliens.**

An Act to require the State Compensation Board to perform certain duties relating to the Local Inmate Data System.

[\[H 235\]](#)

Approved March 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The State Compensation Board shall (i) maintain in the Local Inmate Data System (LIDS) specific data fields for an inmate's country of birth and country of citizenship, (ii) require all jail facilities that are subject to LIDS reporting to complete the additional fields for all inmates housed at such facilities, (iii) annually encourage all jail facilities subject to LIDS reporting to request compensation from the United States Department of Justice State Criminal Alien Assistance Program (SCAAP) for costs associated with incarcerating undocumented aliens; (iv) provide information to all jail facilities on the eligibility requirements to obtain such funds; and (v) monitor local jail participation in the SCAAP program.*

## **Chapter 91 Nursing home bed projects; conditions for issuance of an amended certificate of public need.**

An Act to amend and reenact Chapter 912 of the Acts of the Assembly of 2000, relating to amendment of certain certificate of public need.

[\[S 388\]](#)

Approved March 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 912 of the Acts of Assembly of 2000 is amended and reenacted as follows:

§ 1. Amendment of certain certificate of public need authorized.

Notwithstanding the provisions of subdivision 6 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the

conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 for an increase in beds in which nursing facility or extended care services are provided to allow such continuing care provider to continue, until ~~the continuing care contract holders constitute ninety percent of the occupancy for such facility or July 1, 2004 2008, whichever is the first to occur,~~ to admit patients, other than continuing care contract holders, with whom the facility has an agreement with the individual responsible for the patient for private payment of the costs upon the following conditions being met: (i) the continuing care community is established for the care of retired military personnel and their families *spouses or widows or widowers* and (ii) the facility's bond ~~requires that the nursing home unit maintain a ninety percent contract holder occupancy rate is less than 85 percent.~~

## **Chapter 117 Monacan Bridge; desig. as Lynchburg bypass bridge across James River b/Amherst Cty & Lynchb.**

An Act to designate the Lynchburg Bypass bridge across the James River between Amherst County and the City of Lynchburg the “Monacan Bridge.”

[\[S 560\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Lynchburg bypass bridge across the James River between Amherst County and the City of Lynchburg is hereby designated the “Monacan Bridge.” The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 120 Hampton Roads Sanitation District; adding King and Queen County thereto.**

An Act to amend and reenact §§ 1 and 2, as amended, §§ 3 through 6, §§ 10 and 11, as amended, §§ 13, 22 and 32, § 45, as amended, and §§ 48 and 49 of Chapter 66 of the Acts of Assembly of 1960, relating to the Hampton Roads Sanitation District.

[\[S 654\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 and 2, as amended, §§ 3 through 6, §§ 10 and 11, as amended, §§ 13, 22 and 32, § 45, as amended, and §§ 48 and 49 of Chapter 66 of the Acts of Assembly of 1960 are amended and reenacted as follows:

§ 1. The creation of the Hampton Roads Sanitation District is hereby ratified, validated and confirmed, and said District shall embrace all the territory within the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg; the Counties of Gloucester, Isle of Wight, James City, *King and Queen*, King William, Mathews, Middlesex and York; and the Town of Urbanna. Territory may be added to the District as hereinafter provided in this act.

For the purpose of this section the territory of a county included within the District shall include all the territory lying within the boundaries of any town in the county.

Said District shall constitute a political subdivision of Commonwealth established as a governmental instrumentality to provide for the public health and welfare.

§ 2. The functions, affairs and property of the Hampton Roads Sanitation District shall be managed and controlled by a commission, known as the "Hampton Roads Sanitation District Commission," consisting of eight members appointed by the Governor. The Commission and the term of each such member shall continue until his successor shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of four years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Commission shall be eligible for reappointment without limitation as to the number of terms that may be served. Members of the Commission may be suspended or removed by the Governor at his pleasure.

At the time of their appointment, one of the members of the Commission, and each of his successors, shall be residents of the territory in the District within the City of Norfolk, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Virginia Beach, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Newport News, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Hampton, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Chesapeake, one of the members,

and each of his successors, shall be residents of the territory in the District within the City of Suffolk or Isle of Wight County, one of the members, and each of his successors, shall be residents of the territory in the District within the City of Williamsburg or James City County or York County or the City of Poquoson or Gloucester County or King William County or Mathews County or Middlesex County or the Town of Urbanna, *or King and Queen County*, and one of the members, and each of his successors, shall be residents of the territory in the District within the City of Portsmouth. Any member who shall cease to reside within the territory from which he was appointed shall thereupon be disqualified from holding office as a member of the Commission and the vacancy thus created shall be filled by appointment by the Governor for the balance of the unexpired term.

§ 3. The Commission shall annually elect one of its members as chairman and another as vice chairman. The Commission shall appoint a secretary, who may or may not be a member of the Commission, and a treasurer, who shall not be a member of the Commission. The compensation of the secretary and of the treasurer shall be fixed by the Commission. The secretary and the treasurer shall serve at the pleasure of the Commission.

The secretary shall keep a record of the proceedings of the Commission and shall be custodian of all books, documents and papers filed with the Commission and of the minute book or journal of the Commission and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Commission and to give certificates under the official seal of the Commission to the effect that such copies are true copies, and all persons dealing with the Commission may rely upon such certificates.

~~Three~~ *Four* members of the Commission shall constitute a quorum and the affirmative vote of ~~three~~ *four* members shall be necessary for any action taken by the Commission. No vacancy in the membership of the Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of the Commission.

§ 4. Each member of the Commission shall, before entering upon the discharge of his duties, take and subscribe the oath of office required by ~~§ 34 of the Article II, § 7, Constitution of Virginia (1971),~~ and give bond payable to the District in form approved by the Attorney General, in such penalty as shall be fixed from time to time by the Governor, with some surety or guaranty company duly authorized to do business in the Commonwealth and approved by the Governor, as security, conditioned upon the faithful discharge of his duties. *Each such Commissioner shall be covered by a public official's liability policy in the amount of at least \$1,000,000, with a \$10,000 deductible available*

*through the Commonwealth.* The premium of such ~~bonds~~ *insurance policies* shall be paid by the Commission.

§ 5. The members of the Commission shall receive no salary, but shall be paid their necessary traveling and other expenses incurred in attendance upon meetings of the Commission or while otherwise engaged in the discharge of their duties and the same sum per diem for each day or portion thereof in which they are engaged in the performance of such duties as is paid the members of the ~~State Highway Commission~~ *Commonwealth Transportation Board*.

§ 6. Regular meetings of the Commission shall be held at least once every month at such time and place as the Commission shall from time to time prescribe. Special meetings of the Commission shall be held upon ~~one day's mailed~~ *such* notice, ~~or actual notice otherwise given,~~ to each member of the Commission upon call of the chairman or of any two members of the Commission, at such time and at such place within the District as such notice may specify, or at such other time and place with or without notice as all of the members of the Commission may expressly approve *as required by the Virginia Freedom of Information Act*.

§ 10. The Commission is hereby authorized and empowered:

- (a) to adopt bylaws and to make rules and regulations for the management of its affairs and the conduct of its business;
- (b) to adopt an official seal and alter the same at pleasure;
- (c) to sue and to be sued;
- (d) to construct, and to improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a sewage disposal system or systems, enter within or without or partly within and partly without the corporate limits of the District, and to construct sewer improvements within the corporate limits of the District;
- (e) to issue revenue bonds, notes or other obligations of the District for any of its authorized purposes, payable solely from the special funds provided under the authority of this act and pledged for their payment, all as provided in this act;
- (f) to fix and collect rates, fees and other charges for the services and facilities furnished by any such sewage disposal system or sewer improvements, and to fix and collect charges for making connections;
- (g) to acquire in the name of the District, either by purchase, lease, grant, or the exercise of the right of eminent domain, such lands, structures, property, rights, rights of way, easements, franchises and other interests in or relating to lands, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, improvement, extension, enlargement or operation of

any sewage disposal system or sewer improvements, and to hold and dispose of all real and personal property under its control;

(h) to employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, managers, and such other officers, employees and agents as may be necessary in its judgment, and to fix their compensation;

(i) to exercise jurisdiction, control and supervision over any sewage disposal system or systems or sewer improvements operated or maintained by the Commission and to make and enforce such rules and regulations for the maintenance and operation of any such sewage disposal system or systems or sewer improvements as may, in the judgment of the Commission, be necessary or desirable for the efficient operation of any such system or improvements and for accomplishing the purposes of this act;

(j) to enter on any lands, water or premises located within or without the District to make surveys, borings, soundings or examinations for the purposes of this act;

(k) to construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipelines in, along or under any streets, alleys, highways or other public places within or without the District; in so constructing its facilities, it shall see that the public use of such streets, alleys, highways, and other public places is not unnecessarily interrupted or interfered with and that such streets, alleys, highways and other public places are restored to their former usefulness and condition within a reasonable time; to this end the Commission shall cooperate with the Commonwealth Transportation Board and the appropriate officers of the respective counties, cities and towns having an interest in such matters;

(l) to restrain, enjoin or otherwise prevent any county, city, town or political subdivision and any person or corporation, public or private, from discharging into any waters within the District, any sewage, industrial wastes or other refuse which would contribute or tend to contribute to the pollution of such waters, and to restrain, enjoin or otherwise prevent the violation of any provision of this act or of any resolution, rule or regulation adopted pursuant to the powers granted by this act;

(m) to use and connect with any sewage disposal system or sewer improvement within the District and, if deemed necessary by the Commission to close off and seal any outlets and outfalls therefrom;

(n) subject to such provisions and restrictions as may be set forth in the resolution authorizing any revenue bonds or in the trust agreement hereinafter mentioned securing the same, to enter into contracts with the United States of America or any agency or instrumentality thereof, or with any county, city, town or political subdivision or any sanitary dis-

trict, private corporation, copartnership, association or individual providing for or relating to the treatment and disposal of sewage;

(o) to receive and accept from the United States of America or any agency or instrumentality thereof grants for or in aid of the planning, construction or financing of any sewage disposal system or sewer improvements, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(p) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(q) to do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contracts with any persons;

(r) to execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the Commission or to carry out the powers expressly given in this act; and

(s) to seek civil penalties or civil charges against owners who have been charged with violation of or found to be in violation of the pretreatment standards incorporated in the permit or other requirements of the District's approved industrial waste control program. The penalties which the District may seek, and the procedures to be followed by the District, shall be the same as those set forth for the State Water Control Board, as set forth in [§ 62.1-44.32](#) of the Code of Virginia.

1. For purposes of this subsection, the term "owner" shall include the definition contained in § 9 (i) and, in addition, any corporate officer designated in the permit issued by the District, if any.

2. With the consent of any owner who has violated ~~ana~~ a provision of this subsection, or is charged by the District with having violated the provision of this subsection, the District may provide, in an order issued by it against such owner, for the payment of civil charges for such violations in specific sums not to exceed ~~\$10,000~~ *those set forth in § 62.1-44.32 of the Code of Virginia* for each violation. Each day of violation shall constitute a separate offense. Such civil charges shall be instead of any appropriate civil or criminal penalty imposed under the provisions of this subsection.

§ 11. (a) The Commission is hereby authorized and empowered to acquire by purchase, lease, grant or conveyance such lands, structures, property, rights, rights of way, easements, franchises and other interests in or relating to lands, including lands lying under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any sewage disposal system or sewer improvements, upon such terms

and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

All public agencies and commissions of the Commonwealth with the approval of the Governor and all counties, cities, towns and political subdivisions, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the District at the request of the Commission upon such terms and conditions as may be mutually agreed upon, without the necessity for any advertisement, order of court or other action or formality, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Commission, including public highways and other real property already devoted to public use.

(b) *The Commission is also hereby authorized and empowered to acquire by condemnation or eminent domain such lands, structures, property rights, rights-of-way, easements, franchises and other interests in or relating to lands, including lands lying under water and riparian rights, deemed necessary or convenient for the construction and operation of any sewage disposal system or sewer improvements.* The powers of condemnation or eminent domain conferred on the Commission by this act shall be exercised by the Commission pursuant to the provisions of ~~Chapter 1, Title 25~~ 25.1, *Chapter 1 through 4, inclusive, of the Code of Virginia, 1950, as amended, to the extent that such provisions may be applicable, and subject to the provisions of § 25-233 of said Code as now enacted or as hereafter amended or reenacted;* provided, however, that the Commission may exercise such power ~~proceed~~ pursuant to the provisions of Article 57([§ 33.1-89](#) *et seq.*) of Chapter 1 of Title ~~33~~ 33.1 of the Code of Virginia, 1950, as enacted or as hereafter amended or reenacted, for the procurement of rights of way for sewer lines and sites for pumping stations, ~~subject, however, to the provisions of § 25-233 of said Code.~~

(c) Title to any property acquired by the Commission shall be taken in the name of the District.

(d) The Commonwealth with the approval of the Governor hereby consents to the use of any lands or property owned by the Commonwealth including lands lying under water, which are deemed by the Commission to be necessary for the construction or operation of any sewage disposal system or sewer improvements.

§ 13. The principal of and the interest on revenue bonds issued under the provisions of this act shall be payable solely from the funds therein provided for such payment. The bonds of each issue shall be dated, ~~shall bear interest at such rate or rates not exceeding six per centum (6%) per annum,~~ shall mature at such time or times not exceeding ~~forty~~ 40 years from their date or dates, as may be determined by the Commission, and

may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds; ~~provided, however, that any bonds of more than ten years maturity shall be made redeemable before maturity, at the option of the Commission, at such price or prices and under such term and conditions as may be fixed by the Commission prior to the issuance of the bonds.~~ The Commission shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person or persons as at the actual time of the execution of such bond shall be the proper officer or officers to sign such bond although at the date of such bond such person or persons may not have been such officer or officers. ~~Notwithstanding any other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth.~~ The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the District, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six ~~per centum (6%)~~ percent per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values excluding, however, from such computation, the amount of any premium to be paid on the redemption of any bonds prior to maturity.

§ 22. The Commission ~~shall~~ *may*, in the resolution providing for the issuance of revenue bonds or in the trust agreement securing the same, *covenant to* fix the ~~schedule of~~ rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, the sewage disposal system or systems and the sewer improvements, if any, for which such bonds are to be issued, to be paid by the owner, tenant or occupant

of each lot or parcel of land which may be connected with or may use any such sewage disposal system or sewer improvements. The Commission may revise such ~~schedule of~~ rates, fees and charges from time to time. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (a) to pay the cost of maintaining, repairing and operating such sewage disposal system or systems and such sewer improvements, if any, including reserves for such purpose and for renewals and replacements and necessary extensions and additions to the sewerage system, (b) to pay the principal of and the interest on such revenue bonds as the same shall become due and to provide reserves therefor, and (c) to provide a margin of safety for making such payments. The Commission shall charge and collect the rates, fees and charges so fixed or revised, and, except as hereinafter provided in this act, such rates, fees and charges shall not be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the Commonwealth or of any district or other political subdivision of the Commonwealth.

Such rates, fees and charges shall be just and equitable and may be based or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewerage system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors. Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than a public water system may be determined by gauging or metering at the expense of the owner, tenant or occupant of such premises or in any other manner as directed and approved by the Commission.

Premises not discharging the entire volume of water into the sanitary sewers shall be allowed a reduction in the charges provided the customer installs facilities, in a manner satisfactory to the Commission, for measuring the volume either discharged or not discharged into the sanitary sewers.

The Commission shall fix and determine the time or times when and the place or places where such rates, fees and charges shall be due and payable and may require that such rates, fees and charges shall be paid in advance for periods of not more than six months. A copy of the schedules of all rates, fees and charges in effect shall at all times be kept on file at the principal office of the Commission, and such schedules shall at all reasonable times be open to public inspection.

In cases where the character of the sewage from any manufacturing or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewage disposal system, an additional charge may be made therefor, or the Commission may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Commission before discharging such sewage, into the sewerage system or prohibit the discharge, directly or indirectly, of such sewage into the sewerage system.

§ 32. The Commission shall have no power to mortgage, pledge, encumber or otherwise dispose of any part of the sewerage system of the District, except such part or parts thereof as may be no longer necessary or useful for the purposes of the Commission; *however, the Commission may enter into lease purchase and installment purchase agreements for equipment and fixtures and grant security interests therein.* The provisions of this section shall be deemed to constitute a contract with the holders of bonds of the District. The sewerage system of the District shall be exempt from any and all liability which may be incurred by, or imposed upon, the Commission or any county, city, town or political subdivision.

§ 45. All construction contracts, except in cases of emergency, ~~over ten thousand dollars~~ that the Commission may let for construction or materials in connection with such construction shall be let after public advertising *and in accordance with the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq. of the Code of Virginia).* The Commission shall advertise for bids for the work or materials at least ~~ten~~ 10 days prior to the letting of any contracts therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place where bids for the work or materials will be opened. Each bidder shall accompany his bid with bid bond or other security payable to the Commission, for a reasonable sum to be fixed by the Commission, as a guarantee that if the contract is awarded to him, he will enter into a contract with the Commission for doing the work or furnishing the materials. The contract shall be let to the lowest responsible bidder, and the successful bidder shall give bond or other security for the faithful performance of the contract, in such form and amount as the Commission may require. The Commission is authorized to reject any and all bids. In the event that all bids are rejected, the Commission shall advertise for new bids as in the first instance. All bids and contracts shall be public records. The Commission is authorized, in its discretion, to do any and all such work by force account.

§ 48. The circuit court of the county or the corporation or circuit court of the city in which any territory proposed to be added to the District is located, upon receipt of a petition of the Commission or a petition of the governing body of the territory proposed to be added

to the District or a petition signed by not less than ~~twenty-five per centum (25%)~~ *25 percent* of the qualified voters residing within the limits of the territory proposed to be added to the District, or a petition signed by the owners of not less than ~~twenty-five per centum (25%)~~ *25 percent* by area of the real property within the territory proposed to be added to the District, shall enter an order fixing the date and hour and place for a public hearing on the question of the addition of territory to the District, which order shall set forth a copy of the petition, excluding signatures, and shall describe the territory proposed to be added to the District.

A copy of such order shall be published once a week for three consecutive weeks in a newspaper of general circulation within the territory proposed to be added to the District to be designated by such court and posted in such public places within such territory as shall be designated by such court. The first of such publications and such posting shall occur not less than ~~thirty~~ *30* days prior to the date fixed for such hearing.

At the time and place stated in such order, or to which an adjournment may be taken by the court, the court shall receive and hear any objections of interested persons to the addition of such territory to the District or to any defect in the petition and the court may then or thereafter grant such petition with such modifications, if any, as it may deem advisable and which do not enlarge the territory proposed to be added to the District. All such objections shall be made in writing, in person or by attorney, and filed with the court at or before the time or adjourned time of such hearing. Any such objections not so made shall be considered as waived.

If upon such hearing the court shall be of the opinion that any area proposed to be added to the District will not be benefited by the District, then said area shall not be included in the District. The order altering the boundaries of and enlarging the District shall prescribe the territory to be added to the District and fix the boundaries thereof.

From an order enlarging the District under the provisions of this section an appeal shall lie to the Supreme Court of ~~Appeals~~ *Virginia* in the manner provided by law.

~~If the city of Hampton, Newport News, Norfolk or South Norfolk shall hereafter annex any territory not then within the District to said city, such territory shall become a part of and be embraced within the District at such time as such annexation shall become effective.~~

§ 49. Nothing in this act shall be construed to affect, impair, repeal or supersede in any way the powers of the State Water Control Board under the provisions of Chapter ~~23.1~~, Title ~~6262.1~~, Code of Virginia, 1950, as amended.

## **Chapter 490 Parking Facilities Bond Bill of 2004; created.**

An Act to authorize the issuance of bonds, in an amount up to \$5,700,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring a revenue-producing capital project to be administered by the Department of General Services, to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital project and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

### [\[S 32\]](#)

Approved April 12, 2004

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, of institutions and agencies administered solely by the executive branch of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of the capital project identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that the capital project complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This bill shall be known and may be cited as the "Commonwealth of Virginia Parking Facilities Bond Bill of 2004."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of*

*the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Parking Facilities Bonds, Series....." in an aggregate principal amount not exceeding \$5,700,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring a revenue-producing capital project of the Commonwealth as follows:*

<i>Department</i>	<i>Acquire Virginia</i>	<i>\$5,700,000</i>
<i>of</i>	<i>Retirement</i>	<i>16996</i>
<i>General Ser-</i>	<i>System Parking Deck</i>	
<i>vices</i>		
<i>Total</i>		<i>\$5,700,000</i>

*§ 3. Application of Proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital project, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or,*

*when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series....."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the*

*proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the agency for which the capital project was authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. The Department of General Services is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of the capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The Department of General Services is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose of the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as*

*determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§9. Security for bonds and BANs. The net revenues of the Department of General Services Parking Facilities System and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the Department of General Services to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs,*

*respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

## **Chapter 634 Telecommunications and video taxation; proposed changes.**

An Act to establish a schedule for, and initiate Virginia's transition to, a new system for taxing telecommunications services in the Commonwealth.

[\[H 1174\]](#)

Approved April 12, 2004

Whereas, it is in the best interest of the citizens of this Commonwealth to restructure state and local telecommunications taxes and fees so that the tax burden falls equitably on all users of telecommunications services; and

Whereas, it is the intent of the General Assembly that any new tax structure fully replace revenues provided to state and local governments by current telecommunications taxes and fees; and

Whereas, the Joint Subcommittee to Study the State and Local Taxation of the Entire Telecommunications Industry and Its Customers within the Commonwealth (HJR 651, 2003; HJR 209, 2002) has been reviewing ways Virginia could restructure its telecommunications taxes and fees; and

Whereas, the joint subcommittee has, in conjunction with the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement,

developed a set of guiding principles for telecommunications tax and fee restructuring;  
and

Whereas, those guiding principles are to reduce consumer confusion, consolidate taxes and fees, make taxes and fees uniform statewide, reduce the tax rate on the vast majority of Virginians, make taxes and fees competitively neutral, preserve state and local government revenues, and establish a single point of administration; and

Whereas, a working group of industry and local government representatives has been meeting under the auspices of the joint subcommittee to develop draft legislation for consideration by the joint subcommittee and the affected parties; and

Whereas, more information on the revenue impact from existing state and local telecommunications taxes and fees is needed before specific telecommunications tax and fee restructuring legislation can be enacted; and

Whereas, it is the intent of the General Assembly to collect this information prior to the 2005 Session so that telecommunications tax restructuring legislation may be introduced during the 2005 Session, to become effective July 1, 2005; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the General Assembly; the counties, cities and towns of the Commonwealth; and those providers of telecommunications services in Virginia are requested to work together to assist in the preparation of legislation for the 2005 General Assembly Session establishing a new telecommunications statewide tax and fee structure to become effective July 1, 2005.*

*§ 2. During the 2005 Session, the intent is for a new method of taxation to be enacted, effective July 1, 2005, to replace the following taxes and fees, which will be repealed: local consumer utility tax on consumers of local exchange and wireless services (§ [58.1-3812](#)); the gross receipts tax in excess of 0.5 percent (§ [58.1-3731](#)); the Virginia Relay Center Assessment (§ [56-484.6](#)); and state and local E-911 taxes and fees (§§ [58.1-3813.1](#) and [56-484.12](#)).*

*§ 3. In place of these taxes and fees, the intent is for legislation to be introduced during and enacted by the 2005 General Assembly, levying a yet-to-be-named tax on all retail telecommunications service revenues. The tax shall not be less than 4.5 percent and to the extent the state and local retail sales and use tax rate is greater than 4.5 percent, the tax may not exceed the state and local retail sales and use tax rate. This tax will be assessed in lieu of any other state or local sales and use tax.*

*§ 4. The 2005 legislation shall also provide for a uniform statewide 911 tax not to exceed \$0.75 levied on all local exchange lines and a uniform statewide 911 fee not to exceed \$0.75 levied on all wireless service lines. The rate shall be set at the level needed to ensure that revenues from it, when combined with revenues from the yet-to-be-named tax, are sufficient to fully replace all revenues that would have resulted from those state and local taxes that are being repealed.*

*§ 5. Service providers shall collect the yet-to-be-named tax from each end user's (other than federal, state and local governments) monthly bill for taxable retail service. In addition, local exchange and wireless providers shall collect the 911 tax and the 911 fee respectively, on a per access line and wireless service line basis by adding the tax or fee to each end user's (other than federal, state and local governments) monthly bill. The yet-to-be-named tax, the 911 tax and the 911 fee, when billed, shall be stated as a distinct item separate and apart from the monthly charges for service. Until the end user pays the yet-to-be-named tax, the 911 tax and the 911 fee to the service provider, the yet-to-be-named tax, the 911 tax and the 911 fee shall constitute a debt of the end user to the authority or other third party (yet to be determined) maintaining a special fund, as set forth in § 6 below. After the end user pays the taxes and fees to the appropriate service provider, all taxes and fees paid shall be deemed to be held in trust by such service provider until remitted to the authority or other third party. Provisions regarding how bad debts and sales for resale/access are to be treated shall be included in the 2005 legislation, if it is determined they are necessary.*

*§ 6. The 2005 legislation shall provide for the yet-to-be-named tax and the 911 tax collections to be remitted from the service providers to a special fund maintained by an authority or other third party (yet to be determined), which in turn will remit appropriate shares of the revenue to the state and individual local governments. The 911 fee collections shall be remitted from the wireless service providers directly to the Wireless 911 Board. To the extent that the 911 fee established as set forth in § 4, above, is inadequate to replace the total Wireless 911 Board revenues identified by the Auditor of Public Accounts as set forth in § 10, below, the difference will be transferred from the special fund to the Wireless Board. Also, sufficient funds will be transferred to the appropriate authority to adequately support the relay service centers.*

*§ 7. The 2005 legislation shall authorize the authority or other third party to conduct an annual audit, at their discretion, by means of a centralized and uniform method of any or all service providers to verify the accuracy of collections and special fund receipts. All expenses associated with the audits shall be paid from the special fund.*

§ 8. *The 2005 legislation shall establish a distribution methodology for the revenues in the special fund that will initially provide the state and each local governmental entity with revenues that are at least equal to those received in FY 2004, and in the case of local governments, from taxes and fees adopted by local ordinance on or before July 1, 2003. The distribution methodology shall also account for differences in future telecommunications revenue growth within the various localities. In addition, revenues distributed from the special fund shall not constitute state aid to localities for state budgeting purposes.*

§ 9. *The legislation shall also subject pre-paid calling arrangements to the Virginia retail sales and use tax in Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1, at the point of sale.*

§ 10. *In order to determine the amount of revenues generated by the current tax system to be replaced by the yet-to-be-named tax, the 911 tax and the 911 fee, the Auditor of Public Accounts shall determine revenues received by the Commonwealth and by its individual counties, cities, and towns for the fiscal year commencing July 1, 2003, and ending June 30, 2004, at rates adopted on or before July 1, 2003 for the following taxes and fees collected by the service providers: the gross receipts tax in excess of 0.5 percent; the Virginia Relay Center Assessment; the local consumer utility tax; and the 911 taxes and fees, where they exist. Local governments and service providers shall cooperate with the Auditor of Public Accounts and provide information to him as requested. The Auditor or his agent shall not divulge any information acquired by him in the performance of his duties under this section that may identify specific service providers. The Auditor shall report his findings to the chairmen of the House and Senate Finance Committees no later than October 15, 2004.*

§ 11. *In the event the Auditor of Public Accounts determines that the rate limitations established in sections 3 and 4, above, for the yet-to-be-named tax, the 911 tax and the 911 fee, respectively, are insufficient to fully replace all revenues that would have resulted from those state and local taxes and fees that are intended to be repealed, no telecommunications tax restructuring legislation related to this study shall be introduced during the 2005 General Assembly Session.*

§ 12. *The working group of industry and local government representatives that has been assisting the joint subcommittee is requested to continue its work and to develop recommendations on the following issues, as well as any others that may arise prior to the 2005 General Assembly Session: an authority or third party to receive and disburse the revenues to the state and individual local governments; a distribution methodology for apportioning the revenues; and a centralized and uniform method for auditing the revenues produced by the taxes and fees. The working group shall report its findings and*

*recommendations to the chairmen of the House and Senate Finance Committees no later than November 15, 2004.*

## **Chapter 119 Woodlawn Road; Dept. of Transp. to assert property rights of State in Fairfax County & Ft. Belvoir.**

An Act to require the Virginia Department of Transportation to assert the property rights of the Commonwealth with respect to Woodlawn Road in Fairfax County and Fort Belvoir.

[\[S 590\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Department of Transportation, with the assistance of the Office of the Attorney General, shall assert the property rights of the Commonwealth with respect to Woodlawn Road in Fairfax County and Fort Belvoir. Such assertion of property rights may include the reopening of Woodlawn Road to public vehicular traffic or modifying the present alignment of Woodlawn Road prior to its reopening, provided that the reopening is accomplished expeditiously, and that the safety and security of Fort Belvoir and the surrounding communities are preserved.*

## **Chapter 129 Translation contracts; Dept. of General Serv. to establish for telephonic language interpretation.**

An Act to direct the Department of General Services to establish a statewide contract for telephonic language interpretation services and other interpretation and translation services.

[\[H 302\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of General Services shall, in coordination with the Secretary of Health and Human Services, establish a statewide contract for telephonic language*

*interpretation services and other interpretation and translation services to Virginia's limited English-speaking residents, if it determines that such a contract is cost-effective.*

## **Chapter 138 Natural cut Christmas trees; use in certain places of worship and apartment dwelling units.**

An Act relating to the use of natural cut Christmas trees in the common areas of places of worship and in apartment dwelling units that do not have automatic sprinkler systems.

[\[H 622\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The use of natural cut Christmas trees in places of worship and in apartment dwelling units.*

*The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) to permit the use of natural cut Christmas trees in places of worship and apartment dwelling units without an approved automatic sprinkler system. In the development of the regulations, the Board of Housing and Community Development shall seek input from state and local fire code officials, local building code officials, representatives of apartment owners and managers, and representatives of places of worship.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 139 Ambulance; definition.**

An Act to require ambulance permits to be consistent with certain federal requirements.

[\[H 627\]](#)

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Commissioner of Health to issue certain emergency medical services permits or licenses.*

*The Commissioner of Health shall issue permits or licenses for emergency medical services agencies and vehicles as needed to ensure compliance with federal regulations relating to reimbursement of ambulance services pursuant to Medicare and Medicaid.*

## **Chapter 156 Health insurance; coverage for biologically based mental illness.**

An Act to repeal the fifth enactment of Chapter 941 of the Acts of Assembly of 1999, relating to insurance coverage for biologically based mental illness.

[\[S 44\]](#)

Approved March 19, 2004

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 941 of the Acts of Assembly of 1999 is repealed.

## **Chapter 244 Water supply plan regulations; effective date.**

An Act to amend and reenact the second enactment of Chapter 227 of the Acts of Assembly of 2003, relating to effective date of water supply plan regulations.

[\[S 110\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 227 of the Acts of Assembly of 2003 is amended and reenacted as follows:
2. That the State Water Control Board shall promulgate regulations necessary to carry out the provisions of this act, including criteria for the development of local and regional water supply plans. Such regulations shall not become effective prior to July 1, 2004

*2005*

. Draft criteria for the development of local and regional water supply plans shall be prepared and submitted to the Governor, the Senate Committee on Agriculture, Con-

ervation and Natural Resources, the House Committee on Agriculture, Chesapeake and Natural Resources, and the State Water Commission by December 1, 2003.

## **Chapter 148 Miller School of Albemarle; membership of Board of Trustees.**

An Act to amend and reenact § 2 of the first enactment of Chapter 319 of the Acts of Assembly of 2002, relating to The Miller School of Albemarle.

[\[H 642\]](#)

Approved March 16, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 319 of the Acts of Assembly of 2002 is amended and reenacted as follows:

§ 2. The Miller School of Albemarle shall be governed by a Board of Trustees consisting of ~~fifteen~~ *no more than 23* members, *according to its bylaws*. ~~Five~~ *Two* members shall be appointed by the Governor of Virginia subject to confirmation by the Senate and the House of Delegates, ~~five~~ *two* members shall be appointed by the Judge of the Circuit Court of Albemarle County, and ~~five~~ *the remaining* members shall be elected by the entire Board according to its bylaws.

*All trustees serving as of July 1, 2004, shall be eligible to complete their respective terms. Thereafter, all appointments and elections shall be for four years except appointments and elections to fill vacancies, which shall be for the unexpired term of the vacancy.*

No member shall be eligible to serve more than ~~three~~ *two* consecutive four-year terms.

## **Chapter 257 Campbell, Anthony Daryl; widow awarded serv. hdgn. which he used as member of St. Police.**

An Act to award a service handgun to the widow of Trooper Anthony Daryl Campbell.

[\[S 623\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§1. That Leigh Ripley Campbell, the widow of Trooper Anthony Daryl Campbell, be,*

*and hereby is, vested with title to, and authorized to possess and retain as her own, Trooper Anthony Daryl Campbell's service handgun, which he used as a member of the Virginia Department of State Police. This transfer is made as a visible and express token of the appreciation of the General Assembly for the professionalism, devotion, and dedication of Trooper Anthony Daryl Campbell.*

## **Chapter 258 Deer or elk; spotlighting.**

An Act to repeal Chapter 420 of the Acts of Assembly of 1958, relating to the spotlighting of deer or elk.

[\[H 25\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 420 of the Acts of Assembly of 1958 is repealed.

## **Chapter 259 Antlerless deer; hunting.**

An Act to repeal Chapter 180 of the Acts of Assembly of 1956, relating to authorizing a special permit to hunt and kill antlerless deer.

[\[H 26\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 180 of the Acts of Assembly of 1956 is repealed.

## **Chapter 260 Wild turkeys; hunting in Pittsylvania County.**

An Act to repeal Chapter 451 of the Acts of Assembly of 1958, relating to the establishment of a season for hunting wild male turkeys.

[\[H 27\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 451 of the Acts of Assembly of 1958 is repealed.

## **Chapter 261 Squirrels; hunting in Floyd County.**

An Act to repeal Chapter 354 of the Acts of Assembly of 1952, relating to establishing a squirrel-hunting season in Floyd County.

[\[H 28\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 354 of the Acts of Assembly of 1952 is repealed.

## **Chapter 265 Bird sanctuary; abolishes establishment in Roanoke County.**

An Act to repeal Chapter 303 of the Acts of Assembly of 1954, relating to the establishment of a bird sanctuary.

[\[H 76\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 303 of the Acts of Assembly of 1954 is repealed.

## **Chapter 266 Deer and wild birds or animals; abolishes unlawful rifle hunting in Halifax & Cumberland Counties.**

An Act to repeal Chapter 144 of the Acts of Assembly of 1958, as amended by Chapter 235 of the Acts of Assembly of 1993, relating to hunting in Halifax and Cumberland Counties.

[\[H 77\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 144 of the Acts of Assembly of 1958, as amended by Chapter 235 of the Acts of Assembly of 1993 is repealed.

## **Chapter 290 Norfolk Southern Corporation; Dept. of Conserv. & Recreation to accept abandoned railroad prop.**

An Act authorizing the Department of Conservation and Recreation to accept title to certain real property along abandoned railroad lines in several counties.

[\[H 643\]](#)

Approved March 31, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to § [10.1-104](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to accept from the Norfolk Southern Corporation, upon terms and conditions the Department deems proper, with the approval of the Governor, a parcel of real estate comprising abandoned railroad right-of-way from Burkesville to Pamplin City between milepost north 133.4 and north 169.06, a distance of approximately 35.66 miles, partially located in the Counties of Appomattox, Cumberland, Nottoway and Prince Edward.*

*§ 2. Any deed of conveyance shall be in a form approved by the Attorney General.*

## **Chapter 337 Final judgments in circuit court; when modifiable and appealable.**

An Act to repeal Chapter 1017 of the Acts of Assembly of 2003, relating to final judgments in circuit court; modification and appeal.

[\[S 609\]](#)

Approved April 8, 2004

Be it enacted by the General Assembly:

1. That Chapter 1017 of the Acts of Assembly of 2003 is repealed.

## **Chapter 393 Firearms; permit to sell or purchase in certain counties.**

An Act to amend and reenact § [15.2-1208](#) of the Code of Virginia and to repeal Chapter 297 of the Acts of Assembly of 1944, relating to permits to sell or purchase pistols or revolvers in counties.

[\[S 227\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-1208](#) of the Code of Virginia is amended and reenacted as follows:

§ [15.2-1208](#). Same; in certain counties.

Chapter 297 of the Acts of Assembly of 1944, approved March 29, 1944, requiring permits to sell or purchase pistols or revolvers in any county having a density of population of more than 1,000 a square mile, is ~~continued in effect~~ *repealed*. *Any records or copies thereof that were created pursuant to this section that are in the custody of any county shall be destroyed no later than July 31, 2004. Upon destroying the records, the county shall certify to the circuit court that such destruction has been completed.*

2. That Chapter 297 of the Acts of Assembly of 1944 is repealed.

## **Chapter 473 Diplomas; local school board to award verified units of credit.**

An Act to amend and reenact Chapter 577 of the Acts of Assembly of 2002, relating to the award of verified units of credit for standard diplomas by local school boards.

[\[H 1257\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That Chapter 577 of the Acts of Assembly of 2002 is amended and reenacted as follows:

§ 1. The provisions of the Standards of Accreditation (8 VAC [20-131](#)-10 et seq.) governing diploma requirements notwithstanding, the Board of Education shall establish guidelines for local school boards to award verified units of credit for standard diplomas

to students who have (i) entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003; and (ii) passed the relevant coursework.

*Local school boards shall adopt procedures for the award of verified units of credit for such students based on the Board's guidelines.*

Such students shall meet such additional criteria established by the Board for the award of such verified units which may include, but shall not be limited to, performance on Standards of Learning assessments or other tests, including subsequent administrations of such assessments or tests; attendance and conduct requirements; and participation in remediation programs.

The guidelines shall set forth procedures for the award of such verified units by local school boards and shall be applicable only to the award of the four student-selected verified units of credit required for a standard diploma pursuant to the Standards of Accreditation (8 VAC [20-131](#)-50 B). Students shall be required to earn the two verified units of credit in English for a standard diploma as provided in the Standards of Accreditation.

The guidelines issued by the Board shall not be subject to the Administrative Process Act (§ [2.2-4000](#) et seq.) and shall be applicable to students who have entered the ninth grade for the first time during the school years of 2000-2001, 2001-2002, and 2002-2003.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 532 School boards; fringe benefits, expenses and reimbursements in Arlington County.**

An Act relating to fringe benefits, expenses, and reimbursements for certain school board members.

[\[H 433\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Benefits, expenses, and reimbursements for the school board members of certain county.*

*An elected school board of a school division comprised of a county having the county manager plan of government may grant itself fringe benefits, expenses, and reimbursements, or any of them, as it deems appropriate, and in the manner and form as such fringe benefits, expenses, and reimbursements are provided for school board*

*employees, after satisfying the notice and public hearing requirements as set forth in § [15.2-702.1](#) of the Code of Virginia. Such school board serving a county having the county manager plan of government whose membership totals five may establish such fringe benefits, expenses, and reimbursements by July 1 in any year in which two of the five members are to be elected. Any such fringe benefits, expenses, and reimbursements shall become effective on January 1 of the following year.*

## **Chapter 454 Elizabeth River; Governor to convey certain subaqueous lands to Norfolk City.**

An Act to authorize the Governor to convey certain subaqueous lands in the Elizabeth River at Norfolk to the City of Norfolk.

[\[H 949\]](#)

Approved April 12, 2004

Whereas, in 2000, the Virginia Port Authority formally requested that the City of Norfolk (the City) begin handling homeport cruise activity at the City's Nauticus pier on the Elizabeth River in Norfolk, with Norfolk's willingness to handle passenger activity at Nauticus enabling the Port Authority to focus on its core cargo business; and

Whereas, the City appropriated \$2 million in 2001 to strengthen the Nauticus pier to handle cruise ships for the Commonwealth; and

Whereas, the requirements for Federal Inspection Stations for Customs, United States Citizenship and Immigration Services, and the U.S. Department of Agriculture dramatically increased after September 11, 2001, and the City is now required to construct a full-scale passenger terminal or all homeport cruise operations in the Commonwealth will cease in 2006; and

Whereas, the cruise terminal must be located adjacent to the current pier on piles above a portion of state bottomlands which the City desires to obtain by a conveyance of such subaqueous land from the Commonwealth; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is hereby authorized to convey, upon consultation with the Marine Resources Commission and the Attorney General, and in consideration of the mutual promises of the parties and the payment of \$1, an irregular-shaped lot, piece or parcel of land situate, lying and being in the downtown section of the City of Norfolk, Virginia, said parcel being further described as follows: all the subaqueous lands bounded on the*

north by the City Hall Avenue Canal, said canal being shown on a plat entitled, "Plat of Merchants & Miners Transportation Co's Property," said plat being dated February 14, 1911, and being on file in the Department of Public Works in the Division of Surveys in the City of Norfolk, Virginia, as file number [1-4-52](#); on the east by Boush Street and Matthews Street; on the south and west by the Pierhead Lines (Port Warden Lines) of the Eastern Branch of the Elizabeth River, said parcel being further described as follows: beginning at a point that is the intersection of the northern line of Main Street extended westwardly to its intersection with the western line of Matthews Street, said point of intersection being shown on a plat entitled, "Exhibit A," said plat prepared by the Division of Surveys and being on file in the Department of Public Works in the Division of Surveys in the City of Norfolk, Virginia, in Tube 507; thence, from the point of beginning thus described, the following two courses and distances along said western line of Matthews Street: S 19-10'-42" W, 360.00 feet, more or less, to a point; thence, S 35-34'-43" W, 219.23 feet, more or less, to a point on the Pierhead Line (Port Warden Line) running along the northern shore of the Eastern Branch of the Elizabeth River; thence, the following three courses and distances along said Pierhead Line (Port Warden Line): N 42-04'-56" W, 257.80 feet, more or less, to a point; thence, N 25-52'-55" W, 800.08 feet, more or less, to a point; thence, N 15-19'-53" W, 230.00 feet, more or less, to a point on the northern boundary of said parcel; thence, S 82-16'-46" E, 586.82 feet, more or less, to a point; thence, S 76-00'-00" E, 525.00 feet, more or less, to a point; thence, S 10-11'-42" W, 34.00 feet, more or less, to a point; thence, S 79-48'-14" E, 16.13 feet, more or less, to a point on the western line of Boush Street; thence, the following two courses and distances along said western line of Boush Street; S 25-57'-05" W, 197.08 feet, more or less, to a point; thence, S [21-18](#)'-27" W, 225.00 feet, more or less, to a point; thence, N 68-41'-33" W, 42.21 feet, more or less, to a point; thence, S [21-18](#)'-27" W, 25.00 feet, more or less, to a point; thence, N 68-08'-18" W, 60.00 feet, more or less, to the point of beginning.

The above-described parcel contains 15.00 acres, more or less, eight acres, more or less, of which are subaqueous lands.

§ 2. Such conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.

## **Chapter 571 Employment Commission; conveying certain real property located in Petersburg City.**

An Act authorizing the Virginia Employment Commission to convey certain real property to the City of Petersburg.

[\[H 1261\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Employment Commission is hereby authorized to convey to the City of Petersburg, upon terms and conditions the Department of General Services deems proper, with the approval of the Governor, a parcel of real estate located at 10 North Jefferson Street in the City of Petersburg, consisting of an improved lot measuring approximately 47,460 square feet, and formerly used by the Virginia Employment Commission until it relocated its offices to the City of Hopewell.*

*§ 2. Such conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 483 Elizabeth River; Marine Resources Commission to grant easement to VEPCO for electr. transm. lines.**

An Act to authorize the Virginia Marine Resources Commission to grant an easement and right-of-way across and in the bed of the Elizabeth River, including a portion of the Baylor Survey, to Virginia Electric and Power Company (Dominion Virginia Power) for an electric transmission line.

[\[H 1436\]](#)

Approved April 12, 2004

Whereas, notwithstanding a General Assembly grant of authority to the Virginia Marine Resources Commission (VMRC) to convey an easement in the Commonwealth's bottomland, Virginia Electric and Power Company will still be required to file a joint permit application with VMRC and VMRC will determine through this application process

whether, and under what conditions, to approve the encroachment on the Commonwealth's bottomlands so as to protect natural resources; and

Whereas, Dominion Virginia Power operates two submarine electric transmission line cables through two adjacent eight inch pipes under the Elizabeth River between the Craney Island Terminal Station and the Tanners Point Terminal Station, which serve the U.S. Norfolk Naval Air Station, the City of Norfolk, the Norfolk International Terminal, and numerous other business and residential areas; and

Whereas, demand for electricity has grown significantly over the 30 years since the two cables were installed and anticipated growth in Norfolk and Hampton Roads necessitates that additional capacity be provided to the area; and

Whereas, demand will soon grow to the point that if one of the two existing and closely placed submarine cables were to fail or be damaged, the remaining cable will be overloaded, placing in question the reliability of electrical service to the area; and

Whereas, resolution of this electric reliability situation necessitates the construction of an additional 230 kV transmission cable system between Craney Island Terminal Station and Tanners Point Terminal Station, approximately 500 feet north of the existing Elizabeth River crossing, providing a protective distance between the new and the existing cables, increasing needed electrical supply to the area and creating a safeguard should one or more cables fail; and

Whereas, it will be necessary to place the new transmission cable in the bed of the Elizabeth River because it is not possible to construct an overhead electrical line crossing at this important location due to the danger such a line poses to Elizabeth River Channel ship traffic and to U.S. Norfolk Naval Air Station air traffic; and

Whereas, a submarine crossing at this location will cross within the Baylor Survey Ground numbers 1, 2, 3 and possibly 5, therefore necessitating an act of the General Assembly; and

Whereas, it is necessary for continued adequate, secure and dependable electric service in Norfolk and the surrounding localities that the new transmission line be constructed; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor and the Attorney General, shall deem proper, a permanent easement and right-of-way of 50 feet of*

*width and a temporary right-of-way of a reasonable width as needed for the purpose of installing, constructing, maintaining, repairing and operating a submarine electric transmission cable system in and across the bed of the Elizabeth River, including a portion of the Baylor Survey, the center line of such easement being described as follows:*

*Beginning at the mean low water mark on the west bank of the Elizabeth River, being the property line of a parcel of land now or formerly owned by the U.S. Department of the Navy, in the City of Portsmouth, Virginia; thence N 66° 49' E +/- 220 feet +/- to a point; thence along a curve with an angle 18° 30' +/- with a length 245 +/- feet to a point; then N 48° 19' E +/- 1,115 +/- feet to a point; thence along a curve with an angle 18° 30' +/- with a length of 245 +/- feet to a point; thence N 66° 49' E +/- 4,290 +/- feet to a point; thence along a curve with an angle 47° 00' +/- with a length 726 +/- feet to a point; then N 19° 49' E +/- with a length of 200 +/- feet to a point, being a bulkhead/property line of a parcel of land now or formerly owned by the Virginia Port Authority on the east bank of the Elizabeth River, said point being West 300 +/- feet from the bulkhead at the intersection of the Lafayette and Elizabeth Rivers.*

*§ 2. None of the above described property that lies within the Baylor Survey shall be considered part of the natural oyster beds, rocks and shoals in the waters of the Commonwealth.*

*§ 3. The instrument granting and conveying the easement and right-of-way from the Commonwealth to Dominion Virginia Power shall be in a form approved by the Attorney General.*

## **Chapter 572 William J. Hargis, Jr. Library; Institute of Marine Science to name library.**

An Act to name the library at the Virginia Institute of Marine Science the William Jennings Hargis, Jr. Library.

[\[H 1313\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the library at the Virginia Institute of Marine Science shall be named the William Jennings Hargis, Jr. Library.*

## **Chapter 578 Sam Snead Memorial Highway; designating as Route 220 in Bath County.**

An Act to designate a portion of U.S. Route 220 the "Sam Snead Memorial Highway."

[\[S 13\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 220 lying within Bath County is hereby designated the "Sam Snead Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 524 Unclaimed property; electronically filing of reports.**

An Act to amend and reenact § [55-210.12](#) of the Code of Virginia, relating to electronically filing unclaimed property reports.

[\[H 276\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § [55-210.12](#) of the Code of Virginia is amended and reenacted as follows:

§ [55-210.12](#). Report and remittance to be made by holder of funds or property presumed abandoned; holder to exercise due diligence to locate owner.

A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report and remit to the administrator with respect to the property as hereinafter provided. *Reports containing 25 or more items shall be remitted in an electronic format as prescribed by the administrator. The administrator may waive this requirement when he determines, in his discretion, that it creates an undue hardship.*

B. The report shall be verified and shall include:

1. The name and social security or federal identification number, if known, and last known address, including ZIP code, if any, of each person appearing from the records of

the holder to be the owner of any property of the value of \$100 or more presumed abandoned under this chapter;

2. In case of unclaimed funds of insurance corporations, the full name of the insured or annuitant and any beneficiary, if known, and the last known address according to the insurance corporation's records;

3. In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator, and any amounts owing to the holder;

4. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$100 each may be reported in aggregate;

5. The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

6. Other information which the administrator prescribes by rule as reasonably necessary for the administration of this chapter.

C. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

D. The report and remittance, including the remittance of unclaimed demutualization proceeds made pursuant to § [55-210.4:2](#), shall be filed before November 1 of each year as of June 30 next preceding, but the report and remittance of insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. When property is evidenced by certificate of ownership as set forth in § [55-210.6:1](#), the holder shall deliver to the State Treasurer a duplicate of any such certificate registered in the name "Treasurer of Virginia" or the Treasurer's designated nominee at the time of report and remittance. The administrator may postpone the reporting and remittance date upon written request by any person required to file a report.

E. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. All holders shall exercise due diligence, as defined in § [55-210.2](#), at least 60 days prior to the submission of the report to ascertain the whereabouts of the owner if (i) the holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate and (ii) the property has a value of \$100 or more.

F. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

## **Chapter 579 Jack and Carter Hardesty Bridge; designating as Route 340 bridge in Clarke County.**

An Act to designate the U.S. Route 340 bridge over the Norfolk Southern right-of-way north of the Town of Berryville in Clarke County the "Jack and Carter Hardesty Bridge."

[\[S 34\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The U.S. Route 340 bridge over the Norfolk Southern right-of-way north of the Town of Berryville in Clarke County is hereby designated the "Jack and Carter Hardesty Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 581 George Fortune, Jr., Memorial Bridges; designating as I-66 bridges over Rt. 29 in Fairfax County.**

An Act to designate the Interstate Route 66 bridges over U.S. Route 29 in Fairfax County the "George Fortune, Jr., Memorial Bridges."

[\[S 155\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate Route 66 bridges over U.S. Route 29 in Fairfax County are hereby designated the "George Fortune, Jr., Memorial Bridges." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to these bridges.*

## **Chapter 537 Higher educ. inst. & industry; development of policies and strategies to eliminate barriers between.**

An Act to direct the State Council of Higher Education for Virginia to develop policies and strategies to eliminate the barriers between the Commonwealth's institutions of higher education and industry and enhance the development of human capital in the Commonwealth.

[\[H 547\]](#)

Approved April 12, 2004

Whereas, excellence in teaching at the undergraduate level and high-quality research are two main factors that contribute to a university's success; and

Whereas, a focus on quality research and teaching will bring about growth in revenues, attract higher quality students and faculty, and higher rankings for Virginia-based universities; and

Whereas, for the Commonwealth's universities to maintain and enhance their positions at the forefront of research on a national and international basis and draw industries to locate, incubate, and grow to maturity in Virginia, they must recruit and retain top faculty; and

Whereas, the competitiveness of Virginia-based universities lies in the hands of high-quality faculty and researchers with the drive to provide excellent education and build positive relationships with industry; and

Whereas, these relationships lead to research and development of new technologies; and

Whereas, bringing new technologies from the research laboratory to the marketplace requires academia and industry to work together in new and innovative ways; and

Whereas, investment in strategic areas will allow the Commonwealth to more fully benefit from its investments in higher education and economic development; and

Whereas, new technologies can spawn new industries leading to new jobs, new products, and new markets thereby multiplying their impact on the economy; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The State Council of Higher Education for Virginia (SCHEV) shall develop policies to eliminate the barriers between the Commonwealth's institutions of higher education*

*and industry and enhance the development of human capital in the Commonwealth. These policies and strategies shall include a review of (i) offering incentives for industry to partner with universities in the practical training of undergraduate and graduate students; (ii) providing opportunities and incentives for corporate scientists and engineers to have adjunct appointments at universities to train and collaborate with faculty and students; (iii) assisting universities in acquiring funding to build or buy facilities where academic labs and corporate entities can work together; (iv) providing opportunities and assistance for academic researchers to take one- to two-year sabbaticals in a corporate setting or national lab and bring that experience back to the institution; (v) increasing the two-year leave of absence for science and engineering faculty to generate more industrial-sponsored research; (vi) allowing industry to fully fund faculty salaries and allow the faculty to work in industry while remaining a university employee, with proper safeguards in place; and (vii) allowing faculty to be part-time university employees and part-time industry employees, also with proper safeguards in place. The State Council of Higher Education for Virginia (SCHEV) shall report its findings to the Governor and the General Assembly by November 30, 2004.*

*§ 2. All agencies of the Commonwealth shall provide assistance to SCHEV, for the development of these policies and strategies, upon request.*

## **Chapter 618 York County Circuit Court; name changed to York County-Poquoson Circuit Court.**

An Act to change the name of the York County Circuit Court.

[\[H 605\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the York County Circuit Court shall be named the York County-Poquoson Circuit Court.*

## **Chapter 628 Fairfax Station Road; designating entire length in Fairfax County as a Virginia byway.**

An Act to designate the entire length of Fairfax Station Road in Fairfax County a Virginia byway.

[\[H 997\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, the entire length of Fairfax Station Road in Fairfax County is hereby declared to be a Virginia byway.*

## **Chapter 629 Pleasant Valley Road; designating portion thereof in Fairfax County as a Virginia byway.**

An Act to designate Virginia Route 609 (Pleasant Valley Road) between U.S. Route 29 (Lee Highway) and Blue Spring Drive in Fairfax County a Virginia byway.

[\[H 998\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, Virginia Route 609 (Pleasant Valley Road) between U.S. Route 29 (Lee Highway) and Blue Spring Drive in Fairfax County is hereby declared to be a Virginia byway.*

2. That the provisions of this act shall become effective on July 1, 2005.

## **Chapter 550 Exterior lighting; allows James City Co. to regulate illumination levels of buildings and property.**

An Act to allow lighting level regulation in James City County.

[\[H 963\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That James City County may provide by ordinance for the regulation of maximum upward exterior illumination levels of buildings and property zoned or used for commercial or business purposes. Such ordinance shall only apply to lighting installed after the effective date of the ordinance and shall not affect or be applied to agricultural or silvicultural operations. Any lighting installed prior to the effective date of the ordinance shall be conforming and shall not be treated as nonconforming under any ordinance. Further, such ordinance shall not apply to (i) any outdoor advertising signs owned by a person in the business of outdoor advertising licensed by the Department of Transportation pursuant to § [33.1-361](#), (ii) temporary construction or maintenance activities performed by the Department of Transportation or its agents or contractors, (iii) utility companies, (iv) facilities owned by the Department of Corrections, (v) lighting regulated by the Uniform Statewide Building Code, or (vi) premise security lighting on any property whose primary usage is for multifamily residential or commercial office purposes.*

2. That if James City County has not adopted an ordinance pursuant to this act prior to July 1, 2006, then provisions of this act shall expire on that date.

## **Chapter 624 Heritage Music Trail: The Crooked Road; designating as certain hwys. in Southwest Va.**

An Act to designate portions of certain highways "Virginia's Heritage Music Trail: The Crooked Road."

[\[H 909\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The following route is hereby designated "Virginia's Heritage Music Trail: The Crooked Road": Beginning at the Blue Ridge Folklife Museum in Ferrum, thence west on U.S. Route 40 to Shooting Creek Road, thence along Shooting Creek Road to its intersection with U.S. Route 221, thence along U.S. 221 through the Town of Floyd and west on U.S. Route 221 to its intersection with U.S. Route 58 in the Town of Hillsville, thence west on U.S. 58/221 to the Town of Independence, thence west on U.S. Route 58*

*through the Town of Damascus to its intersection with U.S. Route 11, thence southeast on U.S. 11 through the Town of Abingdon where U.S. 11 joins with U.S. Route 19 to Interstate Route 81 (Exit 5) in the City of Bristol, thence west on U.S. 58 and Interstate Route 81 to the intersection of U.S. Route 421 (Exit 1), thence west on U.S. 58/421 to its intersection with U.S. Route 23 in the Town of Weber City, thence west and north on U.S. Route 23/58/421 to the Town of Duffield, thence north on U.S. Route 23 through the Town of Big Stone Gap and the City of Norton to the intersection of U.S. Route 23 (business) south of the Town of Pound, thence north on U.S. 23 (business) into the Town of Pound to the intersection of Virginia Route 83, thence east on Virginia Route 83 to the Town of Clintwood. The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route. This designation shall not affect any other designation heretofore or hereafter applied to this route or any portions thereof.*

### **Chapter 633 Route 17; designating portion as a Virginia byway.**

An Act to designate a portion of U.S. Route 17 a Virginia byway.

[\[H 1154\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 17 between the Town of Tappahannock and the Caroline/Spotsylvania County boundary is hereby designated a Virginia byway.*

### **Chapter 641 Korean War, World War II, & Vietnam Veterans Mem. Hwys.; desig. as Interstate Routes 64, 81, & 95.**

An Act to designate Interstate Route 64 in Virginia the "Korean War Veterans Memorial Highway," Interstate Route 81 in Virginia the "World War II Veterans Memorial Highway," and Interstate Route 95 in Virginia the "Vietnam Veterans Memorial Highway."

[\[H 1413\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the entire length of Interstate Route 64 in Virginia is hereby designated the*

*"Korean War Veterans Memorial Highway," the entire length of Interstate Route 81 in Virginia is hereby designated the "World War II Veterans Memorial Highway," and the entire length of Interstate Route 95 in Virginia is hereby designated the "Vietnam Veterans Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designations of these highways; however, the cost of initially placing these markers shall be paid from private sources. These designations shall not affect any other designations heretofore or hereafter applied to these highways or any portions thereof.*

## **Chapter 643 Humelsine Parkway; designating as Route 199 between I-64 east and west of Williamsburg City.**

An Act to designate Virginia Route 199 the "Humelsine Parkway."

[\[H 1444\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 199, from its junction with Interstate Route 64 west of the City of Williamsburg to its junction with Interstate Route 64 east of the City of Williamsburg is hereby designated the "Humelsine Parkway." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this highway or any portion thereof.*

## **Chapter 616 Integrated research & academic campuses; Research & Tech. Adv. Comm. continue its exam. of establmt.**

An Act to require the Virginia Research and Technology Advisory Commission (VRTAC) to continue its examination of establishing integrated research and academic campuses in the Commonwealth.

[\[H 545\]](#)

Approved April 12, 2004

Whereas, according to a 2002 study by the State Council of Higher Education for Virginia (SCHEV), approximately 90 percent of research and development (R&D) expendit-

ures in Virginia are attributable to private sector activities, federal agencies, and federal labs; and

Whereas, more than half of R&D expenditures in Virginia are attributable to the private sector, with a significant portion of that activity occurring in northern Virginia; and

Whereas, only two of the seven public research universities are located in northern Virginia and Hampton Roads while nine of the 12 federal labs, agencies and centers identified in the SCHEV report are located in the two regions; and

Whereas, Virginia's research universities must be located near its technology businesses if the Commonwealth is going to be on the world stage with an intertwined and vibrant academic research environment and entrepreneurship culture; and

Whereas, across the Commonwealth, several universities have gained eminence in critical fields of science and technology and attracted top students from the Commonwealth, the nation, and internationally; and

Whereas, most of the graduates of these leading-edge programs are unable to find jobs in their fields near where they studied causing many of them to move; and

Whereas, these graduates are as likely to move out of Virginia as they are to relocate within Virginia; and

Whereas, this situation stymies collaboration between Virginia's research universities, the private sector and the federal customers that drive much of Virginia's technology-based business activity; and

Whereas, co-location of research space and equipment for shared use and partnership between universities, federal labs and the private sector can produce enhanced access to cutting-edge equipment, decreased expense associated with capital costs and equipment, and more professional collaboration and shared objectives between Virginia's various research actors; and

Whereas, enhancing the capabilities of Virginia's universities to conduct sustained and significant research programs in close proximity to leading-edge companies and institutions would contribute enormously to improving leverage of existing private sector assets and expenditures while the private sector would gain better access to faculty and graduate student expertise; and

Whereas, a November 2003 study by the VRTAC Subcommittee on The Creation of New High-Technology Industries in Virginia recommended that Virginia look seriously at establishing an integrated research and academic campus in northern Virginia; and

Whereas, such an institution would enable a student to pursue a degree in nanotechnology from one institution, while taking courses from another institution at the

same campus, and working on cutting-edge research projects in the private sector; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Research and Technology Advisory Commission (VRTAC) shall continue its examination of the establishment of integrated research and academic campuses in the Commonwealth. The examination shall include (i) the feasibility of building or utilizing existing facilities for an academic research and advanced education enterprise in northern Virginia and in Hampton Roads; (ii) the requirements and policies necessary to establish a graduate school component that features participation from all universities in the Commonwealth; and (iii) a review of other options for enhancing the research capabilities of the Commonwealth's public institutions and leveraging the Commonwealth's proximity to the research activities of the private sector and federal government. Technical assistance shall be provided by the Secretary of Technology, the Secretary of Commerce and Trade, the Secretary of Education, the State Council of Higher Education for Virginia, and the Joint Commission on Technology and Science as may be permitted by each participant's time and resource availability. The Virginia Research and Technology Advisory Commission (VRTAC) shall submit to the Division of Legislative Automated Systems an executive summary and report of its findings to the Governor and the General Assembly no later than November 30, 2004. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

## **Chapter 642 Lovettsville Union Cemetery Company; updating incorporation thereof.**

An Act to amend and reenact §§ 2, 9 and 10 of Chapter 1 of the Acts of Assembly of 1879, relating to the Lovettsville Union Cemetery Company.

[\[H 1432\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 2, 9 and 10 of Chapter 1 of the Acts of Assembly of 1879 are amended and reenacted as follows:

§ 2. The said company shall have the right to hold, in or near the town of Lovettsville, ~~not exceeding in quantity, ten acres of land~~, for the purpose of said cemetery; and shall have power to lay out and ornament the same, to erect such buildings thereon as it may deem necessary and proper, to arrange burial lots, and to make and enforce by reasonable fines and penalties such by-laws, rules and regulations for the government of the establishment as it shall judge best; provided, the same be not contrary to the constitution and laws of the United States, or of this state.

§ 9. The said company shall have full power to acquire assets by sale of lots, gifts, devises in money and personal property, or by a tax on lot-holders, ~~an amount in value not exceeding ten thousand dollars~~; provided, however, that said company shall make no use of said money, property or effects, except for the improvement, repairs, and maintenance of the cemetery.

§ 10. The grounds and improvements thereon, and all other property and things connected therewith belonging to said company hereby incorporated, shall, for all police purposes, be under the protection of, and subject to, the ordinances of the ~~corporation of the town of Lovettsville, and the mayor, recorder, and common council of said corporation~~ *County of Loudoun and to the Commonwealth of Virginia*, which shall have jurisdiction of all offenses committed upon and within said grounds, ~~in the same manner as if done and committed within the town of Lovettsville.~~

## **Chapter 660 Toll facilities; allows operator or toll collection tech. to obtain vehicle owner inform. from DMV.**

An Act to authorize the release of personal data by the Department of Motor Vehicles to toll facility operators and toll technology entities.

[\[S 107\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the Commissioner of the Department of Motor Vehicles may enter into agreements with private toll facility operators or toll collection technology entities to enable such operators or entities to obtain from the Department personal information, as described in § [46.2-208](#) of the Code of Virginia, in order to conduct motor vehicle research relating to methods of electronic toll collection. Any such*

*agreement shall include provisions acceptable to the Commissioner designed to ensure that: (i) personal information shall not be further disclosed or otherwise disseminated by the operator or entity; (ii) the information furnished shall not be used for a purpose other than the purpose for which it was furnished; (iii) personal information shall be returned to the Department at the conclusion of the research; and (iv) the operator or vendor will not contact any individual identified by such personal information.*

2. That the provisions of this act shall expire on July 1, 2005.

## **Chapter 662 Virginia-North Carolina Interstate High-Speed Rail Compact; created.**

An Act to establish the Virginia-North Carolina Interstate High-Speed Rail Compact.

[\[S 126\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Short title.*

*This act shall be known and may be cited as the Virginia-North Carolina Interstate High-Speed Rail Compact.*

*§ 2. Compact established.*

*Pursuant to the invitation in 49 U.S.C. § 24101 Interstate Compacts, in which the United States Congress grants consent to states with an interest in a specific form, route, or corridor of intercity passenger rail service (including high-speed rail service) to enter into interstate compacts, there is hereby established the Virginia-North Carolina Interstate High-Speed Rail Compact.*

*§ 3. Agreement.*

*The Commonwealth of Virginia and the State of North Carolina agree, upon adoption of this compact:*

- 1. To study, develop, and promote a plan for the design, construction, financing, and operation of interstate high-speed rail service through and between points in the Commonwealth of Virginia and the State of North Carolina and adjacent states;*
- 2. To coordinate efforts to establish high-speed rail service at the federal, state, and local governmental levels;*

3. To advocate for federal funding to support the establishment of high-speed interstate rail service within and through Virginia and North Carolina and to receive federal funds made available for rail development; and

4. To provide funding and resources to the Virginia-North Carolina High-Speed Rail Compact Commission from funds that are or may become available and are appropriated for that purpose.

§ 4. Commission established; appointment and terms of members; chairman; reports; Commission funds; staff.

The Virginia-North Carolina High-Speed Rail Compact Commission is hereby established as a regional instrumentality and a common agency of each signatory party, empowered in a manner hereinafter set forth to carry out the purposes of the Compact. The Virginia members of the Commission shall be appointed as follows: three members of the House of Delegates appointed by the Speaker of the House of Delegates, and two members of the Senate appointed by the Senate Committee on Rules. The North Carolina members of the Commission shall be composed of five members as follows: two members of the Senate appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, two members of the House of Representatives appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives, and one appointed by the Governor.

The chairman of the Commission shall be chosen by the members of the Commission from among its membership for a term of one year, and shall alternate between the member states.

The Commission shall meet at least twice each year, at least once in Virginia and once in North Carolina, and shall issue a report of its activities each year.

The Commission may utilize, for its operation and expenses, funds appropriated to it therefor by the legislatures of Virginia and North Carolina or received from federal sources.

Virginia members of the Commission shall receive compensation and reimbursement for the necessary and actual expenses as provided in the general appropriations act; North Carolina members of the Commission shall receive per diem, subsistence and travel allowances in accordance with applicable statutes of North Carolina, as appropriate. Primary staff to the Commission shall be provided by the Virginia Department of Rail and Public Transportation and the North Carolina Department of Transportation.

2. This act shall become effective upon its enactment by the Commonwealth of Virginia and the State of North Carolina, and in accordance with federal law authorizing the compact.

## **Chapter 664 High-occupancy toll (HOT) lanes; Dept. of Transportation when making improv. to I-66 to include.**

An Act to require that any study by the Virginia Department of Transportation of possible improvements to a certain portion of Interstate Route 66 include consideration of High-Occupancy Toll (HOT) lanes.

[\[S 139\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any study by the Virginia Department of Transportation of possible improvements to Interstate Route 66 outside the Capital Beltway (Interstate Route 495) shall include consideration of the desirability and feasibility of constructing High-Occupancy Toll (HOT) lanes in conjunction with any such improvements.*

*For the purposes of this act, HOT lanes shall mean highway lanes ordinarily restricted to use by high-occupancy vehicles, but which may be used by a nonhigh-occupancy vehicle if a toll is paid by the operator for the use of the facility by such nonhigh-occupancy vehicle.*

## **Chapter 698 Motor vehicle registration; nonrenew. for nonpaymt. of parkg. citations, abol. sunset provisions.**

An Act to repeal the second enactment of Chapter 326 of the Acts of Assembly of 2003, relating to motor vehicle taxes and license fees imposed by counties, cities, and towns; delinquent parking citations.

[\[S 419\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 326 of the Acts of Assembly of 2003 is repealed.

## **Chapter 705 Staunton Correctional Center; Governor to sell and convey.**

An Act to authorize the Governor to sell and convey former Staunton Correctional Center.

[\[S 516\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is hereby authorized to sell and convey, upon consultation with the Attorney General, and in consideration of the mutual promises of the parties and the payment of fair market value consideration, the former Staunton Correctional Center (SCC) and the land within the fenced-in area around the SCC located in Staunton, Virginia.*

*§ 2. Such sale and conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the sale and conveyance.*

*§ 3. All proceeds from the sale of the SCC shall be deposited by the Comptroller into the general fund of the state treasury.*

## **Chapter 708 Health-related data elements; Secretary of Health & Human Resources to create a reference database.**

An Act to develop a reference database of statewide health-related data; Secretary of Health and Human Resources.

[\[S 565\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. Secretary of Health and Human Resources to develop a reference database of statewide health-related data elements. In order to facilitate the exchange and use of*

*information between the agencies within the Secretariat of Health and Human Resources, the Secretary of Health and Human Resources shall develop a reference database of statewide health-related data elements. The reference database shall be developed in accordance with the provisions of the Health Insurance Portability and Accountability Act (HIPAA).*

*B. In order to develop the reference database, each agency within the Health and Human Resources Secretariat shall submit to the Secretary the following information: (i) a list of the names and a general narrative description of its existing automated systems containing statewide health-related data; (ii) the hardware and software platforms upon which each identified system is running; and (iii) a data dictionary describing the data fields comprising the system, which data dictionary shall include a narrative description of each data field.*

*C. The Secretary shall compile the information submitted by each agency into the reference database. Further, the Secretary shall ensure that each agency within the Secretariat uses the database information to the greatest extent possible to improve the overall efficiency and cost-effectiveness of the services rendered by these agencies. The reference database shall be updated by the Secretary as necessary.*

## **Chapter 713 Chamberlin Hotel at Fort Monroe; extends lease for operation.**

An Act to amend and reenact § 1 of Chapter 809 of the Acts of Assembly of 1998, relating to the extension of the lease and use provisions of a facility located at Fort Monroe.

[\[S 602\]](#)

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 809 of the Acts of Assembly of 1998 is amended and reenacted as follows:

§ 1. The consent of the Commonwealth is hereby given to such individuals or company, and their successors and assigns, as may be granted the privilege by the United States to maintain and operate the hotel presently known as the Chamberlin Hotel at Fort Monroe, Virginia, to lease, sublease or use such structure for hotel, *seniorhousing facilitywith an assisted living component*, business or professional office space *and an adjoining parking garage* as deemed appropriate by the operator of the hotel holding the privilege

from the United States for a term up to and including December 31, ~~2037~~2087, hereby abridging and suspending for the period of such term, the provision of the deed from the Commonwealth to the United States by which such site would revert and revest in the Commonwealth.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 776 Licensure by Bd. of Contractors; Dept. of Prof. & Occupat'l Regul. & Bd. for Contr. to est. progr.**

An Act to direct the Director of the Department of Professional and Occupational Regulation and the Board for Contractors to establish a pilot program for local enforcement of licensure.

[\[S 285\]](#)

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall establish a pilot program consisting of a cooperative agreement with at least one local governing body that authorizes the building official of such locality to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board. Nothing in this act shall be construed to limit any independent actions of the Director to carry out his responsibilities under Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1 of the Code of Virginia and to assure compliance with the laws of the Commonwealth.*

*§ 2. The Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall submit a report on or before November 1, 2004, and on or before November 1, 2005, to the Governor and the General Assembly on progress made in the development and implementation of any pilot program established pursuant to this act.*

2. That the provisions of this act shall expire on July 1, 2006.

## **Chapter 813 Higher Educational Institutions Bond Bill of 2004; created.**

An Act to authorize the issuance of bonds to finance \$137,700,600 in previously authorized projects and \$117,616,000 in new projects for a total of up to \$255,316,600, plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

### [\[S 31\]](#)

Approved April 14, 2004

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c), Constitution of Virginia; now, therefore

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Bill of 2004."*

§ 2. Authorization of bonds and BANs.

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$255,316,600 for \$137,700,600 previously authorized projects and \$117,616,000 in new projects, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

Institution	Project Title
Project	Amount
Code	
Christopher Newport	
University	Residence Hall
16418	\$951,000
George Mason University	Renovate Commonwealth and
	Dominion Housing Facilities
16690	3,100,000

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	George Mason University	Renovate Student Housing,
		President's Park I
17050	3,340,000	
	George Mason University	Construct Student
		Housing VII
17056	63,778,000	
	James Madison	Renovate Bluestone Residence
	University	Hall, Phase 3
16687	6,810,000	
	Longwood University	Renovate Housing Facilities
16874	10,500,000	
	Mary Washington College	Seacobeck Dining Hall
16096	5,000,000	
	Mary Washington College	Acquisition of Student
		Residence Facilities
16686	10,000,000	
	Old Dominion University	Renovate Housing, Phase I
16688	5,100,000	
	The College Of William	

Uncodified Acts of Assembly - 2004

And Mary In Virginia 16340	6,105,000	Renovate Dormitories
The College Of William		Renovate Commons
And Mary In Virginia 16647	11,493,000	Dining Hall
University Of Virginia 16650	22,500,000	Construct Alderman  Road Housing
University of Virginia		Construct Observatory  Hill Dining Facility
16094	10,000,000	
University of Virginia's		
College at Wise 16151	6,400,000	Construct Residence Hall
Virginia Military Institute 16684	10,447,000	Renovate and Enlarge  Crozet Hall and Parking
Virginia Commonwealth University 16338	6,365,000	Gladding Residence  Hall Addition
Virginia Commonwealth		

Uncodified Acts of Assembly - 2004

University	MCV Campus Housing
16402 14,506,000	
Virginia Commonwealth	
University	Academic Campus Housing
16405 15,346,000	
Virginia Polytechnic	
Institute and State	Improve Major Residence and
University	Dining Hall
17008 4,000,000	
Virginia Polytechnic	
Institute and	Major Repairs
State University	Dorm & Dining
14303 1,078,900	
Virginia Polytechnic	
Institute and State	
University	Parking Auxiliary Projects
14815 4,942,700	
Virginia Polytechnic	
Institute and State	Renovate Dietrick Servery,
University	Phase II
16681 5,000,000	

## Uncodified Acts of Assembly - 2004

Virginia Polytechnic		
Institute and State		Construct New
University		Residence Hall
16682	15,000,000	
Virginia Polytechnic		
Institute and State		Construct Dining and
University		Student Union Facility
16683	6,250,000	
Virginia State		Construct Student Village
University		240 Bed Residence Hall
16685	7,304,000	
Total		
	\$255,316,600	

### **§ 3. Application of Proceeds**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the*

*consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds, Series....".*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer*

*before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by*

*the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest*

*on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That Chapters 808 and 815 of the Acts of Assembly of 2002 and Chapters 4 and 157 of the Acts of Assembly of 2003 are repealed; however, such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such acts.

## **Chapter 824 Statewide Agencies Radio System (STARS); Secretary of Public Safety to implement.**

An Act to grant the Secretary of Public Safety the authority to implement the Statewide Agencies Radio System.

[\[S 608\]](#)

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Secretary of Public Safety is hereby granted the authority to finalize and*

*implement the Statewide Agencies Radio System (STARS) contract, consistent with provisions of Item 457 B, of the general appropriation act for the Commonwealth's fiscal year beginning July 1, 2003, as passed by the 2004 Session of the General Assembly, and to manage the STARS Program following implementation, including but not limited to the following:*

- 1. Approve any change orders as may be necessary or appropriate, within the limits of appropriated and authorized funding, subject to any requirements contained in the contract to obtain additional gubernatorial or General Assembly approvals.*
- 2. Establish and maintain STARS as a program and staff within the Department of State Police.*
- 3. Acquire any and all necessary sites for the implementation of STARS by negotiated acquisition or, if deemed necessary by the Secretary of Public Safety for the efficient and cost-effective implementation of the STARS contract, the exercise of eminent domain authority, including the authority granted in Chapter 3 (§ [25.1-300](#) et seq.) of Title 25.1 of the Code of Virginia to use certificates of take or certificates of deposit to acquire such property.*
- 4. Maintain coordination with all user agencies by utilizing and maintaining the Management Group and User Agencies Requirements Committee created by Executive Order 28(01), or such other mechanisms as may be approved in writing by the Governor, provided, however, that final decisions regarding the management of the STARS Program shall be the responsibility of the Secretary of Public Safety or his designee, as may be authorized herein.*

*§ 2. The Secretary of Public Safety or his designee shall consult with the Virginia Information Technologies Agency (VITA) prior to implementing any significant data transport related network upgrade or modification.*

*§ 3. The Secretary of Public Safety, as he deems necessary or appropriate, may delegate such authority as is granted herein to any member of his staff or to the Superintendent of State Police. Any delegations are subject to the continuing authority, accountability and responsibility of the Secretary of Public Safety.*

## **Chapter 897 Capitol Square Preservation Act of 2003; changes in provisions.**

An Act to amend and reenact the first and second enactments of Chapter 955 of the Acts of Assembly of 2003, and to amend Chapter 955 of the Acts of Assembly of 2003 by

adding a third and fourth enactment, relating to the Capitol Square Preservation Act of 2003.

[\[H 105\]](#)

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That the first and second enactments of Chapter 955 of the Acts of Assembly of 2003 are amended and reenacted, and that Chapter 955 of the Acts of Assembly of 2003 is amended by adding a third and fourth enactment as follows:

1.

§ 1. Title. This act shall be known and may be cited as the "Capitol Square Preservation Act of 2003."

§ 2. Pursuant to § [2.2-2264](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to undertake the construction and improvement of the following projects including, without limitation, constructing, improving, maintaining, and renovating buildings, facilities, improvements, and land therefor; and to exercise any and all powers granted to it by law in connection therewith, including the power to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal amount not to exceed ~~\$118,570,000~~ *\$130,978,000* plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during construction or renovation and for one year after completion thereof, and other financing expenses.

Agency	Project Description
Amount	
Dept. of General Services	Renovate Capitol Building
<del>\$54,492,000</del>	
<i>\$63,732,000</i>	
	Construct <del>new northern</del>
	<del>entrance</del> <i>southern extension</i>

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	for Capitol Building	
<del>\$13,528,000</del>		
\$19,319,000		
	Renovate Old State	
	Library to accommodate	
	temporary closure of the	
	Capitol Building	\$
3,848,000		
Subtotal		
<del>\$71,868,000</del>		
\$86,899,000		
Dept. of General Services	Construct and improve	
	Capitol Square utilities	
\$2,036,000		
Dept. of General Services	Renovate and expand	
	Old Finance Building	
<del>\$31,520,000</del>		
\$26,284,000		
Dept. of General Services	Renovate Washington	

Building

~~\$13,146,000~~

*\$15,759,000*

GRAND TOTAL

~~\$118,570,000~~

*\$130,978,000*

§ 3. The Virginia Public Building Authority is also authorized to exercise any and all powers granted to it by law in connection therewith, including the power to finance the cost thereof by the issuance of revenue bonds not to exceed the principal amount set forth plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to or during improvement and for up to one year after completion of the improvement, and other financing expenses.

§ 4. Notwithstanding the foregoing, the Virginia Public Building Authority shall not take any action in regard to the renovations of the Old Finance Building and Washington Building projects included in § 2, including the issuance of bonds, that will financially obligate the Commonwealth except as provided in this section.

The Governor shall prepare and release a plan to the Chairmen of the Senate Finance Committee and House Appropriations Committee on or before December 1, 2003, providing alternatives to the issuance of bonds for completing the renovations included in § 2 for the Old Finance Building and Washington Building projects. Such alternatives shall include detailed information on the feasibility of entering into public-private partnerships for completing such renovations, including, but not limited to, entering into a comprehensive agreement with a private entity for the completion of such renovations pursuant to The Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq. of the Code of Virginia). In addition, the plan shall identify the proposed tenants of each of the Old Finance and Washington Buildings, respectively, who will be occupying office space in such buildings immediately after completion of such renovations. In no case shall any action be taken that will financially obligate the Commonwealth, except costs incidental to the preparation and release of such plan, in regard

to the renovations of the Old Finance Building and Washington Building projects included in § 2 prior to March 31, 2004.

The Department of General Services shall provide written notice to the Virginia Public Building Authority no sooner than March 31, 2004, identifying the renovations, and the expected costs thereof, for the renovations included in § 2 for the Old Finance Building and Washington Building projects that will be undertaken and completed by entities other than the Authority (in accordance with the Governor's plan provided herein), including, but not limited to, renovations to be completed pursuant to a comprehensive agreement with a private entity under the provisions of The Public-Private Education Facilities and Infrastructure Act of 2002. Upon receipt of such notice, the Virginia Public Building Authority shall undertake and complete, and may issue bonds to finance, the costs of all other renovations for the Old Finance Building and Washington Building projects included in § 2.

~~The provisions of this act authorizing the Virginia Public Building Authority to issue bonds for the renovations for the Old Finance Building and Washington Building projects included in § 2 are conditioned upon the Governor preparing and releasing the plan described in this section by December 1, 2003, to the Chairmen of the Senate Finance Committee and House Appropriations Committee. If such plan is not released to the Chairmen by such date, the Virginia Public Building Authority shall not issue any bonds under this act for the renovations for the Old Finance Building and Washington Building projects included in § 2.~~

**2. That the Joint Rules Committee with the assistance of the Secretary of Administration shall prepare and release a plan to the Chairmen of the Senate Finance Committee and House Appropriations Committee on or before December 1, 2003, to fund the acquisition of fixtures and furnishings**

***, historic finishes, landscaping, art and artifact restoration, educational exhibits, and related purposes***

**for the Capitol Building renovation project (included in the Capitol Square Preservation Act of 2003) through private donations or other means of fundraising. The estimated cost of these fixtures and furnishings**

***, historic finishes, landscaping, art and artifact restoration, educational exhibits, and related purposes***

**is**

~~**\$5,972,000**~~

***\$13,825,000***

. Any funds raised from private donations or other fundraising for purposes of acquiring fixtures and furnishings  
*, historic finishes, landscaping, art and artifact restoration, educational exhibits, and related purposes*

for the Capitol Building renovation project may be used for such purposes by the Department of General Services after December 31, 2003.

3. The Governor is authorized to implement the plan presented to the Chairmen of the Senate Finance and Rules Committees and House Appropriations and Rules Committees set forth in § 4 of the first enactment of this act providing for the issuance of bonds for completing the renovations of the Old Finance Building and Washington Building projects, including entering into a comprehensive agreement with a private entity for the completion of such renovations pursuant to The Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) of the Code of Virginia.

4. The Governor shall prepare and release a plan to the Chairmen of the Senate Finance and Rules Committees and House Appropriations and Rules Committees on or before December 1, 2004, for the demolition of derelict buildings and the development of office and parking facilities on certain state-owned property bounded by 8th, 9th, and Broad Streets in the City of Richmond, which shall provide detailed information on the feasibility of entering into public-private partnerships including a comprehensive agreement with a private entity, for the completion of such project pursuant to The Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) of the Code of Virginia.

## **Chapter 825 Occonechee State Park; Dept. of Conserv. & Rec. to amend lease w/Sec. of Army in Mecklenburg.**

An Act to amend and reenact § 6 of Chapter 809 of the Acts of Assembly of 2002, relating to authorizing the Department of Conservation and Recreation to amend a lease by and between the Secretary of the Army, Lessor, and the Commonwealth of Virginia, Department of Conservation and Recreation, Lessee, for Occonechee State Park in Mecklenburg County.

[\[S 614\]](#)

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 6 of Chapter 809 of the Acts of Assembly of 2002 is amended as follows:

§ 6. The provisions of this act shall expire on July 1, ~~2004~~2006, unless the amendment has been incorporated into the lease agreement by July 1, ~~2004~~2006.

## **Chapter 861 Correctional facilities; utilization of private contracts.**

An Act relating to state correctional facilities; private contracts.

[\[H 1042\]](#)

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§1. That on or after July 1, 2004, no new prison financing, site selection, acquisition, construction or maintenance, leasing, management or operation of any new prison facility shall be commenced unless based upon written analysis of such components, demonstrating a benefit to the Department of Corrections, including an analysis of the costs and benefits of utilizing the Corrections Private Management Act (§ [53.1-261](#) et seq.) or the Public-Private Education Facilities and Infrastructure Act (§ [56-575.1](#) et seq.) of the Code of Virginia, or other means as appropriate.*

## **Chapter 910 Assisted living facilities; exception to regula. requirement for those w/Alzheimer's care units.**

An Act to authorize an exception to regulations for certain assisted living facilities.

[\[H 635\]](#)

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain exception to regulations for assisted living facilities authorized.*

*Notwithstanding any provision of §§ [63.2-1732](#) and [63.2-1803](#) of the Code of Virginia and of 22 VAC 40-71-700 to the contrary, the provisions of 22 VAC 40-71-700 B 1 and C 14 shall not be applicable to any assisted living facility licensed by the Department of Social Services when such facility (i) offers a safe, secure environment in a freestanding self-contained unit for residents who have been assessed by an independent clinical*

*psychologist or a licensed physician as having a serious cognitive impairment due to a primary diagnosis of dementia; (ii) has an individual facility capacity that does not exceed five residents; (iii) is located in a converted single-family dwelling located in an established residential neighborhood in any county having a population of no less than 259,000 and no greater than 263,000; (iv) has at least one direct care staff member in such facility at all times that residents are present who shall be responsible for the care and supervision of the residents; (v) has established written emergency procedures that provide for prompt assistance to the direct caregiver by other staff members who may be located at locations other than the facility where the assistance is requested; (vi) is operated by a Virginia limited liability company that operates at least three such facilities with a combined minimum of 15 residents; and (vii) has provided written notice to the resident and his legally authorized representative at the time of admission that one direct care staff member rather than two are present at all times.*

## **Chapter 969 Stuart Finley Bridge; desig. as bridge on Potterton Drive over Lake Barcroft in Fairfax County.**

An Act to designate a certain bridge "The Stuart Finley Bridge."

[\[H 1474\]](#)

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The bridge on Potterton Drive, State Route 2760, over Lake Barcroft in Fairfax County is hereby designated "The Stuart Finley Bridge" after the late Stuart Finley, long-time Executive Director of the Lake Barcroft Watershed Improvement District. The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation applied to this bridge.*

## **Chapter 1020 Real property owned by State; cert. restricted use may be satisfied if used for tourism in Va. Bch.**

An Act to clarify municipal or recreational purpose restrictions on real property acquired by the Commonwealth or any locality.

[\[S 661\]](#)

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any municipal or recreational purpose restriction placed on the real property, located wholly or in part in the City of Virginia Beach, and acquired by the Commonwealth or from the Commonwealth by such locality on or after July 1, 1993, shall be satisfied if the property is used for tourism purposes that benefit the locality's tourism industry. For purposes of this act, "the property" refers to an approximately 18 acre parcel that is a portion of property known as Tract 4 and that the Commonwealth was directed to convey to the City pursuant to Chapter 690 of the Acts of Assembly of 1994.*

### **Chapter 1017 Professional licensees; exp. of contin. educ. requir. for reg. who are on active military duty.**

An Act to amend and reenact the third enactment of Chapter 998 of the Acts of Assembly of 2003, relating to the Department of Professional and Occupational Regulation and the Department of Health Professions; continuing education for certain professional licensees.

[\[S 573\]](#)

Approved April 21, 2004

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 998 of the Acts of Assembly of 2003 is amended and reenacted as follows:

**3. That notwithstanding any other provision of law, ~~the Department of Professional and Occupational Regulation, the Department of Health Professions, the Supreme Court of Virginia, and local governing bodies shall extend the time allowed to comply with certification or licensure requirements, including those pertaining to the application for or renewal of any license, certificate, registration or authority, until one year after the person's release from active military duty, if~~ the person is on active military duty during 2003 and ~~such extension would not constitute a danger to the public health, safety or welfare.~~ The provisions of this section shall expire on July 1, 2004**

no license, permit, certificate, or other document, however styled or denominated, that is related to the practice of any business, profession, or calling and issued under Title 54.1 to any citizen of the Commonwealth shall be held to have expired, and no requirements pertaining to the renewal or maintenance of such license, permit, certificate, or other document shall have to be met, during the period of such person's service outside of the United States in the armed services of the United States and 60 days thereafter. No extension granted under this section, however, shall exceed five years from the date of expiration of the document.

For the purposes of this enactment "service in the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

# Uncodified Acts of Assembly - 2005

## Chapter 7 Opiate addiction; standards for issuance of new licenses to providers of treatment.

An Act to require regulations for the evaluation of the need and appropriateness for certain providers; moratorium.

[\[S 753\]](#)

Approved February 25, 2005

Whereas, a number of new clinics for the treatment of persons with opiate addiction have been proposed or licensed in the Commonwealth in the last several years; and  
Whereas, most clinics treating persons with opiate addiction dispense Methadone, a replacement drug that is taken for years by persons with opiate addiction, in many cases, for life; and

Whereas, although Methadone neutralizes withdrawal symptoms and stabilizes persons with opiate addiction, Methadone does not cure the addiction; and

Whereas, prior to 2000, opiate dependence treatment was only available through treatment clinics authorized by federal law and regulation to dispense Methadone or other Schedule II drugs for such treatment; and

Whereas, in recent years several developments at the federal level may increase the availability of treatment for opiate addiction, i.e., the Food & Drug Administration approved several new drugs for opiate addiction treatment (Subutex and Suboxone) and pursuant to the federal Drug Addiction Treatment Act (DATA) of 2000, these drugs can be prescribed through physicians' offices; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Standards for the evaluation of the need and appropriateness for certain new licenses; moratorium on licensure of providers until standards in place.*

*A. In addition to the existing regulations, the State Mental Health, Mental Retardation and Substance Abuse Services Board shall establish, pursuant to the Administrative Process Act, standards to evaluate the need and appropriateness for the issuance of new licenses to providers of treatment for persons with opiate addiction through the use of*

*Methadone or any other controlled substance approved by the Food & Drug Administration for the use in opiate treatment. The standards shall include criteria for (i) determination of need for new clinics, taking into consideration (a) the number of persons residing in the service area who are known or reasonably estimated to be in need of such treatment; (b) the availability of relevant staff in the service area; and (c) the building or space proposed to be the site of the new clinic and its suitability; (ii) the availability of counseling or other services necessary for effective treatment of persons with opiate addiction; (iii) existing access to such treatment, including through physicians' offices; (iv) the reasonable parameters, both geographic and demographic, of a clinic's service area; and (v) the proposed clinic's plan of operation, including security and accountability measures.*

*B. Notwithstanding the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services' discretion to grant licenses to providers of treatment for persons with opiate addiction through the use of the controlled substance, methadone, or other opioid replacements, a moratorium on the issuance of new licenses for such providers shall be in effect from the enactment date of this act until the date on which the regulations required by subsection A become effective.*

2. That the State Mental Health, Mental Retardation and Substance Abuse Services Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

3. That an emergency exists and this act is in effect from its passage.

## **Chapter 29 Income tax, state; charitable contributions for relief of tsunami victims.**

An Act to allow taxpayers to include contributions for the relief of tsunami victims made in January 2005 as a deduction for taxable year 2004 income taxes.

[\[S 897\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. For purposes of Virginia income taxes, the Commonwealth shall allow taxpayers to treat any contribution described in § 2 made in January 2005 as if such contribution was*

*made on December 31, 2004, and not in January 2005.*

*§ 2. A contribution is described in this section if such contribution is a cash contribution made for the relief of victims in areas affected by the December 26, 2004, Indian Ocean tsunami for which a charitable contribution deduction is allowable under § 170 of the Internal Revenue Code of 1986.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 32 Higher Educational Institutions Bond Act of 2005; created.**

An Act to authorize the issuance of bonds, in an amount up to \$10,563,000, plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 939\]](#)

Approved March 20, 2005

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same

become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2005."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ..." in an aggregate principal amount not exceeding \$10,563,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>
<i>Amount</i>		
<i>George Mason University</i>	<i>Renovate Commonwealth and Dominion Housing</i>	<i>16690</i>
<i>\$1,925,000</i>		
<i>University of Virginia's 16963</i>	<i>New Residence Hall \$7,185,000</i>	
<i>College at Wise</i>		

Virginia Military	Renovate and Enlarge	
Institute	Crozet Hall and Parking	16684
\$1,453,000		
Total		-
\$10,563,000		

*§ 3. Application of Proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30*

*years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ...."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and*

*sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the*

*Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (b) or (c) of the Constitution of Virginia, as the case may be.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or*

*applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 83 Higher Educational Institutions Bond Act of 2005; created.**

An Act to authorize the issuance of bonds, in an amount up to \$10,563,000, plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 2047\]](#)

Approved March 20, 2005

Whereas, Article X, Section 9 (c) of the Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:



Institute  
\$ 1,453,000

Crozet Hall and Parking 16684

Total

\$ 10,563,000

*§ 3. Application of Proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ...."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the*

*bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued*

*under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (b) or (c) of the Constitution of Virginia, as the case may be.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or*

*applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 134 Indigent care; physicians providing services without charge immune from liability.**

An Act to require the Board of Medicine to inform its licensees about immunity for services to patients of free clinics.

[\[H 1556\]](#)

Approved March 20, 2005

Whereas, the Board of Medicine is a valuable source of information regarding aspects of medical practice in the Commonwealth of Virginia; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notification to licensees of the Board of Medicine about immunity for health care services to patients of free clinics.*

*The Board of Medicine shall provide to its licensees a full description of the protection from civil liability established pursuant to § [54.1-106](#). Such description shall explain the coverage available under the Division of Risk Management pursuant to subsection B of § [54.1-106](#).*

## **Chapter 279 Roanoke Regional Airport Commission; allows Commission to change name.**

An Act to amend and reenact §§ 8, 9, 10, 14, and 24, as amended, of Chapter 140 of the Acts of Assembly of 1986, relating to the Roanoke Regional Airport Commission.

[\[H 1597\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 8, 9, 10, 14, and 24, as amended, of Chapter 140 of the Acts of Assembly of 1986 are amended and reenacted as follows:

§ 8. Name of airport.-The name of the airport operated by the Commission within the boundaries of the City of Roanoke and Roanoke County shall be "Roanoke Regional Airport, Woodrum Field:" *or such other name as the Commission shall adopt, provided that the words "Woodrum Field" are part of such other name.*

§ 9. Rules and regulations.-The Commission shall have the power to adopt, amend, and repeal rules and regulations for the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Commission shall by unanimous vote of all Commissioners present determine that an emergency exists, the Commission shall, prior to the adoption of any rule or regulation or alteration, amendment or modification thereof:

- a. Make such rule, regulation, alteration, amendment or modification in convenient form available for public inspection in the office of the Commission for at least five days; and
- b. Post in a public place a notice declaring the Commission's intention to consider adopting such rule, regulation, alteration, amendment or modification and informing the public that the Commission will at a public meeting consider the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least five days from the first day of the posting of the notice thereof.

The Commission's rules and regulations shall be available for public inspection in the Commission's principal office.

The Commission's rules and regulations relating to:

- a. Traffic, including but not limited to motor vehicle speed limits and the location of and payment of public parking;
- b. Access to Commission facilities, including but not limited to solicitation, handbilling, and picketing; and
- c. Aircraft operation and maintenance; shall have the force and effect of law, as shall any other rule or regulation of the Commission which shall contain a determination by the Commission that it is necessary to accord the same force and effect of law in the interest of the public safety; ~~provided, however, that with respect to motor vehicle traffic rules and regulations, the Commission shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which such rules or regulations are to be enforced.~~ The violation of any rule or regulation of the Commission relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the participating political subdivision in which such

violation occurred. All other violations of the Commission's rules and regulations having the force and effect of law shall be punishable as misdemeanors.

All ordinances, rules and regulations duly adopted for the regulation, administration and operation of Roanoke Regional Airport, Woodrum Field, in force at the effective date of this Act shall remain in full force and effect insofar as they or any part thereof are not inconsistent with the provisions of this Act until amended or repealed in accordance with this Act.

§ 10. Police powers.-The Commission's employees meeting the minimum *registration* requirements of the *Department of Criminal Justice Officers Training Standards Commission* shall be given special police power. *Services may be appointed as special conservators of the peace* by the circuit court of any participating political subdivision. The authority conferred upon such special ~~police~~ *conservators* shall be exercised only upon the Commission's facilities located within such participating political subdivision, and shall be in all terms consistent with the requirements of Chapter ~~3~~ 2 of Title ~~15.1~~ 19.2 of the Code of Virginia.

Such special ~~police~~ *conservators of the peace* shall have all powers vested in ~~police~~ officers under Chapter ~~3~~ 2 of Title ~~15.1~~ 19.2 of the Code of Virginia and shall be responsible upon the Commission's facilities for enforcing *authorized to enforce* the Commission's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of the United States of America and agencies and instrumentalities thereof and this Commonwealth and political subdivisions, agencies and instrumentalities thereof *upon the Commission's facilities, subject to and limited by the Commission's applicable policies, procedures, and regulations.*

Such special ~~police~~ *conservators of the peace* may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation of the Commission or other applicable statute, ordinance, rule or regulation.

For the purpose of enforcing such statutes, ordinances, rules and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the participating political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violating of any such statutes, ordinances, rules and regulations.

*The Commission shall have the authority to seek appointment of such other law-enforcement officers as shall be permitted by applicable law.*

§ 14. Deposit and investment of funds.-All moneys received pursuant to the authority of this Act, whether as proceeds from the sale of bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this Act. All

moneys of the Commission shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations ~~having their principal offices in the Commonwealth~~. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act.

Funds of the Commission not needed for immediate use or disbursement may, subject to the provisions of any contract between the Commission and the holders of its bonds, be invested in securities which are considered lawful investments for fiduciaries.

§ 24. Fiscal year; Commission budget.

A. The fiscal year of the Commission shall begin on July 1 and end on June 30.

B. The Commission shall annually, prior to March ~~16~~ 31, prepare and submit to the participating political subdivisions (i) a proposed operating budget showing its estimated revenues and expenses on an accrual basis for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion of the deficit proposed to be borne by each participating political subdivision, and (ii) a proposed capital budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000 (or such higher amount as the Commission and the participating political subdivisions may determine) and having an estimated useful life of ~~twenty~~ 20 years or more and the source of funds for such expenditures, including any amount requested from the participating political subdivisions. Depreciation shall be excluded from the Commission's operating budget with respect to assets purchased by the Commission with funds appropriated to it for such purpose by a participating political subdivision and, for this determination, it shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable Commission budget to the extent such purchase price is included in the approved budget. Assets purchased by the Commission with bond proceeds shall be depreciated over the useful life of such assets purchased with bond proceeds.

C. If the governing body of a participating political subdivision shall approve the Commission's proposed operating budget, it shall appropriate to the Commission such political subdivision's portion of such deficit. If during any fiscal year the Commission shall receive revenues in excess of those estimated by the Commission in its approved budget for such year, the budgeted deficit for such fiscal year shall automatically be reduced and, except as herein provided, the appropriation of each participating political subdivision shall be proportionately reduced. Notwithstanding the foregoing, with the consent of the governing bodies of the participating subdivisions, all or a portion of such

appropriations may be maintained so as to enable the Commission to expend such excess revenues for its proper purposes.

D. If the governing body of a participating political subdivision shall approve the Commission's proposed capital budget, it shall appropriate to the Commission such participating political subdivision's portion of the expenditures set forth therein. Any such appropriation shall automatically be reduced by the participating political subdivision's proportionate share of any grant funds received by the Commission for the purchase of assets included in the Commission's approved capital budget in excess of the grant funds shown in such capital budget as a source of funds for such expenditure, unless prohibited by the basic provider of the grant funds.

E. The Commission may expend any and all moneys within its control without obtaining the approval of the participating political subdivisions, but, except as otherwise provided in this Act with respect to contracts and agreements between the Commission and any political subdivision, the Commission shall not commit any participating political subdivision in an amount in excess of that appropriated to the Commission by the governing body of such political subdivision.

F. If at any time during any fiscal year it shall appear that the cash disbursements of the Commission will exceed its cash receipts for such fiscal year, including amounts appropriated to it by the participating political subdivisions, the Commission may request supplemental appropriations from the participating political subdivisions and any other political subdivision.

## **Chapter 11 No Child Left Behind Act; Board of Education to seek waiver.**

An Act to direct the Board of Education to take certain actions regarding the Commonwealth's participation in the federal No Child Left Behind Act.

[\[S 1136\]](#)

Approved March 16, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, pursuant to § 9401 of the federal No Child Left Behind Act (the Act), the Board of Education shall seek waivers from compliance with those provisions of the Act*

*that are (i) in conflict with Title IX, Section 9527 (a), which prohibits federal authorities from mandating, directing, or controlling state or local allocation of resources and from mandating state or local expenditure of funds or incursion of any costs not paid for under the Act; or (ii) duplicative of the Commonwealth's existing educational accountability system as set forth in the Standards of Quality, Standards of Learning, and Standards of Accreditation; or (iii) lacking in effectiveness, including, but not necessarily limited to, those addressing (a) testing of students with disabilities or limited English proficiency; (b) additional or excessive testing; (c) exclusion of passing scores on expedited retakes of Standards of Learning assessments from calculations of adequate yearly progress; (d) measurement of adequate yearly progress based on, among other things, individual grade levels rather than longitudinal data and individual subgroup failures; (e) the over-inclusion of certain students in several subgroups; and (f) components of the Commonwealth's educational accountability system and teacher licensure and employment requirements that, in the discretion of the Board, already substantially comply with the spirit and intent of the federal act.*

2. That the Board of Education shall examine the fiscal and other implications for the Commonwealth and its local governments in the event that Virginia continues its compliance with, or withdraws from participation in, the federal No Child Left Behind Act. The Board shall convey its findings from such examination to the House Committees on Education and Appropriations and the Senate Committees on Education and Health and Finance no later than October 1, 2005.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 13 No Child Left Behind Act; Board of Education to seek waiver.**

An Act to direct the Board of Education to take certain actions regarding the Commonwealth's participation in the federal No Child Left Behind Act.

[\[H 2602\]](#)

Approved March 16, 2005

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That, pursuant to § 9401 of the federal No Child Left Behind Act (the Act), the

*Board of Education shall seek waivers from compliance with those provisions of the Act that are (i) in conflict with Title IX, Section 9527 (a), which prohibits federal authorities from mandating, directing, or controlling state or local allocation of resources and from mandating state or local expenditure of funds or incursion of any costs not paid for under the Act; or (ii) duplicative of the Commonwealth's existing educational accountability system as set forth in the Standards of Quality, Standards of Learning, and Standards of Accreditation; or (iii) lacking in effectiveness, including, but not necessarily limited to, those addressing (a) testing of students with disabilities or limited English proficiency; (b) additional or excessive testing; (c) exclusion of passing scores on expedited retakes of Standards of Learning assessments from calculations of adequate yearly progress; (d) measurement of adequate yearly progress based on, among other things, individual grade levels rather than longitudinal data and individual subgroup failures; (e) the over-inclusion of certain students in several subgroups; and (f) components of the Commonwealth's educational accountability system and teacher licensure and employment requirements that, in the discretion of the Board, already substantially comply with the spirit and intent of the federal act.*

2. That the Board of Education shall examine the fiscal and other implications for the Commonwealth and its local governments in the event that Virginia continues its compliance with, or withdraws from participation in, the federal No Child Left Behind Act. The Board shall convey its findings from such examination to the House Committees on Education and Appropriations and the Senate Committees on Education and Health and Finance no later than October 1, 2005.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 155 Pregnant inmates; prohibits execution.**

An Act to require the Department of Corrections to promulgate regulations setting forth procedures to assure that no person sentenced to death shall be put to death while she is pregnant.

[\[H 1812\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Department of Corrections shall promulgate regulations setting forth

*procedures to assure that no person sentenced to death shall be put to death while she is pregnant.*

## **Chapter 159 Lippa, Anthony A., Jr.; awarded handgun for noteworthy service to Capitol Police.**

An Act to award a service pistol and shotgun to First Sergeant Anthony A. Lippa, Junior.

[\[H 1897\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That First Sergeant Anthony A. Lippa, Junior, be, and hereby is, vested with title to, and authorized to possess and retain as his own, his service pistol for payment of \$1.05 and shotgun for payment of \$150, which he used as a member of the Virginia Department of State Police. This transfer is made as a visible and express token of the appreciation of the General Assembly for the professionalism, devotion, and dedication of First Sergeant Anthony A. Lippa, Junior, in his 24 years and three months' service.*

## **Chapter 17 University of Virginia; extends sunset provision for electronic meetings of Board of Visitors.**

An Act to amend and reenact the second enactment of Chapter 777 of the Acts of Assembly of 1998, as amended by Chapter 909 of the Acts of Assembly of 2000, Chapter 297 of the Acts of Assembly of 2002, and Chapter 475 of the Acts of Assembly of 2003, relating to electronic meetings of the Board of Visitors of the University of Virginia.

[\[S 752\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 777 of the Acts of Assembly of 1998, as amended by Chapter 909 of the Acts of Assembly of 2000, Chapter 297 of the Acts of

Assembly of 2002, and Chapter 475 of the Acts of Assembly of 2003 is amended and reenacted as follows:

2. That the provisions of this act shall expire on July 1, ~~2005~~ 2007. From July 1, 1998, to July 1, ~~2005~~2007, the Board of Visitors of the University of Virginia shall record the date and name of each board or committee meeting held pursuant to this chapter and, for each meeting, record the name of each board member who participates by video or telephone. The Board of Visitors also shall record any complaints about telephonic or video participation at meetings expressed by board members, members of the public, or members of the media. No later than January 1, ~~2005~~ 2007, the Board shall provide the Secretary of Education, *the Virginia Freedom of Information Advisory Council*, and the General Assembly a written report containing the information required to be recorded as well as a narrative summary of the positive and negative experiences of employing telephonic and video meetings.

## **Chapter 24 Prescription Drug Payment Assistance Program; created, report.**

An Act to implement the federal Medicare Part D benefit and to convene a task force on prescription drug assistance for low-income Virginians.

[\[S 841\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Implementation of the Medicare Part D benefit.*

*A. The Board of Medical Assistance Services shall promulgate necessary regulations to implement the provisions of the Medicare Part D prescription drug benefit that becomes effective January 1, 2006.*

*B. Upon the implementation of the Medicare Part D program, the Department of Medical Assistance Services shall convene a task force of public and private stakeholders to assist the Department in evaluating the Medicare Part D benefit and to make recommendations for enhancing, coordinating, and integrating the existing pharmacy assistance programs for low-income Virginians and the Medicare Part D benefit. The*

*Department shall report its findings and recommendations to the Governor and the General Assembly no later than November 1, 2006.*

2. That the Board of Medical Assistance Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 53 Child Day-Care Council; parental notification when a child is injured.**

An Act to require the Board of Social Services and the Child Day-Care Council to review regulations concerning parental notification of injuries to children at child day programs.

[\[H 1550\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Child day programs; parental notification of child's injury.*

*The Board of Social Services and the Child Day-Care Council shall, by July 1, 2006, review all regulations under their purview regarding child day programs to determine whether they adequately provide for the notification of parents, legal guardians, or other persons duly authorized to pick up a child, in the event a child sustains a significant physical injury while under a program's care. If the Board or Council determines that the regulations do not provide adequate notification provisions, then the Board, or Council in the case of child day centers, shall adopt regulations that require each program to notify a child's parent, legal guardian, or other person duly authorized to pick up a child whenever any owner, operator, manager, or employee thereof has actual knowledge of a significant physical injury sustained by a child while in attendance. The regulations shall establish notification procedures, including the time and manner in which notification shall be made and the nature and scope of physical injuries that shall require notification.*

## **Chapter 177 Hospitals and nursing homes; Bd. of Health must include min. standards for design and construction.**

An Act relating to hospital and nursing home licensure; Board of Health regulations on design and construction.

[\[H 2366\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain design and construction standards to be incorporated in hospital and nursing home licensure regulations.*

*Notwithstanding any law or regulation to the contrary, the Board of Health shall promulgate regulations pursuant to § [32.1-127](#) of the Code of Virginia for the licensure of hospitals and nursing homes that shall include minimum standards for the design and construction of hospitals, nursing homes, and certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health.*

2. That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 56 Insurance Plan for Seniors; created.**

An Act to implement the federal Medicare Part D benefit and to convene a task force on prescription drug assistance for low-income Virginians.

[\[H 1624\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Implementation of the Medicare Part D benefit.*

*A. The Board of Medical Assistance Services shall promulgate necessary regulations to implement the provisions of the Medicare Part D prescription drug benefit that becomes effective January 1, 2006.*

*B. Upon the implementation of the Medicare Part D program, the Department of Medical Assistance Services shall convene a task force of public and private stakeholders to assist the Department in evaluating the Medicare Part D benefit and to make recommendations for enhancing, coordinating, and integrating the existing pharmacy assistance programs for low-income Virginians and the Medicare Part D benefit. The Department shall report its findings and recommendations to the Governor and the General Assembly no later than November 1, 2006.*

2. That the Board of Medical Assistance Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 64 Methadone clinics; prohibited in certain counties.**

An Act to require regulations for the evaluation of the need and appropriateness for certain providers; moratorium.

[\[H 1778\]](#)

Approved March 20, 2005

Whereas, a number of new clinics for the treatment of persons with opiate addiction have been proposed or licensed in the Commonwealth in the last several years; and

Whereas, most clinics treating persons with opiate addiction dispense Methadone, a replacement drug that is taken for years by persons with opiate addiction, in many cases, for life; and

Whereas, although Methadone neutralizes withdrawal symptoms and stabilizes persons with opiate addiction, Methadone does not cure the addiction; and

Whereas, prior to 2000, opiate dependence treatment was only available through treatment clinics authorized by federal law and regulation to dispense Methadone or other Schedule II drugs for such treatment; and

Whereas, in recent years several developments at the federal level may increase the availability of treatment for opiate addiction, i.e., the Food & Drug Administration approved several new drugs for opiate addiction treatment (Subutex and Suboxone) and pursuant to the federal Drug Addiction Treatment Act (DATA) of 2000, these drugs can be prescribed through physicians' offices; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Standards for the evaluation of the need and appropriateness for certain new licenses; moratorium on licensure of providers until standards in place.*

*A. In addition to the existing regulations, the State Mental Health, Mental Retardation and Substance Abuse Services Board shall establish, pursuant to the Administrative Process Act, standards to evaluate the need and appropriateness for the issuance of new licenses to providers of treatment for persons with opiate addiction through the use of Methadone or any other controlled substance approved by the Food & Drug Administration for the use in opiate treatment. The standards shall include criteria for (i) determination of need for new clinics, taking into consideration (a) the number of persons residing in the service area who are known or reasonably estimated to be in need of such treatment; (b) the availability of relevant staff in the service area; and (c) the building or space proposed to be the site of the new clinic and its suitability; (ii) the availability of counseling or other services necessary for effective treatment of persons with opiate addiction; (iii) existing access to such treatment, including through physicians' offices; (iv) the reasonable parameters, both geographic and demographic, of a clinic's service area; and (v) the proposed clinic's plan of operation, including security and accountability measures.*

*B. Notwithstanding the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services' discretion to grant licenses to providers of treatment for persons with opiate addiction through the use of the controlled substance, methadone, or other opioid replacements, a moratorium on the issuance of new licenses for such providers shall be in effect from the enactment date of this act until the date on which the regulations required by subsection A become effective.*

2. That the State Mental Health, Mental Retardation and Substance Abuse Services Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 199 Clinical drug trials; publication of certain data.**

An Act to require the publication of certain data on clinical drug trials.

[\[H 2831\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Publication of clinical drug trial results.*

*The Secretary of Health and Human Resources shall make available on the appropriate state health-related websites information directing citizens of the Commonwealth to publicly available information on clinical drug trials and other clinical studies including those sponsored by the National Institutes of Health and those sponsored by the private sector, such as the Pharmaceutical Research and Manufacturers of America.*

## **Chapter 74 Handley Board of Trustees; terms of office in City of Winchester.**

An Act to amend and reenact the second enactment of Chapter 257 of the Acts of Assembly of 1896, relating to terms for Handley Board of Trustees in City of Winchester.

[\[H 1923\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 257 of the Acts of Assembly of 1896 is amended and reenacted as follows:

**2. As soon as possible after the passage of this act the common council of Winchester shall elect a board of trustees, consisting of nine citizens over the age of ~~twenty-one~~ 21 years, who shall be residents of Winchester, and three of whom shall be elected for a term of six years, and three for a term of nine years, and three for a term of ~~twelve~~ 12 years, but no one shall hold the office of councilman and that of trustee at one and the same time.**

Upon the expiration of the term of office of each of said trustees his successor shall be chosen in like manner for a term of ~~twelve~~ 12 years. *However, beginning July 2005, trustees shall be elected for terms of six years.* Any vacancies in said board through death, resignation, removal from the city, or otherwise, shall be filled by the common council for the unexpired term. The duties of this board shall be to carry out the objects of the benefactions of the will of the late John Handley, so far as they relate to the city of Winchester, and superintend and direct the custody and investment of the

fund arising under the said will for these purposes, but no plan for the ultimate application of the said fund, in whole or in part, for the purposes of said will shall be valid until the same has been reported to and approved by the common council of the city of Winchester, as hereinafter provided.

The said trustees shall serve without compensation, and no member of the board of trustees shall receive any compensation for any services rendered or labor performed for the board, nor shall he be interested, directly or indirectly, in any contract said board shall make.

The said trustees shall annually, and at such other times as the council may require, or the trustees may see proper to do so, report to the common council of the said city their proceedings for its information; and the said annual report, and such other reports as the council may direct, shall be published at least once a week for two successive weeks in at least one newspaper published in Winchester; and they shall, as soon as it becomes necessary, appoint a treasurer to handle the funds of the said board, who shall not be a member of the board, who shall hold his office at the pleasure of the board, and who shall give bond with surety, corporate or personal, as the board may determine, payable to the City of Winchester, in such penalty as the said board may fix; and from time to time, when so required by the said board, he shall renew his said bond or add to its penalty. His compensation shall be such as the board, from time to time, may fix, and his duties shall be, upon the order of the board, to receive and keep and disburse said funds, keeping the same on deposit in the banks of Winchester, in equal amounts, unless said board, on some emergency arising, may order otherwise, subject to his check as treasurer, countersigned by the president of the said board; and also to have charge of all securities, investments, and other choses in action belonging to said trust; and he shall discharge such other duties as may, from time to time, be required of him by said board. He shall in all respects be under the control and subject to the orders of said board; and he shall annually settle his accounts as do other fiduciaries in the corporation court of said city.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 202 Real property; Governor to convey certain in custody of Bd. of Corrections to Town of Marion.**

An Act to convey without consideration certain property in the custody of the Board of Corrections to the Town of Marion.

[\[H 2891\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Corrections, with the approval of the Governor, is hereby authorized to convey without consideration to the Town of Marion a parcel of property owned by the Commonwealth and in the control of the Board of Corrections of up to three acres that adjoins Interstate 81 at the southbound off-ramp of Exit 45 with frontage on the entrance road to Marion Correctional Treatment Center off Highway 16. No conveyance shall be made until a survey has been conducted identifying the exact parcel of property.*

*§ 2. Such conveyance shall be made upon terms and conditions the Department of General Services deems proper and be in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

**Chapter 220 State Police, Department of; conveyance of easement to Earl J. Nipper.**

An Act to authorize the Department of State Police to convey an easement to Earl J. Nipper.

[\[S 943\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of State Police is hereby authorized to negotiate with all necessary parties to convey to Earl J. Nipper an easement sufficient to provide access to his property located on State Route 19 in Tazewell County, Virginia, and situated behind the Virginia State Police Headquarters building. This transaction shall be on such terms and conditions as may be negotiated between the parties, with the approval of the Governor*

*and in a form approved by the Attorney General. The appropriate officials of the Commonwealth, including those ordinarily delegated signature authority for such transactions pursuant to § [2.2-1148](#) of the Code of Virginia, are hereby authorized to prepare, execute, and deliver such deeds and other documents as may be necessary to accomplish this transaction.*

## **Chapter 99 Nursing home bed projects; conditions for issuance of an amended certificate of public need.**

An Act to authorize relocation of certain nursing home beds under limited circumstances.

[\[H 2316\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Relocation of certain nursing home beds under limited circumstances.*

*A. Notwithstanding (i) the provisions of §§ [32.1-102.3](#) and [32.1-102.3:2](#), (ii) any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, or (iii) the provisions of any current Requests for Applications issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#), the Commissioner of Health shall accept applications and may issue certificates of public need for nursing home beds when such beds are a relocation from one facility to another facility or facilities under common ownership or control, regardless of whether they are in the same planning district, if, as of December 31 of the year preceding the year in which relocation is proposed, the following criteria are met:*

- 1. The occupancy rate of the facility seeking to relocate beds, based upon the total number of beds for which the facility is licensed, was less than 67 percent;*
- 2. Greater than 25 percent of the residents of the facility from which beds are to be relocated, immediately prior to moving to the facility, resided outside the planning district in which the facility is located;*
- 3. More than 10 percent of the nursing hours of the facility from which beds are to be relocated were performed by temporary agency staffing; and*
- 4. Any facility to which beds are to be relocated has experienced an average occupancy rate that meets or exceeds 90 percent.*

*B. A relocation of nursing home beds under the circumstances described herein shall not constitute a "project" as defined in § [32.1-102.1](#). An entity may not relocate more than two-thirds of the total number of beds for which the facility was licensed prior to any relocation pursuant to this section. Any restrictions that apply to the certificate at the time of the relocation shall remain in effect following the relocation.*

## **Chapter 126 Communications services; various revisions to taxation thereof.**

An Act directing the Auditor of Public Accounts to determine the amount of revenues received by local governments from certain communications services; taxes and fees for fiscal year 2005.

[\[H 2880\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Auditor of Public Accounts shall determine the amount of revenues received by every county, city, and town that is included in the annual APA's Comprehensive Revenue Report, for the fiscal year commencing July 1, 2004, and ending June 30, 2005, for each of the following taxes and fees collected by the service providers: the gross receipts tax in excess of 0.5 percent; the local consumer utility tax, video program excise tax, cable franchise fee, and the 911 taxes and fees, where they are collected. Local governments and service providers shall cooperate with the Auditor of Public Accounts and provide information to him as requested. The Auditor or his agent shall not divulge any information acquired by him in the performances of his duties under this section that may identify specific service providers. The Auditor shall report his findings on a tax-by-tax basis to the chairmen of the House and Senate Finance Committees and the Department of Taxation no later than December 1, 2005.*

## **Chapter 222 Hospitals and nursing homes; Bd. of Health must include minimum standards for design, etc.**

An Act relating to hospital and nursing home licensure; Board of Health regulations on design and construction.

[\[S 1024\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain design and construction standards to be incorporated in hospital and nursing home licensure regulations.*

*Notwithstanding any law or regulation to the contrary, the Board of Health shall promulgate regulations pursuant to § [32.1-127](#) of the Code of Virginia for the licensure of hospitals and nursing homes that shall include minimum standards for the design and construction of hospitals, nursing homes, and certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health.*

2. That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 235 Clinical drug trials; publication of certain data.**

An Act to require the publication of certain data on clinical drug trials.

[\[S 1278\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Publication of clinical drug trial results.*

*The Secretary of Health and Human Resources shall make available, on the appropriate state health-related websites, information directing citizens of the Commonwealth to publicly available information on clinical drug trials and other clinical studies including those sponsored by the National Institutes of Health and those sponsored by the private sector, such as the Pharmaceutical Research and Manufacturers of America.*

## Chapter 241 Interstate Route 81 Corridor Multistate Transportation Planning Initiative; created.

An Act to provide for the establishment of the Interstate Route 81 Corridor Multistate Transportation Planning Initiative.

[\[S 778\]](#)

Approved March 20, 2005

Whereas, the General Assembly has determined that the transportation of freight and passengers by rail frequently provides a less expensive, safer, and more environmentally friendly alternative to the construction of additional highways; and  
Whereas, hundreds of miles of railroads in the Commonwealth have been abandoned and dismantled within the last 50 years, and hundreds of additional miles of railroad tracks are currently in need of repair, poorly utilized, and threatened with abandonment; and

Whereas, improvements and repairs to rail equipment and infrastructure can, in many circumstances, reduce or eliminate the cost to the public of highway construction, and can also reduce accidents, traffic congestion, fuel consumption, and air and water pollution; and

Whereas, the railroad companies that own most of the railroad infrastructure in the Commonwealth do not have the financial ability to make all of the repairs and improvements to rail infrastructure that would be in the public interest; and

Whereas, a higher-speed dual-track railway would enable the diversion of up to 30 percent of the through truck traffic from interstate highways to "truck ferries"; and

Whereas, there is a pressing public need to provide a mechanism for making improvements and repairs to the Commonwealth's rail infrastructure that are clearly in the public interest and in assisting in the financing of such improvements; now, therefore,

Be it enacted by the General Assembly of Virginia:

1

. § 1. *The Commonwealth of Pennsylvania, and the States of New York, New Jersey, West Virginia, Maryland, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana, primary states served by the Interstate Route 81 corridor, be requested to adopt an I-81 corridor multistate transportation planning initiative.*

*§ 2. The Interstate Route 81 corridor multistate transportation planning initiative shall:*

- 1. Study, develop, and promote a plan for the design, construction, financing, and operation of optimal freight and passenger transportation facilities in the I-81 corridor, a national and international transportation corridor, through and between points in the Commonwealth and other states;*
- 2. Coordinate efforts to establish the least costly and most efficient combination of transportation infrastructure development including highway expansion, higher-speed rail service, coordinated user regulations, and enforcement proposals at the federal, state, and local government levels;*
- 3. Coordinate and require joint planning by the Virginia Department of Transportation and the departments of transportation in other states; and*
- 4. Seek and provide funding and resources for innovative and appropriate passenger and freight transportation improvement concepts, including improved infrastructure, user regulation, and enforcement options, which most effectively meet the purpose and need of the corridor for a safe, efficient, least costly, and least environmentally damaging approach.*

## **Chapter 247 King Family Memorial Bridge; designating as portion of Route 260.**

An Act to designate Bridge Number 264 on the Route 260 Connector as the "King Family Memorial Bridge."

[\[S 837\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Bridge Number 264 on the Route 260 Connector be designated as the "King Family Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portions thereof.*

## **Chapter 249 Mennel Milling Company; conveys land in Roanoke County to be used as VDOT maintenance facility.**

An Act to authorize the Virginia Department of General Services, in cooperation with the Virginia Department of Transportation, to exchange a certain parcel of land with the Mennel Milling Company, located in Roanoke County.

[\[S 887\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§1. That the Virginia Department of General Services, with the approval of the Governor and in a form approved by the Attorney General, is hereby authorized to convey a parcel of land in Roanoke County, containing approximately six acres as shown on Tax Map No. 87.10-2-6, to the Mennel Milling Company, in exchange for a parcel of land in Roanoke County, containing approximately 7.472 acres as shown on Tax Map No. 87.14-3-2, for use by the Virginia Department of Transportation (VDOT), at no cost to VDOT, for an area maintenance headquarters to serve the southwestern portion of Roanoke County.*

*§ 2. The appropriate offices of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the exchange.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 253 G.A. Treakle Memorial Bridge and T. Ray Hassell, III Memorial Highway; designating.**

An Act to designate the I-64 High Rise Bridge as the "G.A. Treakle Memorial Bridge" and the Route 168 Great Bridge Bypass as the "T. Ray Hassell, III Memorial Highway."

[\[S 919\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the I-64 High Rise Bridge is hereby designated the "G.A. Treagle Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portions thereof.*

*§ 2. That the Route 168 Great Bridge Bypass is hereby designated the "T. Ray Hassell, III Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 254 Blue Star Memorial Highway; designating as Route 1 in Fairfax County.**

An Act to amend and reenact § 1 of Chapter 453 of the Acts of Assembly of 1990, relating to the "Blue Star Memorial Highway."

[\[S 929\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 453 of the Acts of Assembly of 1990 is amended and reenacted as follows:

~~§ 1. That portion~~ *the entire length* of U.S. Route 1 in Fairfax County ~~from the Occoquan River to its intersection with Virginia Route 235~~ is hereby designated the "Blue Star Memorial Highway." Appropriate markers shall be placed and maintained by the Department of Transportation to indicate the designation of this route. This designation shall not affect any other designations heretofore given this portion of U.S. Route 1, nor shall it affect the designation, made pursuant to Senate Joint Resolution No. 14 of 1948, of U.S. Route 301 in Virginia from the North Carolina boundary to the Maryland boundary as "The Blue Star Memorial Highway."

## **Chapter 256 H. Paul Buskell Memorial Bridge; designating as Route 460 Cedar Bluff bypass bridge.**

An Act to designate the U.S. Route 460 Cedar Bluff bypass bridge over the Clinch River the "H. Paul Buskell Memorial Bridge."

[\[S 944\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the U.S. Route 460 Cedar Bluff bypass bridge over the Clinch River is hereby designated the "H. Paul Buskell Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portions thereof.*

## **Chapter 272 80th U.S. Army Reserve Division Highway; designating as portions of Rts. 144, 1, and 150.**

An Act to designate portions of Virginia Route 144, U.S. Route 1, and Virginia Route 150 the "80th U.S. Army Reserve Division Highway."

[\[S 1297\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 144 from its junction with Virginia Route 36 at Fort Lee to its junction with U.S. Route 1 in Colonial Heights, that portion of U.S. Route 1 from its junction with Virginia Route 144 in Colonial Heights to its junction with Virginia Route 150 in Chesterfield County, and that portion of Virginia Route 150 from its junction with U.S. Route 1 in Chesterfield County to its junction with Parham Road at its intersection with River Road in Henrico County are hereby designated the "80th U.S. Army Reserve Division Highway." The Department of Transportation shall place and maintain*

*appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 295 Virginia Capital Trail; designating portion of Route 5 between City of Richmond and Jamestown.**

An Act to designate the bicycle and pedestrian transportation facilities within the Virginia Route 5 corridor between the City of Richmond and Jamestown the "Virginia Capital Trail."

[\[H 2049\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the bicycle and pedestrian transportation facilities within the Virginia Route 5 corridor between the City of Richmond and Jamestown are hereby designated the "Virginia Capital Trail." This designation shall not affect any other designation heretofore or hereafter applied to these facilities.*

## **Chapter 328 Retail Sales and Use Tax; exemptions include certain truck trailers and cargo containers.**

An Act to restrict collection of sales and use taxes on certain truck trailers and their cargo containers.

[\[H 2827\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Taxation is prohibited from taking any affirmative action to collect any sales and use tax from the sale or use prior to February 1, 2005, of (i) any truck trailer that may be taxed pursuant to Chapter 24 (§ [58.1-2400](#) et seq.) of Title 58.1*

*of the Code of Virginia, or is listed as exempt from such tax in § [58.1-2403](#) of the Code of Virginia, (ii) any cargo container that is designed to be affixed to any such truck trailer, and (iii) any on-site storage container that is similar to the cargo container but not necessarily designed to be affixed to the truck trailer. Nothing in this act shall be construed to affect the validity or invalidity of the imposition or collection of such taxes on or after February 1, 2005.*

## **Chapter 442 Natural cut Christmas trees; use in certain place of worship and apartment dwelling units.**

An Act relating to the use of natural cut Christmas trees in the common areas of places of worship and in apartment dwelling units that do not have automatic sprinkler systems.

[\[H 2936\]](#)

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The use of natural cut Christmas trees in places of worship and in apartment dwelling units.*

*Emergency regulations adopted by the Board of Housing and Community Development following the enactment of Chapter 138 of the Acts of Assembly of 2004 shall remain in full force and effect until a regulation to replace the emergency regulations is adopted in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia or July 2006, whichever occurs first.*

## **Chapter 270 Chesapeake Bay Bridge and Tunnel Commission; provisions for members.**

An Act to amend and reenact § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954, relating to the Chesapeake Bay Bridge and Tunnel Commission.

[\[S 1261\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954 is amended and reenacted as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.--A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. The Commission shall consist of the following eleven members: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach. The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed.

Any member of the Commission appointed or reappointed on or after July 1, 1998, shall be appointed by the Governor, subject to confirmation by each house of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly.

The Commission shall select a chairman annually from its membership. Within ~~thirty~~30 days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as ~~vice-chairman~~ *vice chairman*. The Commission shall employ a secretary and treasurer (who may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, clerk, or deputy clerk of any court of record; judge of a district court in the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission. No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the Commonwealth Transportation Board; *provided*

*that the Commission may, in its discretion, designate one of its members to perform extraordinary duties not normally performed by members of the Commission, and, for a single period not in excess of six months, may compensate the member so designated for the performance of such extraordinary services. In no event shall such compensation exceed the salary paid to the immediately preceding executive director. Six members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this act. The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected, subject to the approval of the Commonwealth Transportation Board.*

2. That the provisions of this act shall expire on January 1, 2006.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 495 Cemeteries; Buchanan County to expend county funds for maintenance of highways.**

An Act to provide for maintenance of certain roads in Buchanan County.

[\[S 945\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Buchanan County may make appropriations in such sums and at such times as the governing body of the county deems proper, for maintenance of private roads that provide the sole access to private family cemeteries containing 10 or more graves. Appropriations shall be made for this purpose only when necessary to keep the roads passable by motor vehicle and only when such action is not in conflict with the provisions of § [57-27.1](#).*

## **Chapter 522 Game wardens; abolishes payment of salaries by Dickenson and Buchanan Counties.**

An Act to repeal Chapter 197 of the Acts of Assembly of 1950, as amended by Chapter 419 of the Acts of Assembly of 1956, relating to payment of salaries of game wardens in

Dickenson and Buchanan Counties.

[\[H 1668\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 197 of the Acts of Assembly of 1950, as amended by Chapter 419 of the Acts of Assembly of 1956, is repealed.

### **Chapter 523 Deer; abolishes rifle hunting in Essex County.**

An Act to repeal Chapter 96 of the Acts of Assembly of 1954, relating to the prohibition on the use of certain firearms when hunting deer in Essex County.

[\[H 1669\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 96 of the Acts of Assembly of 1954 is repealed.

### **Chapter 297 Chesapeake Bay Bridge and Tunnel Commission; provisions for members.**

An Act to amend and reenact § 6 of Chapter 693 of the Acts of Assembly of 1954, as amended, relating to the Chesapeake Bay Bridge and Tunnel Commission.

[\[H 2067\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 6 of Chapter 693 of the Acts of Assembly of 1954, as amended, is amended and reenacted as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.--A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. The

Commission shall consist of the following ~~eleven~~ 11 members: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach. The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed.

Any member of the Commission appointed or reappointed on or after July 1, 1998, shall be appointed by the Governor, subject to confirmation by each house of the General Assembly. Commission members shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, the Governor shall appoint a new member to complete the unexpired portion of the term, subject to confirmation by each house of the General Assembly.

The Commission shall select a chairman annually from its membership. Within ~~thirty~~ 30 days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as ~~vice-chairman~~ *vice chairman*. The Commission shall employ a secretary and treasurer (who may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, clerk, or deputy clerk of any court of record; judge of a district court in the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission. No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the Commonwealth Transportation Board.; *provided that the Commission may, in its discretion, designate one of its members to perform extraordinary duties not normally performed by members of the Commission and, for a single period not in excess of six months, may compensate the member so designated for the performance of such extraordinary services. In no event shall such compensation exceed the salary paid to the immediately preceding executive director.* Six members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the

performance of its duties and the execution of its powers under this act. The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected, subject to the approval of the Commonwealth Transportation Board.

2. That the provisions of this act shall expire on January 1, 2006.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 319 Interstate Route 81 Safety Taskforce; created.**

An Act to require the establishment of Interstate Route 81 Safety Committees within the Department of Transportation.

[\[H 2554\]](#)

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Within each Virginia Department of Transportation highway construction district wherein any portion of Interstate Route 81 is located, the Commonwealth Transportation Commissioner or his designee shall work with the planning districts and metropolitan planning organizations to establish an Interstate Route 81 Safety Advisory Committee. The Commissioner or his designee shall appoint to the Committees the Superintendent of State Police or his designee, local government officials, persons from the private sector having expertise in highway construction and safety, representatives of commercial trucking business, and others having experience or expertise of value to the Committees. The Commissioner or his designee shall serve as chairman. The Committees shall meet at the call of the Commissioner or his designee, and a majority of their members shall constitute a quorum. The Committees shall, from time to time, make such recommendations and submit such reports on issues related to safety on Interstate Route 81 as they deem necessary or desirable to the Commonwealth Transportation Board, the Governor, or the General Assembly. Members of the Committees shall serve without compensation.*

## Chapter 332 Electrical transmission lines; location underground in certain localities.

An Act to direct the State Corporation Commission to analyze the implications of a requirement that it consider imposing a condition, when requested by certain localities, that proposed electrical transmission lines be installed underground.

[\[S 783\]](#)

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission shall analyze the implications of a requirement that it consider imposing a condition, when requested by certain localities, that proposed electrical transmission lines be installed underground, as follows:*

*A. By January 1, 2006, the State Corporation Commission shall conduct an analysis of the effects on all affected persons of an amendment to § [56-46.1](#) of the Code of Virginia that would:*

- 1. Require the Commission, when it considers the effects of an electrical transmission line to be located in any city or county with a population of more than 225,000, based on the latest population estimates of the Weldon Cooper Center for Public Service of the University of Virginia, to consider the impact of such transmission line if it were to be located underground, if requested by the governing body of the city or county;*
- 2. Authorize the Commission, if it finds that underground location would minimize adverse environmental impact and is otherwise in the public interest, to condition its approval of the electrical transmission line upon the line being located underground; and*
- 3. Require the Commission, if it approves the construction of the electrical transmission line without imposing such a condition, to state, in its order approving the construction of the facility, its reason or reasons for declining to impose such a condition.*

*B. The State Corporation Commission shall submit the results of its analysis to the Governor and to the chairmen of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Labor.*

## **Chapter 324 Forest and forestry; transfers current regulations from Dept. of Conservation to Dept. of Forestry.**

An Act to transfer forest regulations from the Department of Conservation and Recreation to the Department of Forestry.

[\[H 2620\]](#)

Approved March 20, 2005

Whereas, the Department of Forestry was created by Chapter 567 of the 1986 Virginia Acts of Assembly from the Department of Conservation and Economic Development's Division of Forestry; and

Whereas, the Department of Conservation and Recreation is the successor to the Department of Conservation and Economic Development and the Department of Conservation and Historic Resources; and

Whereas, Chapter 469 of the 1987 Virginia Acts of Assembly authorized the transfer of various real and personal properties to the Department of Forestry of those resources the Director of the Department of Conservation and Historic Resources wished to transfer; and

Whereas, under Chapter 469 of the 1987 Virginia Acts of Assembly the Prince Edward-Gallion State Forest in Prince Edward County, the Appomattox-Buckingham State Forest in Appomattox and Buckingham Counties, the Cumberland State Forest in Cumberland County, the Lesesne State Forest in Nelson County, the Paul State Forest in Rockingham County, and the Conway-Robinson State Forest in Prince William County were transferred to the Department of Forestry; and

Whereas, Chapter 567 of the 1986 Acts of Assembly made no provision to transfer the regulations related to the new Department of Forestry's programs that were then in full force and effect, specifically the Virginia State Forest Regulations 4 VAC 5-40-10 et seq., and the Virginia Reforestation of Timberlands Regulations 4 VAC 5-60-10 et seq.; and

Whereas, Chapter 567 of the 1986 Acts of Assembly authorized the continuation of the Reforestation Board for the purposes of formulating recommendations to the State Forester concerning administrative rules, regulations and other matters applicable to the Reforestation of Timberlands State Fund; and

Whereas, the Department of Conservation and Recreation has maintained the State Forest Regulations, but due to land transfers to the Department of Forestry and the re-incorporation of the Pocahontas State Forest into the Pocahontas State Park, the Department no longer has programmatic need of the regulations; and

Whereas, the Department of Conservation and Recreation has maintained the Reforestation of Timberlands Regulations, but lacked the continuing statutory authority to adopt, amend or enforce these regulations, and the Department no longer has a programmatic need for the regulations; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia State Forest Regulations, 4 VAC 5-40-10 et seq., and the Virginia Reforestation of Timberlands Regulations, 4 VAC 5-60-10 et seq., are hereby transferred from the Department of Conservation and Recreation to the Department of Forestry, effective July 1, 2005, and shall remain in full force and effect until amended, modified, or repealed. The Department of Forestry shall update the terminology and references to the Code of Virginia pursuant to the authority to promulgate regulations provided in subdivision 4 of § [10.1-1101](#). This update shall be exempt from the provisions of the Administrative Process Act. Any future amendments shall be promulgated in accordance with the provisions of the Administrative Process Act. The Administrative Code numbers shall be changed under that exempt action to conform to the Department of Forestry's regulatory numbering system as assigned by the Virginia Code Commission.*

## **Chapter 362 William and Mary, College of; conveyance of certain property in City of Williamsburg.**

An Act to authorize The College of William and Mary to exchange certain parcels of real property located within the City of Williamsburg.

[\[S 1312\]](#)

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That The College of William and Mary, to further the mission and function of its law school, with the approval of the Governor and in a form approved by the Attorney*

*General, is hereby authorized to convey approximately 0.40 acres of unimproved real property along Route 132 in the City of Williamsburg, commonly known as 502 South Henry Street (Tax Map No. 495-0A-00-058), in exchange for approximately 0.70 cumulative acres of improved and unimproved real property in the City of Williamsburg owned by several individuals, along Route 132, in the City of Williamsburg, commonly known as 604, 608, and 610 South Henry Street (Tax Map Nos. 495-0A-00-064, 495-0A-00-065, and 495-0A-00-066, respectively).*

*§ 2. The College of William and Mary is hereby authorized to prepare, execute, and deliver such deeds and other documents as may be necessary to accomplish the exchange, consistent with the decentralized authorities granted pursuant to § 4-5.06 of Chapter 4 of the Acts of Assembly of Special Session I of 2004, and the Memorandum of Understanding with the Secretaries of Finance and Administration, dated February 2, 2004.*

2. That The College of William and Mary exercise appropriate due diligence to ensure a fair exchange of value prior to the execution of any contracts, deeds, or other documents for the exchange and conveyance.

## **Chapter 393 Long-term care; to ensure coordinated, effective, and efficient services to older adults.**

An Act to establish the policy of the Commonwealth concerning long-term care services for older adults.

[\[H 2036\]](#)

Approved March 21, 2005

Whereas, in keeping with the traditional concept in our democratic society of the inherent dignity of the individual, the older adults in the Commonwealth deserve to enjoy their later years in good health, and with honor, dignity, and independence; and

Whereas, older adults should retain their ability to exercise free choice in planning and managing their lives; and

Whereas, the Commonwealth should coordinate the effective and efficient provision of community long-term care services to older adults so that those services will be readily available to the greatest number of people over the widest geographic area; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Policy of the Commonwealth on long-term care services for older adults.*

*The Commonwealth shall seek to ensure that:*

- 1. A balanced range of health, social, and supportive services exists to deliver long-term care services to older adults with chronic illnesses or functional impairments;*
- 2. Meaningful choice, increased functional ability, and affordability are the determining factors in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing the needs and preferences of these older adults;*
- 3. Service delivery, consistent with the needs and preferences of older adults, occurs in the most independent, least restrictive, and most appropriate living situation possible;*  
*and*
- 4. Opportunities for self-care and independent living by older adults grow significantly through strengthening the natural support system of family, friends, and neighbors and by encouraging all long-term care programs to maximize self-care and independent living within the mainstream of life in the community.*

## **Chapter 491 Logo sign program; fee shall be collected by Transp. Comm. from entity for purpose of participating.**

An Act to specify certain duties of the Commonwealth Transportation Board in connection with the Integrated Directional Signing Program.

[\[S 813\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In addition to the duties set forth in § [33.1-12](#) of the Code of Virginia, the Commonwealth Transportation Board shall establish reasonable fees to be collected by the Commonwealth Transportation Commissioner from any qualified entity for the purpose of participating in the Integrated Directional Sign Program (IDSP) administered by the Department of Transportation or its agents that is designed to provide information to the motoring public relating to gasoline and motor vehicle services, food, lodging, attractions or other categories as defined by the IDSP. Such fees shall be deposited into a special*

*fund specifically accounted for and used by the Commissioner solely to defray the actual costs of supervising and administering the signage programs. Included in these costs shall be a reasonable margin, not to exceed ten percent, in the nature of a reserve Fund.*

2. That the Commonwealth Transportation Board shall report no later than August 1, 2005, on the actions it has taken relative to adjusting fees as a result of this Act.
3. That the Department of Transportation is hereby directed to review (i) the feasibility and desirability of auctioning certain travel services (logo) signs for which there are more businesses interested in locating on the sign than there is space to accommodate and (ii) concerning Gas Category I, a change from 16 hours per day to 24 hours per day. The results of such review shall be reported to the Senate and House Transportation Committees no later than August 1, 2005.

## **Chapter 524 Hunting; abolishes unlawful rifles in Buckingham County.**

An Act to repeal Chapter 116 of the Acts of Assembly of 1952, as amended by Chapter 16 of the Acts of Assembly of 1985, relating to prohibiting hunting in Buckingham County with a rifle larger than .22 caliber.

[\[H 1670\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 116 of the Acts of Assembly of 1952, as amended by Chapter 16 of the Acts of Assembly of 1985, is repealed.

## **Chapter 525 Firearms; prohibits person carrying on any part of highway.**

An Act to repeal Chapter 506 of the Acts of Assembly of 1950, as amended by Chapter 148 of the Acts of Assembly of 1960, relating to prohibiting the carrying of loaded firearms on public highways in certain counties.

[\[H 1671\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 506 of the Acts of Assembly of 1950, as amended by Chapter 148 of the Acts of Assembly of 1960, is repealed.

### **Chapter 526 Manville Veterans Memorial Bridge; designating as Route 665 bridge over Copper Creek in Scott Co.**

An Act to designate the Virginia Route 665 bridge over Copper Creek in Scott County the "Manville Veterans Memorial Bridge."

[\[H 1705\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 665 bridge over Copper Creek in Scott County is hereby designated the "Manville Veterans Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

### **Chapter 527 Joe D. Meade Bridge; designating as new pedestrian bridge over Route 71 in Scott County.**

An Act to designate the new pedestrian bridge over Virginia Route 71 at Nickelsville in Scott County, connecting the Nickelsville Elementary School and Keith Memorial Park, the "Joe D. Meade Bridge."

[\[H 1708\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the new pedestrian bridge over Virginia Route 71 at Nickelsville in Scott*

*County, connecting the Nickelsville Elementary School and Keith Memorial Park is hereby designated the "Joe D. Meade Bridge." The Department of Transportation shall place and maintain appropriate markers indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 545 William H. Hume and Jean Emmons McCarty Hume Memorial Bridge; designating portion of Route 688.**

An Act to designate the Virginia Route 688 bridge across Carter's Run, South, near Hume the "William H. Hume and Jean Emmons McCarty Hume Memorial Bridge."

[\[H 2336\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Route 688 bridge across Carter's Run, South, near Hume is hereby designated the "William H. Hume and Jean Emmons McCarty Hume Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 566 Competitive Government Act; change in reporting dates.**

An Act to amend and reenact the third enactment of Chapter 994 of the Acts of Assembly of 2004, relating to the Competitive Government Act; reporting dates.

[\[H 2844\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 994 of the Acts of Assembly of 2004 is amended and reenacted as follows:

3. That the initial examination required by this act shall result in a report being completed by the Secretary of Administration, in consultation with the Secretary of Finance and the Secretary of Technology, and presented to the Governor, the chairs of the House Committee on Appropriations and the Senate Committee on Finance, and such other entities as the Governor may designate no later than ~~January 1, 2006~~ *October 1, 2005*. Thereafter, once in each biennium, the examination of commercial activities not already examined by a commercial source in a preceding report, shall be conducted and reported to the Governor, the chairs of the House Committee on Appropriations and the Senate Committee on Finance, and such other entities as the Governor may designate no later than ~~January 1~~ *October 1* of the second year of each biennium.

### **Chapter 570 Michael Todd Blanton Memorial Bridge.**

An Act to designate the Gaskins Road bridge over Interstate Route 64 in Henrico County the "Michael Todd Blanton Memorial Bridge."

[\[H 2938\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Gaskins Road bridge over Interstate Route 64 in Henrico County is hereby designated the "Michael Todd Blanton Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portions thereof.*

### **Chapter 605 Teachers; extends sunset provision concerning retirement allowances, report.**

An Act to amend and reenact § [51.1-155](#) of the Code of Virginia; to amend and reenact the fifth enactment of Chapter 689 and Chapter 700 of the Acts of Assembly of 2001, as amended by Chapter 211 of the Acts of Assembly of 2003; and to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004, relating to retirement allowances for teachers.

[\[H 1787\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That § [51.1-155](#) of the Code of Virginia is amended and reenacted as follows:

§ [51.1-155](#). Service retirement allowance.

A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than 30 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals 30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than 90, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to 90 or more had he remained in service until such date. If the member has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least 30 years of creditable service and his then creditable service plus his then attained age would have been equal to 90 or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3 of this subsection, a member shall receive an additional allowance which shall be the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ [51.1-700](#) et seq.) of this title, his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

2. Active members of the General Assembly who are eligible to receive a retirement allowance under this title, excluding their service as a member of the General Assembly, shall be eligible to receive a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly. Such members of the General Assembly shall continue to be reported as any other members of the retirement system. Upon ceasing to serve in the General Assembly, members of the General Assembly receiving a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly shall have their retirement allowance recomputed prospectively to include their service as a member of the General Assembly. Active members of the General Assembly shall be prohibited from receiving a service retirement

allowance under this title based solely on their service as a member of the General Assembly.

~~3. (Effective if contingency is met and expires July 1, 2005 – See note) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:~~

~~a. The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education; and~~

~~b. The person has been receiving such retirement allowance for a period of at least 30 days preceding his employment; and~~

~~c. At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#); and~~

~~d. The person is hired pursuant to a contract that does not exceed one year in duration.~~

~~e. [Repealed.]~~

~~Nothing in this subdivision shall be construed to restrict the total number of years that any one person may participate under the provisions of this subdivision, provided that all applicable conditions are met.~~

~~If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.~~

3. (Effective if contingency is not met and expires July 1, 2005 – See note) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

(a) The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education;

(b) The person has been receiving such retirement allowance for a certain period of time preceding his employment as provided by law;

(c) The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and

(d) At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#), by the relevant division superintendent, pursuant to § [22.1-70.3](#), or by the relevant local school board, pursuant to subdivision 9 of § [22.1-79](#).

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

2. That the fifth enactment of Chapter 689 and Chapter 700 of the Acts of Assembly of 2001, as amended by Chapter 211 of the Acts of Assembly of 2003, is amended and reenacted as follows:

5. That the provisions of this act shall expire on July 1, ~~2005~~2007.

3. That the third enactment of Chapter 563 of the Acts of Assembly of 2004 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2005~~2007.

4. That prior to the 2007 Session of the General Assembly, the Virginia Retirement System shall determine the actuarial cost of this act and report such cost to the chairmen of the House Appropriations and Senate Finance Committees.

## **Chapter 606 Teachers; extends sunset provision concerning retirement allowances, report.**

An Act to amend and reenact § [51.1-155](#) of the Code of Virginia; to amend and reenact the fifth enactment of Chapter 689 and Chapter 700 of the Acts of Assembly of 2001, as amended by Chapter 211 of the Acts of Assembly of 2003; and to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004; relating to retirement allowances for teachers.

[\[S 817\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That § [51.1-155](#) of the Code of Virginia is amended and reenacted as follows:

§ [51.1-155](#). Service retirement allowance.

A. Retirement allowance. - A member shall receive an annual retirement allowance, payable for life, as follows:

1. Normal retirement. - The allowance shall equal 1.70 percent of his average final compensation multiplied by the amount of his creditable service.

2. Early retirement; applicable to teachers, state employees, and certain others. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the member has less than 30 years of service at retirement, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of 30 years of creditable service. The provisions of this subdivision shall apply to teachers and state employees. These provisions shall also apply to employees of any political subdivision that participates in the retirement system if the political subdivision makes the election provided in subdivision 3 of this subsection.

3. Early retirement; applicable to employees of certain political subdivisions. - The allowance shall be determined in the same manner as for normal retirement with creditable service and average final compensation being determined as of the date of actual retirement. If the creditable service of the member equals 30 or more years but the sum of his age at retirement plus his creditable service at retirement is less than 90, the amount of the retirement allowance shall be reduced on an actuarial equivalent basis for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which the sum of his then attained age plus his then creditable service would have been equal to 90 or more had he remained in service until such date. If the member has less than 30 years of creditable service, the retirement allowance shall be reduced for the period by which the actual retirement date precedes the earlier of (i) his normal retirement date or (ii) the first date on which he would have completed a total of at least 30 years of creditable service and his then creditable service plus his then attained age would have been equal to 90 or more.

The provisions of this subdivision shall apply to the employees of any political subdivision that participates in the retirement system. The participating political subdivision may, however, elect to provide its employees with the early retirement allowance set forth in subdivision 2 of this subsection. Any election pursuant to this subdivision shall be set forth in a legally adopted resolution.

4. Additional allowance. - In addition to the allowance payable under subdivisions 1, 2, and 3 of this subsection, a member shall receive an additional allowance which shall be

the actuarial equivalent, for his attained age at the time of retirement, of the excess of his accumulated contributions transferred from the abolished system to the retirement system, including interest credited at the rate of two percent compounded annually since the transfer to the date of retirement, over the annual amounts equal to four percent of his annual creditable compensation at the date of abolishment for a period equal to his period of membership in the abolished system.

5. 50/10 retirement. - The allowance shall be payable in a monthly stream of payments equal to the greater of (i) the actuarial equivalent of the benefit the member would have received had he terminated service and deferred retirement to age 55 or (ii) the actuarially calculated present value of the member's accumulated contributions, including accrued interest.

B. Beneficiary serving in position covered by this title.

1. Except as provided in subdivisions 2 and 3, if a beneficiary of a service retirement allowance under this chapter is at any time in service as an employee in a position covered for retirement purposes under the provisions of this or any chapter other than Chapter 7 (§ [51.1-700](#) et seq.) of this title, his retirement allowance shall cease while so employed. Any member who retires and later returns to covered employment shall not be entitled to select a different retirement option for a subsequent retirement.

2. Active members of the General Assembly who are eligible to receive a retirement allowance under this title, excluding their service as a member of the General Assembly, shall be eligible to receive a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly. Such members of the General Assembly shall continue to be reported as any other members of the retirement system. Upon ceasing to serve in the General Assembly, members of the General Assembly receiving a retirement allowance based on their creditable service and average final compensation for service other than as a member of the General Assembly shall have their retirement allowance recomputed prospectively to include their service as a member of the General Assembly. Active members of the General Assembly shall be prohibited from receiving a service retirement allowance under this title based solely on their service as a member of the General Assembly.

~~3. (Effective if contingency is met and expires July 1, 2005 - See note) Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:-~~

- ~~a. The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education; and~~
- ~~b. The person has been receiving such retirement allowance for a period of at least 30 days preceding his employment; and~~
- ~~c. At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#); and~~
- ~~d. The person is hired pursuant to a contract that does not exceed one year in duration.~~
- ~~e. [Repealed.]~~

~~Nothing in this subdivision shall be construed to restrict the total number of years that any one person may participate under the provisions of this subdivision, provided that all applicable conditions are met.~~

~~If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.~~

3. ~~(Effective if contingency is not met and expires July 1, 2005 -- See note)~~ Any person receiving a service retirement allowance under this chapter, who is hired as a local school board instructional or administrative employee required to be licensed by the Board of Education, may elect to continue to receive the retirement allowance during such employment, under the following conditions:

- (a) The person's retirement allowance is based in whole or in part on service as a local school board instructional or administrative employee required to be licensed by the Board of Education;
- (b) The person has been receiving such retirement allowance for a certain period of time preceding his employment as provided by law;
- (c) The person is not receiving a retirement benefit pursuant to an early retirement incentive program from any local school division within the Commonwealth; and
- (d) At the time the person is employed, the position to which he is assigned is among those identified by the Superintendent of Public Instruction pursuant to subdivision 4 of § [22.1-23](#), by the relevant division superintendent, pursuant to § [22.1-70.3](#), or by the relevant local school board, pursuant to subdivision 9 of § [22.1-79](#).

If the person elects to continue to receive the retirement allowance during the period of such employment, then his service performed and compensation received during such

period of time will not increase, decrease, or affect in any way his retirement benefits before, during, or after such employment.

2. That the fifth enactment of Chapter 689 and Chapter 700 of the Acts of Assembly of 2001, as amended by Chapter 211 of the Acts of Assembly of 2003, is amended and reenacted as follows:

5. That the provisions of this act shall expire on July 1, ~~2005~~2007.

3. That the third enactment of Chapter 563 of the Acts of Assembly of 2004 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2005~~2007.

4. That prior to the 2007 Session of the General Assembly, the Virginia Retirement System shall determine the actuarial cost of this act and report such cost to the chairmen of the House Appropriations and Senate Finance Committees.

### **Chapter 607 Teachers; extends sunset provision for division superintendent to report shortages to school board.**

An Act to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004, relating to identification of critical teacher shortage areas.

[\[S 761\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 563 of the Acts of Assembly of 2004 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2005~~ 2010.

### **Chapter 608 Teachers; extends sunset provision for division superintendent to report shortages to school board.**

An Act to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004, relating to identification of critical teacher shortage areas.

[\[H 1781\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 563 of the Acts of Assembly of 2004 is amended and reenacted as follows:
3. That the provisions of this act shall expire on July 1, ~~2005~~2010.

### **Chapter 633 Reporting requirements of certain agencies and collegial bodies.**

An Act to amend and reenact §§ [2.2-720](#), 3.1-14, 3.1-73.5, 3.1-249.29, [4.1-115](#), [5.1-30.9](#), [10.1-1018](#), [10.1-1021](#), [10.1-1322](#), [15.2-5912](#), [17.1-100](#), [22.1-209.1:3](#), [23-1.01](#), [23-9.2:3.1](#), [23-38.84](#), [30-34.15](#), [30-84](#), [59.1-369](#), [62.1-222](#), and [63.2-1529](#) of the Code of Virginia; to amend the Code of Virginia by adding sections numbered [10.1-1018.1](#) and [30-19.8:1](#); and to repeal §§ [23-101](#) and [23-102](#) of the Code of Virginia and the second enactment clause of Chapter 996 of the Acts of Assembly of 1996, relating to certain reporting requirements of agencies and collegial bodies.

[\[H 2321\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-720](#), 3.1-14, 3.1-73.5, 3.1-249.29, [4.1-115](#), [5.1-30.9](#), [10.1-1018](#), [10.1-1021](#), [10.1-1322](#), [15.2-5912](#), [17.1-100](#), [22.1-209.1:3](#), [23-1.01](#), [23-9.2:3.1](#), [23-38.84](#), [30-34.15](#), [30-84](#), [59.1-369](#), [62.1-222](#), and [63.2-1529](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [10.1-1018.1](#) and [30-19.8:1](#) as follows:

§ [2.2-720](#). (Expires July 1, 2006) Alzheimer's Disease and Related Disorders Commission.

A. The Alzheimer's Disease and Related Disorders Commission (Commission) is established as an advisory commission in the executive branch of state government. The purpose of the entity is to assist people with Alzheimer's disease and related disorders and their caregivers.

B. The Commission shall consist of 15 nonlegislative citizen members. Members shall be appointed as follows: three members to be appointed by the Speaker of the House of Delegates; two members to be appointed by the Senate Committee on Privileges and Elections; and 10 members to be appointed by the Governor, of whom seven shall be from among the boards, staffs, and volunteers of the Virginia chapters of the Alzheimer's Disease and Related Disorders Association and three shall be from the public at large. Initial appointments of nonlegislative citizen members shall be staggered as follows:

1. Two gubernatorial appointees shall be appointed for a term of one year each;
2. One member appointed by the Speaker of the House of Delegates and two gubernatorial appointees shall be appointed for a term of two years each;
3. Two members, one appointed by the Speaker of the House of Delegates and one appointed by the Senate Committee on Privileges and Elections, and three gubernatorial appointees shall be appointed for a term of three years each; and
4. Two members, one appointed by the Speaker of the House of Delegates and one appointed by the Senate Committee on Privileges and Elections, and three gubernatorial appointees shall be appointed for a term of four years each.

Thereafter, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and ~~vice-chairman~~ *vice chairman* from among its membership. A majority of the voting members shall constitute a quorum. The Commission shall meet at least four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the voting members so request.

C. Members shall receive such compensation for the discharge of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Department for the Aging.

D. The Commission shall have the following powers and duties:

1. Examine the needs of persons with Alzheimer's disease and related disorders, as well as the needs of their caregivers, and ways that state government can most effectively and efficiently assist in meeting those needs;
2. Advise the Governor and General Assembly on policy, funding, regulatory and other issues related to persons suffering from Alzheimer's disease and related disorders and their caregivers;
3. Develop the Commonwealth's plan for meeting the needs of patients with Alzheimer's disease and related disorders and their caregivers, and advocate for such plan;
4. Submit a report, *including an executive summary*, by October 1 of each year to the Governor and General Assembly regarding the activities and recommendations of the Commission; and
5. Establish priorities for programs among state agencies related to Alzheimer's disease and related disorders and criteria to evaluate these programs.

E. The Department for the Aging shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

F. The Commission may apply for and expend such grants, gifts or bequests from any source as may become available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connections therewith.

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

~~H. This section shall expire on July 1, 2006.~~

§ 3.1-14. Powers and duties in general; rules and regulations of Board of Agriculture and Consumer Services; records to be held in confidence.

A. 1. The Commissioner shall see to the proper execution of the laws relating to the subject of his Department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this Commonwealth concerning the sale of commercial fertilizers, seed and food products, with authority in the Board of Agriculture and Consumer Services to make rules and

regulations governing the same, and to publish them as required by law. He shall ensure that, unless an intent is expressly stated otherwise, the term "horse" or "equine," when used in this title, shall be considered to mean an agricultural or livestock animal.

2. He shall be charged with the inducement of capital and immigration, by the dissemination of information relative to the advantages of soil, climate, healthfulness and markets of this Commonwealth, and to resources and industrial opportunities offered in the Commonwealth as he may deem useful, and also with investigation adapted to promote the improvement of milk and beef cattle and other stock.

3. He, or his duly authorized representative, shall have the authority, as provided in § [59.1-308.2](#), to inquire into consumer complaints regarding violations of § [46.2-1231](#) or § [46.2-1233.1](#) involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials.

4. He, or his duly authorized representative, shall establish mechanisms by which to receive complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include, but are not limited to, establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through computer networks such as the Internet, the World Wide Web, America On-Line *Online*, and Virginia On-Line *Online*.

5. He, or his duly authorized representative, shall establish and administer programs ~~which~~ *that* facilitate resolution of complaints and related inquiries from Virginia consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § [15.2-963](#) which volunteer to participate in a program.

~~6.~~ *He shall submit an annual written report on or before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation, and Natural Resources on his activities pursuant to this subdivision and subdivision 4 of this subsection during the preceding calendar year.*

6. He shall have such other powers and duties as are prescribed by law.

B. The Commissioner shall hold the following records of the Department in confidence unless otherwise directed by the Governor or Board:

1. Schedules of work for regulatory inspection;
2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;
3. Reports of criminal violations made to the Department by persons outside the Department;
4. Records of active investigations until the investigations are closed;
5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records which are otherwise a matter of public record;
6. Tax returns required by the agricultural commodity commissions established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.

§ 3.1-73.5. Commissioner to manage farmers' market operations.

A. In order to establish, operate and maintain a system of state-owned farmers' market facilities within the Commonwealth, the Commissioner or his designee shall have the authority to carry out the provisions of this article, including the power to:

1. Cooperate with various state agencies and other organizations contributing to the development of the farmers' market system;
2. Develop and implement policy for the management of state-owned farmers' market facilities, including:
  - a. Guidelines for fees to be charged at the markets;
  - b. Standards for evaluating market operations;
  - c. Criteria for the expansion of existing state-owned farmers' market facilities and the establishment of new markets in the future;
  - d. Changes in management of markets; and
  - e. Guidelines for the award of contracts for market management;
3. Employ such personnel as necessary to operate the system of markets in accordance with the Virginia Personnel Act (§ [2.2-2900](#) et seq.);
4. Receive and dispense funds;
5. Develop and manage a program budget for the farmers' market system;
6. Provide marketing and promotional services for the farmers' market system;
7. Develop detailed technical plans for, acquire or build, and manage the farmers' market system;
8. Conduct such studies as are necessary to ensure the success of the farmers' market system;

9. Make contracts and agreements and execute other instruments necessary for the operation of the farmers' market system;

10. Enter into agreements with and accept grants from any governmental agency in furtherance of this article;

11. Enter into joint ventures with cities, towns, counties or combinations thereof in developing wholesale, shipping point, and retail farmers' markets; and

12. Rent or purchase land and facilities as deemed necessary to establish markets or to enhance farmers market development.

B. If a market in the network is operated pursuant to a contract between the Commissioner and the market operator, such contract shall require that the operator annually submit to the Commissioner a plan for, and a report on, the operation of the market. The plan shall describe the operator's goals for the coming year as to the acreage to be served by the market, the types of crops to be sold at the market, and the number of brokers, buyers and producers to utilize the market. The report shall describe the extent to which the goals for the previous year were met. The Commissioner shall ~~annually submit a~~ *an annual report on or before February 1* summarizing the market operators' reports and plans to the Chairmen of the House Committee on Agriculture, *Chesapeake, and Natural Resources*, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the Senate Committee on Finance.

C. The Commissioner shall report annually to the Board of Agriculture and Consumer Services regarding the receipt and expenditure of funds as well as the policies, programs and activities of the market operators in the state-owned farmers' market facilities.

§ 3.1-249.29. Powers and duties of the Board.

The Board shall have the power and duty to carry out the provisions of this chapter and is authorized to:

1. Appoint such advisory committees as necessary to implement this chapter;

2. Contract for research projects and establish priorities;

~~3. Publish an annual statistical report and biennial progress report for the Governor and General Assembly;~~

4. Consult with the Department of Environmental Quality regarding compliance with the applicable waste management regulations for the safe and proper disposal of pesticide concentrates, used pesticide containers, and unused pesticides;

54. Consult with the Virginia Department of Labor and Industry regarding compliance with the applicable standards and regulations needed to ensure safe working conditions for pest control and agricultural workers;

65. Consult with the Department of Game and Inland Fisheries regarding standards for the protection of wildlife and fish and to further promote cooperation with respect to programs established by the Department of Game and Inland Fisheries for the protection of endangered or threatened species;

76. Inform the citizens of Virginia as to the desirability and availability of nonchemical and less toxic alternatives to chemical pesticides and the benefits of the safe and proper use of pest control products while promoting the use of integrated pest management techniques and encouraging the development of nonchemical and less toxic alternatives to chemical pesticides;

87. Require that pesticides used in Virginia are adequately tested and are safe for use under local conditions;

98. Require that individuals who sell, store or apply pesticides commercially are adequately trained and observe appropriate safety practices;

109. Cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this Commonwealth or political subdivision, or with an agency of another state, in order to promote the purposes of this chapter; and

110. Consult with the Department of Health regarding compliance with public health standards.

§ [4.1-115](#). Reports and accounting systems of Board; auditing books and records.

A. The Board shall make reports to the Governor as he may require covering the administration and enforcement of this title. Additionally, the Board shall submit an annual report to the Governor and General Assembly on or before ~~October 1~~ of *December 15* each year, which shall contain:

1. A statement of the nature and amount of the business transacted by each government store during the year;

2. A statement of the assets and liabilities of the Board, including a statement of income and expenses and such other financial statements and matters as may be necessary to show the result of the operations of the Board for the year;

3. A statement showing the taxes collected under this title during the year;

4. General information and remarks about the working of the alcoholic beverage control laws within the Commonwealth; and

5. Any other information requested by the Governor.

B. The Board shall maintain an accounting system in compliance with generally accepted accounting principles and approved in accordance with § [2.2-803](#).

C. A regular postaudit shall be conducted of all accounts and transactions of the Board.

An annual audit of a fiscal and compliance nature of the accounts and transactions of the

Board shall be conducted by the Auditor of Public Accounts on or before October 1. The cost of the annual audit and postaudit examinations shall be borne by the Board. The Board may order such other audits as it deems necessary.

§ [5.1-30.9](#). Report to the General Assembly and Governor.

The Board, in conjunction with the Authority, shall report annually *on or before December 1* to the General Assembly and the Governor on all loans made from the Fund.

§ [10.1-1018](#). Virginia Land Conservation Board of Trustees; membership; terms; vacancies; compensation and expenses.

A. The Foundation shall be governed and administered by a Board of Trustees. The Board shall consist of 18 members that include 17 citizen members and one ex officio voting member as follows: four citizen members, who may be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates and, if such members are members of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two citizen members, who may be members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; 11 nonlegislative citizen members, one from each congressional district, to be appointed by the Governor; and the Secretary of Natural Resources, or his designee, to serve ex officio with voting privileges. Nonlegislative citizen members shall be appointed for four-year terms, except that initial appointments shall be made for terms of one to four years in a manner whereby no more than six members shall have terms that expire in the same year. Legislative members and the ex officio member shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-year terms and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Nonlegislative citizen members shall have experience or expertise, professional or personal, in one or more of the following areas: natural resource protection and conservation, construction and real estate development, natural habitat protection, environmental resource inventory and identification, forestry management, farming, farmland preservation, fish and wildlife management, historic preservation, and outdoor recreation. At least one of the nonlegislative citizen members shall be a farmer. Members of

the Board shall post bond in the penalty of \$5,000 with the State Comptroller prior to entering upon the functions of office.

B. The Secretary of Natural Resources shall serve as the chairman of the Board of Trustees. The chairman shall serve until his successor is appointed. The members appointed as provided in subsection A shall elect a ~~vice-chairman~~ *vice chairman* annually from among the members of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The board shall meet at the call of the chairman or whenever a majority of the members so request.

C. Trustees of the Foundation shall receive no compensation for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties on behalf of the Foundation as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of expenses of the members shall be provided by the Department of Conservation and Recreation.

D. The chairman of the Board and any other person designated by the Board to handle the funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation for such purpose.

E. The Board shall seek assistance in developing grant criteria and advice on grant priorities and any other appropriate issues from a task force consisting of the following agency heads or their designees: the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, the State Forester, the Director of the Department of Historic Resources, the Director of the Department of Game and Inland Fisheries and the Executive Director of the Virginia Outdoors Foundation. The Board may request any other agency head to serve on or appoint a designee to serve on the task force.

~~F. The chairman of the Board shall submit to the Governor and the General Assembly a biennial executive summary of the interim activity and work of the Board no later than the first day of each even-numbered year regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.~~

[§ 10.1-1018.1](#). *Reporting.*

*The chairman of the Board shall submit to the Governor and the General Assembly, including the Chairmen of the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, the Senate Committee on Finance, and the Senate Committee on Agriculture, Conservation and Natural*

*Resources, and to the Director of the Department of Planning and Budget an executive summary and report of the interim activity and work of the Board on or before December 15 of each even-numbered year. The document shall report on the status of the Foundation and its Fund including, but not limited to, (i) implementation of its strategic plan; (ii) land conservation targeting tools developed for the Foundation; (iii) descriptions of projects that received funding; (iv) a description of the geographic distribution of land protected as provided in § [10.1-1021.1](#); (v) expenditures from, interest earned by, and financial obligations of the Fund; and (vi) progress made toward recognized state and regional land conservation goals. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

§ [10.1-1021](#). Powers of the Foundation.

In order to carry out its purposes, the Foundation shall have the following powers and duties:

1. To prepare a comprehensive plan that recognizes and seeks to implement all of the purposes for which the Foundation is created. In preparing this plan, the Foundation shall:

a. Develop a strategic plan for the expenditure of unrestricted moneys received by the Fund. In developing a strategic plan for expending unrestricted moneys from the Fund, the Board of Trustees shall establish criteria for the expenditure of such moneys. The plan shall take into account the purposes for which restricted funds have been expended or earmarked. Such criteria may include:

~~(i)~~(1) The ecological, outdoor recreational, historic, agricultural and forestal value of the property;

~~(ii)~~(2) An assessment of market values;

~~(iii)~~(3) Consistency with local comprehensive plans;

~~(iv)~~(4) Geographical balance of properties and interests in properties to be purchased;

~~(v)~~(5) Availability of public and private matching funds to assist in the purchase;

~~(vi)~~(6) Imminent danger of loss of natural, outdoor, recreational or historic attributes of a significant portion of the land;

~~(vii)~~(7) Economic value to the locality and region attributable to the purchase; and

~~(viii)~~(8) Advisory opinions from local governments, state agencies or others;

b. Develop an inventory of those properties in which the Commonwealth holds a legal interest for the purpose set forth in subsection A of § [10.1-1020](#);

c. Develop a needs assessment for future expenditures from the Fund. In developing the needs assessment, the Board of Trustees shall consider among others the properties identified in the following: (i) Virginia Outdoors Plan, (ii) Virginia Natural Heritage Plan, (iii) Virginia Institute of Marine Science Inventory, (iv) Virginia Joint Venture Board of the North American Waterfowl Management Plan, and (v) Virginia Board of Historic Resources Inventory. In addition, the Board shall consider any information submitted by the Department of Agriculture and Consumer Services on farmland preservation priorities and any information submitted by the Department of Forestry on forest land initiatives and inventories; and

d. Maintain the inventory and needs assessment on an annual basis.

2. To expend directly or allocate the funds received by the Foundation to the appropriate state agencies for the purpose of acquiring those properties or property interests selected by the Board of Trustees. In the case of restricted funds the Board's powers shall be limited by the provisions of § [10.1-1022](#).

~~3. To submit a report biennially on the status of the Fund to the Governor and the General Assembly including, but not limited to, (i) implementation of its strategic plan, (ii) projects under consideration for acquisition with Fund moneys, and (iii) expenditures from the Fund, including a description of the extent to which such expenditures have achieved a fair geographic distribution of land protected as provided in § [10.1-1021.1](#).~~

4. To enter into contracts and agreements, as approved by the Attorney General, to accomplish the purposes of the Foundation.

54. To receive and expend gifts, grants and donations from whatever source to further the purposes set forth in subsection B of § [10.1-1020](#).

65. To sell, exchange or otherwise dispose of or invest as it deems proper the moneys, securities, or other real or personal property or any interest therein given or bequeathed to it, unless such action is restricted by the terms of a gift or bequest. However, the provisions of § [10.1-1704](#) shall apply to any diversion from open-space use of any land given or bequeathed to the Foundation.

76. To conduct fund-raising events as deemed appropriate by the Board of Trustees.

87. To do any and all lawful acts necessary or appropriate to carry out the purposes for which the Foundation and Fund are established.

§ [10.1-1322](#). Permits.

A. Pursuant to regulations adopted by the Board, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and

investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The Board shall also collect permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On *or before* January 1, 1993, and December 1 of every even-numbered year thereafter, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit

applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the Board, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

§ [15.2-5912](#). Additional duties.

In addition to the duties set forth elsewhere in this chapter, the Authority shall:

1. Keep records as are consistent with sound business practices and accounting records using generally accepted accounting practices;
2. Cause an audit by an independent certified public accountant to be made of accounts and transactions at the conclusion of each fiscal year;
3. Be subject to audit and examination at any reasonable time of its accounts and transactions by the Auditor of Public Accounts; and
4. Submit a detailed ~~annual~~-report of ~~its~~-any activities and *change in* financial standing to the Governor and to the General Assembly.

§ [17.1-100](#). Judicial performance evaluation program.

The Supreme Court, by rule, shall establish and maintain a judicial performance evaluation program that will provide a self-improvement mechanism for judges and a source of information for the reelection process. By September 1 of each year, the Supreme Court, or its designee, shall transmit a report of the evaluation in the final year of the term of each justice and judge whose term expires during the next session of the General Assembly to the Chairmen of the House and Senate Committees for Courts of Justice. ~~This~~ *The reporting requirement of this section shall become effective on January 1, 2004 when funds are appropriated for this program and the first justice or judge is evaluated.*

§ [22.1-209.1:3](#). Advancement Via Individual Determination (AVID) Programs.

A. With such funds as may be appropriated by the General Assembly for this purpose, local school boards may establish Advancement Via Individual Determination Programs in their respective school divisions to prepare at-risk students enrolled in the secondary

grades in the public schools of the school division for post-secondary education eligibility.

B. Any school board adopting the Advancement Via Individual Determination Program shall establish policies and guidelines to ensure compliance with the provisions of this section. Programs established pursuant to subsection A ~~of this section~~ shall include the following components:

1. A procedure for identifying at-risk students enrolled in the secondary grades in the public schools of the school division who demonstrate academic potential, a desire to attend college, and the willingness to pursue a rigorous academic program of study or the advanced studies program leading to eligibility for college admission;
2. A procedure for obtaining participation in or support for the program by the parent, guardian or other person having charge or control of a child engaged in the program;
3. An agreement executed with a two-year or four-year institution of higher education located within or in the proximity of the school division to provide relevant support services including, but not limited to, access to advanced course work, student mentorships and tutorials, and cultural and enrichment experiences;
4. A curriculum developed for intensive, accelerated instruction designed to establish high standards and academic achievement for participating students;
5. An emphasis on college preparation and college awareness, access to advanced level college preparatory courses at the high school level, building self-esteem and the promotion of personal and social responsibility, the availability of support services for students enrolled in the AVID Program, and the development and fostering of a positive attitude toward learning and the advantages of higher education;
6. A low pupil-teacher ratio to promote a high level of interaction between the students and the teacher;
7. A current program of staff development and training in the organizational structure, instructional methods, strategies, and process used in and unique to the AVID Program for all teachers and administrators assigned to the program;
8. Community outreach to build strong school, business, and community partnerships, and to promote parental involvement in the educational process of participating children;
9. Specific, measurable goals and objectives and an evaluation component to determine the program's effectiveness in preparing students participating in the program for college, increasing academic achievement, and lessening the need for remediation of such students who attend college.

C. Upon completion of the initial school year of the Advancement Via Individual Determination Program and at least annually thereafter, each school board

implementing such program shall require submission of interim evaluation reports of the program. *If funded by an appropriation pursuant to subsection A*, each school board having an Advancement Via Individual Determination Program ~~pursuant to subsection A of this section~~ shall report the status, effectiveness, and results of such program no later than November 30 of the year following the completion of the initial school year ~~and annually thereafter~~ to the Board of Education, which shall transmit such reports to the Governor and the General Assembly.

§ [23-1.01](#). Annual reports required of boards of visitors.

The ~~boards~~*board* of visitors of each institution of higher education shall submit an ~~annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain, at a minimum,~~ the annual financial statements for the year ending the preceding June 30 and the accounts and status of any ongoing capital projects *to the Auditor of Public Accounts for the audit of such statements pursuant to § [30-133](#).*

§ [23-9.2:3](#).1. Authority to establish incentives for voluntary early retirement; eligibility; contents of plans.

A. The board of visitors or other governing body of any public institution of higher education may establish a compensation plan designed to provide incentives for voluntary early retirement of teaching and research staff employed in nonclassified, faculty positions. Participation in such compensation plan shall be voluntary for eligible employees and no employee shall be penalized in any way for not participating.

B. In order to qualify for participation in such compensation plan, an eligible faculty employee shall (i) be at least ~~sixty~~*60* years of age; (ii) have completed at least ~~ten~~*10* years of full-time service at the institution offering the plan; (iii) have been awarded tenure or have a contractual right to continued employment; (iv) agree to withdraw from active membership in the Virginia Retirement System; and (v) comply with any additional criteria established by the governing body of the institution.

C. Any compensation plan established pursuant to this section shall include the institutional needs and objectives to be served, the kind of incentives to be offered, the sources of available funding for implementation, and any additional qualifications required of eligible faculty employees established by the governing body of the institution. Any such compensation plan shall explicitly reserve to the governing body of the institution the authority to modify, amend or repeal the plan. However, no such amendment, modification or repeal shall be effective as to any individual who retires under the plan prior to the effective date of the amendment, modification or repeal.

D. The cash payments offered under any such compensation plan shall not exceed 150 percent of the employee's base annual salary reflected in the Personnel Management Information System at the time of election to participate. Any such payment shall be allocated over at least two years. Such compensation may include payment of insurance benefits by the institution until the participant reaches the age of ~~sixty-five~~ 65. The total cost in any fiscal year for any compensation plan established under this section shall not exceed one percent of the institution's corresponding fiscal year state general fund appropriation for faculty salaries and associated benefits.

E. The Governor may establish, with the assistance of the State Council of Higher Education, uniform criteria for such compensation plans. Prior to the adoption, modification, amendment or repeal of any such compensation plan, the Governor's approval shall be obtained by the governing body of the institution. *The Governor shall provide a copy of each approved plan to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.* All compensation plans shall be reviewed for legal sufficiency by the Office of the Attorney General prior to adoption, modification, amendment or repeal.

F. The Administrative Process Act (§ [2.2-4000](#) et seq.) shall not apply to the establishment of such compensation plans or any implementing regulations or criteria.

~~G. Each public institution of higher education establishing such compensation plan shall report to the Governor on the implementation of the plan by October 31 of each year. A report on approved plans shall be provided by the Governor to the Chairmen of the House Appropriations and Senate Finance Committees by December 15 of each year.~~  
§ [23-38.84](#). Annual report.

The Board shall submit an annual statement *on or before December 15* of the receipts, disbursements, and current investments of the Plan for the preceding year to the Governor, the Senate Committee on Finance, and the House Committees on Appropriations and Finance. The report shall set forth a complete operating and financial statement covering the operation of the Plan during the year and shall include a statement of projected receipts, disbursements, investments, and costs for the further operation of the Plan.

§ [30-19.8:1](#). *Due dates for legislative reports.*

*A. Legislative commissions, councils, and other legislative bodies required to report annually to the General Assembly and Governor shall submit their annual reports on or before June 30 of each year, unless otherwise specified. Annual reports submitted pursuant to this section shall cover the preceding legislative interim period and may include*

*actions taken by the General Assembly during the regular session of the current calendar year.*

*B. Joint subcommittees, joint committees, and other legislative entities required or requested by law or resolution to conduct a study shall submit their reports no later than June 30 of the reporting year, unless otherwise specified. The reports may include actions taken by the General Assembly during the regular session of the current calendar year.*

§ [30-34.15](#). Submission of reports and executive summaries to the legislative branch.

A. Any report required or requested by law or resolution to be submitted to the General Assembly shall be submitted to the Division of Legislative Automated Systems as provided in the procedures for the processing of legislative documents. Such submission shall satisfy the requirement for communication to the General Assembly.

B. Any report required or requested by law or resolution to be submitted to any committee, subcommittee, commission, agency, or other body within the legislative branch or to the chairman or agency head of such entity shall also be submitted to the Division of Legislative Automated Systems as provided in the procedures for the processing of legislative documents and reports.

C. The reports submitted to the Division of Legislative Automated Systems shall include ~~a separate~~ *an* executive summary. The Division shall post the executive summary and the report on the website of the General Assembly and develop a notification process to inform interested persons of such postings. *Any requirement for a separate executive summary may be satisfied by the submission of a report with an executive summary.*

D. *The Director of the Division of Legislative Automated Systems and the publishing authority may enter into agreements to provide equivalent access to the report or the information contained in the report and such access shall satisfy the submission requirement of this section.*

E. Nothing in this section shall be construed to require the release of information otherwise held confidential by law.

§ [30-84](#). Funding for Commission's oversight activities.

The Commission's reasonable and necessary expenses related to its duties under this chapter shall be paid by the Retirement System and shall be borne by each trust fund in the System in the same ratio as the assets of each trust fund, as of the preceding June 30, bear to the total trust funds of the System on that date. On or before September 30 of each year, the Commission shall submit to the Board of Trustees of the Virginia Retirement System an itemized estimate for the next fiscal year of the amounts necessary to pay the Commission's expenses related to its duties under this chapter. ~~A copy of the~~

~~Commission's estimated expenses shall at that time be provided and shall include the estimate as part of the agency's budget submission to the House Appropriations Committee on Appropriations and the Senate Finance Committee on Finance.~~

§ [59.1-369](#). Powers and duties of the Commission.

The Commission shall have all powers and duties necessary to carry out the provisions of this chapter and to exercise the control of horse racing as set forth in § [59.1-364](#). Such powers and duties shall include but not be limited to the following:

1. The Commission is vested with jurisdiction and supervision over all horse racing licensed under the provisions of this chapter including all persons conducting, participating in, or attending any race meeting. It shall employ such persons to be present at race meetings as are necessary to ensure that they are conducted with order and the highest degree of integrity. It may eject or exclude from the enclosure or from any part thereof any person, whether or not he possesses a license or permit, whose conduct or reputation is such that his presence may, in the opinion of the Commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.
2. The Commission, its representatives, and employees shall visit, investigate, and have free access to the office, track, facilities, satellite facilities or other places of business of any license or permit holder, and may compel the production of any of the books, documents, records, or memoranda of any license or permit holder for the purpose of satisfying itself that this chapter and its regulations are strictly complied with. In addition, the Commission may require the production of an annual balance sheet and operating statement of any person licensed or granted a permit pursuant to the provisions of this chapter and may require the production of any contract to which such person is or may be a party.
3. The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter, including a requirement that licensees post, in a conspicuous place in every place where pari-mutuel wagering is conducted, a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers. Such regulations shall include provisions for affirmative action to assure participation by minority persons in contracts granted by the Commission and its licensees. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any horse racetrack. Such regulations may include penalties for violations. The regulations shall be subject to the Administrative Process Act (§ [2.2-4000](#) et seq.).

4. The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter. Such regulations shall include provisions that all simulcast horse racing shall comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to 10 satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission which owns a horse racetrack in the Commonwealth. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

5. The Commission shall promulgate regulations and conditions regulating and controlling a method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act, § 3001 et seq. of Chapter 57 of Title 15 of the United States Code, and in which an individual may establish an account with an entity, approved by the Commission, to place pari-mutuel wagers in person or electronically. Such regulations shall include, but not be limited to, (i) standards, qualifications, and procedures for the issuance of a license to any such entity or entities pursuant to § [59.1-375](#) to operate pari-mutuel wagering in the Commonwealth, (ii) provisions regarding access to books, records, and memoranda, and submission to investigations and audits, as authorized by subdivisions 2 and 10 of this section, and (iii) provisions regarding the collection of all revenues due to the Commonwealth from the placing of such wagers. No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university. The Commission also shall ensure that, except for this method of pari-mutuel wagering, all wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility. Notwithstanding the provisions of § [59.1-392](#), the allocation of revenue from a method of pari-mutuel wagering in which an individual may establish an account with an entity approved by the Commission to place pari-mutuel wagers in person or electronically shall include a licensee fee to the Commission, and shall be subject to a contractual agreement, approved by the Commission, between such entity and an unlimited licensee and representatives of the recognized majority horsemen groups concerning

the distribution of the remaining portion of the retainage. Nothing in this subdivision shall be construed to limit the Commission's authority as set forth elsewhere in this section.

6. The Commission may issue subpoenas for the attendance of witnesses before it, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever, in the judgment of the Commission, it is necessary to do so for the effectual discharge of its duties.

7. The Commission may compel any person holding a license or permit to file with the Commission such data as shall appear to the Commission to be necessary for the performance of its duties including but not limited to financial statements and information relative to stockholders and all others with any pecuniary interest in such person. It may prescribe the manner in which books and records of such persons shall be kept.

8. The Commission may enter into arrangements with any foreign or domestic government or governmental agency, for the purposes of exchanging information or performing any other act to better ensure the proper conduct of horse racing.

9. The Commission shall report annually *on or before March 1* to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Commission.

10. The Commission may order such audits, in addition to those required by § [59.1-394](#), as it deems necessary and desirable.

11. The Commission shall upon the receipt of a complaint of an alleged criminal violation of this chapter immediately report the complaint to the Attorney General of the Commonwealth and the State Police for appropriate action.

12. The Commission shall provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize or pay-off for a winning wager and shall establish the thresholds for such withholdings.

13. The Commission, its representatives and employees may, within the enclosure, stable, or other facility related to the conduct of racing, and during regular or usual business hours, subject any (i) permit holder to personal inspections, including alcohol and drug testing for illegal drugs, inspections of personal property, and inspections of other property or premises under the control of such permit holder and (ii) horse eligible to race at a race meeting licensed by the Commission to testing for substances foreign to the natural horse within the racetrack enclosure or other place where such horse is kept. Any item, document or record indicative of a violation of any provision of this chapter or Commission regulations may be seized as evidence of such violation. All permit holders consent to the searches and seizures authorized by this subdivision, including breath, blood and urine sampling for alcohol and illegal drugs, by accepting the permit issued by

the Commission. The Commission may revoke or suspend the permit of any person who fails or refuses to comply with this subdivision or any rules of the Commission. Commission regulations in effect on July 1, 1998, shall continue in full force and effect until modified by the Commission in accordance with law.

14. The Commission shall require the existence of a contract between the licensee and the recognized majority horseman's group providing for purses and prizes. Such contract shall be subject to the approval of the Commission, which shall have the power to approve or disapprove any of its items, including but not limited to the provisions regarding purses and prizes. Such contracts shall provide that on pools generated by wagering on simulcast horse racing from outside the Commonwealth, (i) for the first \$75 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of five percent in the horsemen's purse account, (ii) for any amount in excess of \$75 million but less than \$150 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of six percent in the horsemen's purse account, (iii) for amounts in excess of \$150 million for each breed, the licensee shall deposit funds at the minimum rate of seven percent in the horsemen's purse account. Such deposits shall be made in the horsemen's purse accounts of the breed that generated the pools and such deposits shall be made within five days from the date on which the licensee receives wagers.

15. Notwithstanding the provisions of § [59.1-391](#), the Commission may grant provisional limited licenses or provisional unlimited licenses to own or operate racetracks or satellite facilities to an applicant prior to the applicant securing the approval through the local referendum required by § [59.1-391](#). The provisional licenses issued by the Commission shall only become effective upon the approval of the racetrack or satellite wagering facilities in a referendum conducted pursuant to § [59.1-391](#) in the jurisdiction in which the racetrack or satellite wagering facility is to be located.

§ [62.1-222](#). Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report *on or before December 1* of its activities for the preceding year to the Governor *and General Assembly*. ~~The Clerk of each House of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Authority.~~ Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

§ [63.2-1529](#). Evaluation of the child-protective services differential response system.

The Department shall evaluate and report on the impact and effectiveness of the implementation of the child-protective services differential response system in meeting the purposes set forth in this chapter. The evaluation shall include, but is not limited to, the following information: changes in the number of investigations, the number of families receiving services, the number of families rejecting services, the effectiveness of the initial assessment in determining the appropriate level of intervention, the impact on out-of-home placements, the availability of needed services, community cooperation, successes and problems encountered, the overall operation of the child-protective services differential response system and recommendations for improvement. The Department shall submit annual reports *on or before December 15* to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services.

2. That §§ [23-101](#) and [23-102](#) of the Code of Virginia and the second enactment clause of Chapter 996 of the Acts of Assembly of 1996 are repealed.

### **Chapter 678 Prescription Monitoring Program; includes reporting by out-of-state dispensers.**

An Act to amend and reenact §§ [54.1-2519](#), [54.1-2520](#), [54.1-2523](#), and [54.1-3434.1](#) of the Code of Virginia, to amend the Code of Virginia by adding a section numbered [54.1-2523.1](#), and to repeal the fourth and fifth enactments of Chapter 481 of the 2002 Acts of Assembly, relating to the Prescription Monitoring Program.

[\[S 1098\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [54.1-2519](#), [54.1-2520](#), [54.1-2523](#), and [54.1-3434.1](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [54.1-2523.1](#) as follows:

§ [54.1-2519](#). Definitions.

As used in this article, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject

by (i) a practitioner or, under the practitioner's direction, his authorized agent or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Bureau" means the Virginia Department of State Police, Bureau of Criminal Investigation, Drug Diversion Unit.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act, Chapter 34 (§ [54.1-3400](#) et seq.) of this title.

"Covered substance" means ~~a~~*all controlled substance substances included in Schedules II, III, and IV that is are* required to be reported to the Prescription Monitoring Program, pursuant to this chapter.

"Department" means the Virginia Department of Health Professions.

"Director" means the Director of the Virginia Department of Health Professions.

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Dispenser" means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.

"Prescriber" means a practitioner licensed in the Commonwealth who is authorized pursuant to §§ [54.1-3303](#) and [54.1-3408](#) to issue a prescription for a covered substance *or a practitioner licensed in another state to so issue a prescription for a covered substance.*

"Recipient" means a person who receives a covered substance from a dispenser.

"Relevant health regulatory board" means any such board that licenses persons or entities with the authority to prescribe or dispense covered substances, including, but not limited to, the Board of Dentistry, the Board of Medicine, and the Board of Pharmacy.

§ [54.1-2520](#). Program establishment; Director's regulatory authority.

A. The Director shall establish, maintain, and administer an electronic system to monitor the dispensing of covered substances to be known as the Prescription Monitoring Program. Covered substances shall include all Schedule II, III, and IV controlled substances, as defined in the Drug Control Act (§ [54.1-3400](#) et seq.).

B. The Director, after consultation with relevant health regulatory boards, shall promulgate, in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), such regulations as are necessary to implement the prescription monitoring pro-

gram as provided in this chapter, including, but not limited to, the establishment of criteria for granting waivers of the reporting requirements set forth in § [54.1-2521](#).

C. The Director may enter into contracts as may be necessary for the implementation and maintenance of the Prescription Monitoring Program.

D. The Director shall provide dispensers with a basic file layout to enable electronic transmission of the information required in this chapter. For those dispensers unable to transmit the required information electronically, the Director shall provide an alternative means of data transmission.

*E. The Director shall also establish an advisory committee within the Department to assist in the implementation and evaluation of the Prescription Monitoring Program.*

§ [54.1-2523](#). Confidentiality of data; disclosure of information; discretionary authority of Director.

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) pursuant to subdivision 15 of § [2.2-3705.5](#). Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.

B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:

1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent designated by the superintendent of the Department of State Police to conduct drug diversion investigations pursuant to § [54.1-3405](#).

2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific dispenser or prescriber *person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; or* information relevant to a disciplinary proceeding before a *health regulatory board* or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions; *or to designated persons operating the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of this title.*

3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ [19.2-191](#) et seq.) of Title 19.2.

*4. Information relevant to a specific investigation of a specific dispenser or specific prescriber to an agent of the United States Drug Enforcement Administration with authority to conduct drug diversion investigations.*

C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:

1. Information in the possession of the program concerning a recipient who is over the age of 18 to that recipient.

2. Information on a specific recipient to a prescriber ~~licensed by the appropriate regulatory board in the Commonwealth~~, *as defined in this chapter*, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient, and the prescriber has obtained written consent to such disclosure from the recipient.

3. *Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in determining the validity of a prescription in accordance with § [54.1-3303](#) when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices. Dispensers shall provide notice to patients, in a manner specified by the Director in regulation, that such information may be requested by them from the Prescription Monitoring Program.*

4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.

~~4~~ 5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the Attorney General *or to designated employees of the Department of Medical Assistance Services, as appropriate.*

6. *Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.*

7. *Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between*

*such qualified personnel and the Director in order to ensure compliance with this sub-division.*

D. This section shall not be construed to supersede the provisions of § [54.1-3406](#) concerning the divulging of confidential records relating to investigative information.

E. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2.

§ [54.1-2523.1](#). *Criteria for indicators of misuse; Director's authority to disclose information; intervention.*

*The Director shall develop, in consultation with an advisory panel, criteria for indicators of misuse and a method for analysis of data collected by the Prescription Monitoring Program using the criteria for indicators of misuse. Upon the development of such criteria and data analysis, the Director may, in addition to the discretionary disclosure of information pursuant to § [54.1-2523](#), disclose information using the criteria that indicates potential misuse by recipients of covered substances to their specific prescribers for the purpose of intervention to prevent such misuse.*

§ [54.1-3434.1](#). Nonresident pharmacies to register with Board.

A. Any pharmacy located outside ~~this~~ *the* Commonwealth which ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into ~~this~~ *the* Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, and shall disclose to the Board all of the following:

1. The location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs or devices to residents of ~~this~~ *the* Commonwealth. A report containing this information shall be made on an annual basis and within ~~thirty~~ 30 days after any change of office, corporate officer, or principal pharmacist.
2. That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the Commonwealth in which it is licensed as well as with all requests for information made by the Board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident.

As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a

copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

3. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in ~~this~~ *the* Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.

4. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § [54.1-3303](#).

B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of ~~forty~~ 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in ~~this~~ *the* Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in ~~this~~ *the* Commonwealth.

C. *Pharmacies subject to this section shall comply with the reporting requirements of the Prescription Monitoring Program as set forth in § [54.1-2521](#).*

D. The registration fee shall be the fee specified for pharmacies within Virginia.

2. That the fourth and fifth enactment clauses of Chapter 481 of the 2002 Acts of Assembly are repealed.

3. That the Director of the Department of Health Professions shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

4. That, notwithstanding the in due course effective date of this act, the provisions of this act shall not be implemented or enforced until the regulations promulgated pursuant to the third enactment clause shall become effective.

5. That the Director of the Department of Health Professions shall notify all dispensers that will be newly subject to the reporting requirements of § [54.1-2521](#) pursuant to this act of such reporting requirements prior to the effective date of the regulations promulgated pursuant to the third enactment clause.

## **Chapter 680 Clarksville-Boydton Airport Commission; created.**

An Act to create the Clarksville-Boydton Airport Commission.

[\[S 1113\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1.

*Clarksville-Boydton Airport Commission.*

*§ 1. If the governing bodies of the towns of Clarksville and Boydton shall by resolution declare that there is a need for an airport commission to be created for the purpose of establishing and operating one or more airports or landing fields for all such political subdivisions, an airport commission, to be known as "The Clarksville-Boydton Airport Commission," shall thereupon exist for the towns and shall exercise its powers and functions therein.*

*In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of The Clarksville-Boydton Airport Commission, the airport commission shall be conclusively deemed to have become created as a body corporate, and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body of each of the towns creating the airport commission declaring that there is need for an airport commission and that it unites with the other political subdivision in its creation. A copy of the resolution, duly certified by the clerk of the governing body of the town which adopted it, shall be admissible in evidence in any suit, action, or proceeding.*

*§ 2. The Clarksville-Boydton Airport Commission, hereinafter referred to as the "Commission," shall consist of members from the participating towns, the membership being composed of five members appointed by the Town of Clarksville and two members by the Town of Boydton. Each member shall be appointed by the governing bodies thereof. Original appointments of members shall be for terms as follows: from the Town of Clarksville, one member for two years, two members each for three and four years; from the Town of Boydton, one member for one year and one member for two years. Thereafter all appointments shall be for three-year terms, except appointments to fill vacancies which shall be for the unexpired terms.*

*The governing body appointing any member may remove that member at any time and appoint his successor. The Commission shall have power to elect its chairman and to adopt rules and regulations for its own procedures and government. The members of the Commission so appointed shall constitute the Commission, and the powers of such*

*Commission shall be vested in and exercised by the members in office from time to time. A majority of the members in office shall constitute a quorum.*

*§ 3. The Commission established hereunder shall have all powers necessary or convenient to carry out the general purposes of this act, including the following powers in addition to others herein granted:*

*A. To sue and be sued; to adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.*

*B. To employ technical experts and other officers, agents, and employees as it may require, and to fix their qualifications and duties, and to fix their compensation within the limits of available funds.*

*C. To accept gifts and make application for and receive grants from the Commonwealth of Virginia or any political subdivision thereof, and from the United States and any of its agencies.*

*D. To acquire within the territorial limits of the region for which it is formed, by purchase, lease, gift, condemnation or otherwise, whatever land may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining, and operating one or more airports or landing fields.*

*E. To acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate the use of any airports, air landing fields, structures, air navigation facilities, and other property incidental thereto, within the area for which it is created; provided, however, that no such airport shall be established or operated without the permission of the Virginia Department of Aviation.*

*F. To construct, install, maintain, and operate facilities for the servicing of aircraft, and for the accommodation of cargo, freight, mail, express, etc., and comfort of air travelers, and to purchase and sell equipment and supplies as an incident to the operation of its airport facilities.*

*G. To determine rates and charges for the use of its airport and other facilities.*

*H. To enforce all rules, regulations, and statutes relating to its airports, including airport zoning regulations.*

*I. To exercise within its area such powers and authority with respect to airports and air navigation facilities as may be conferred by law upon the governing bodies of the towns of the Commonwealth.*

*J. To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance, and operation of its facilities and properties.*

*K. To engage directly or through its agents or employees in the operation for profit of concessions in connection with its airports or other facilities, including the sale of airplanes and aircraft fuel, or to grant such privileges and concessions to others.*

*L. To comply with the provisions of the laws of the United States and the Commonwealth of Virginia and any rules and regulations made thereunder for the expenditure of state or federal moneys in connection with airports, landing fields, and air navigation facilities, and to accept, receive, and receipt for federal moneys granted the commission, or granted any of the political subdivisions by which it is formed, for airport purposes.*

*§ 4. The Commission established hereunder is hereby granted full power to exercise within its area the right of eminent domain in the acquisition of any lands, easements and privileges that are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airport or landing fields where necessary or desirable in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airport and landing fields even though such aviation easement may be inconsistent with the continued use of such land for the same purposes for which it had been used prior to such acquisition, or inconsistent with the maintenance, preservation, and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of acquisition; provided, however, that the power of eminent domain shall not extend to the taking of any radio or television towers or installation in existence on the effective date of this act. Proceedings for the acquisition of land, easements, and privileges by condemnation may be instituted and conducted in the name of the Commission, and the procedure shall be the same as in the acquisition of land by condemnation proceedings instituted by councils of towns; provided, that the provisions of [§ 25.1-102](#) of the Code of Virginia, shall apply to any property owned by a corporation possessing the power of eminent domain that may be sought to be taken by condemnation.*

*§ 5. The towns for which the Commission is formed are hereby authorized to appropriate to the Commission from available funds, or from funds provided for the purpose by bond issues, such funds as may be necessary for the acquisition, construction, maintenance, and operation of airports, air landing fields, and other air navigation facilities. The basis of financial participation by the towns shall be determined by agreement between their governing bodies.*

*§ 6. The Commission shall prepare annually and submit to the governing bodies of the respective towns for which it is formed for their approval, a budget showing the estimated revenues it may reasonably expect to receive for such year, and its estimated expenses for all purposes for such period. After the approval of such budget, the Commission shall*

*be limited in its expenditures for such year to the estimated expenses shown therein, and shall not commit the participating subdivisions beyond appropriations actually made. If the estimated expenditures exceed the estimated revenue from the operation of the Commission for such year the governing bodies of the participating local subdivisions may appropriate, in any amount the particular town determines it can contribute, the funds necessary to supply the deficiency. If the actual revenue received shall be less than the estimated revenue as approved in the budget, the governing bodies of the participating local subdivisions may appropriate, in the same manner, the funds necessary to supply the deficiency.*

*§ 7. If the funds received by the Commission in any year including money appropriated for its use by the participating subdivisions, shall exceed its expenditures for such year, the surplus shall be set aside in a separate fund for capital improvements and extensions. Such fund shall be used for this purpose only with the approval of both the participating subdivisions. Whenever such surplus fund shall amount to \$100,000, any additional revenue received in any year in excess of operating costs shall be applied towards repaying the participating towns' contributions to the Commission in amounts proportionate to each town's financial interest in the Commission. The financial interest of a town shall consist of the proportionate share of the total financial contributions, including those made for capital outlay and for any other reason whatsoever, each participating town has made to the Commission. Thereafter any profits derived from the operations of the Commission shall be distributed to the participating subdivisions in proportion to their financial interest in the Commission.*

*§ 8. The Commission shall be an independent body corporate, invested with the rights, powers, and authority and charged with the duties set forth in this act, and the political subdivisions which created it shall not be responsible for its acts. No pecuniary liability of any kind shall be imposed upon any town creating the Commission because of any act, agreement, contract, tort, malfeasance or misfeasance by or on the part of the Commission or any member thereof, or its agents, servants or employees, except as otherwise provided in this act with respect to contracts and agreements between the Commission and either such town.*

*§ 9. Except in cases of emergency, all contracts of more than \$5,000 that the Commission may let for construction or materials shall be let after public advertising for at least 30 days, stating the place where bidders may examine the plans and specifications and the time and place where bids for such work or materials will be opened. Reasonable deposits may be required of all bidders, and the contract shall be let to the lowest*

*responsible bidder, who shall give bond or other security for the faithful performance of the contract.*

*§ 10. No member, agent, or employee of the Commission shall contract with the Commission or be interested, either directly or indirectly, in any contract with the Commission, or in the sale of any property to the Commission.*

*§ 11. The Commission shall keep and preserve complete records of its operations, dealings, and transactions, which records shall be open to inspection by the participating political subdivisions at all times. It shall make reports to the subdivisions annually and at such other times as they may require.*

*§ 12. Either town creating the Commission may withdraw therefrom upon giving one year's notice to the action, due regard being had for existing contracts and obligations. Upon the cessation of its activities all of the assets of the Commission shall be distributed to the towns participating therein at the time of liquidation in the proportion equal to their financial interest in the Commission as defined in § 7 herein.*

*§ 13. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby.*

*§ 14. The provisions of this act and all rules and regulations adopted hereunder shall not apply to any airport, air landing field, structure, air navigation facilities and other property incidental thereto, created or set aside for such purposes prior to the effective date of this act.*

## **Chapter 717 Newborn screening.**

An Act to amend and reenact §§ [32.1-65](#) through [32.1-67.1](#) of the Code of Virginia and to repeal the second enactment of Chapter 440 of the Acts of Assembly of 2002, relating to newborn screening services.

[\[S 1184\]](#)

Approved March 25, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [32.1-65](#) through [32.1-67.1](#) of the Code of Virginia are amended and reenacted as follows:

Article 7.

~~Detection and Control of Phenylketonuria and Other Inborn Errors of Metabolism- Newborn Screening.~~

§ [32.1-65](#). Certain newborn screening required.

In order to prevent mental retardation; *and* permanent disability or death, every infant who is born in ~~this~~ *the* Commonwealth shall be subjected to a screening test for biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, congenital adrenal hyperplasia, medium-chain acyl-CoA dehydrogenase (MCAD or MCADH) deficiency, and Maple Syrup Urine Disease, and each infant determined at risk shall be subject to a screening test for sickle cell diseases *tests for various disorders consistent with, but not necessarily identical to, the uniform condition panel recommended by the American College of Medical Genetics in its report, Newborn Screening: Toward a Uniform Screening Panel and System, that was produced for the U.S. Department of Health and Human Services. Further, upon the issuance of guidance for states' newborn screening programs by the federal Department of Health and Human Services, every infant who is born in the Commonwealth shall be screened for a panel of disorders consistent with, but not necessarily identical to, the federal guidance document.*

Any infant whose parent or guardian objects thereto on the grounds that such test ~~conflicts~~ *tests conflict* with his religious practices or tenets shall not be required to receive a ~~such screening test~~ *tests*.

The physician or certified nurse midwife in charge of the infant's care after delivery shall cause such ~~test~~ *tests* to be performed. The screening tests shall be performed by the Division of Consolidated Laboratory Services or any other laboratory the Department of Health has contracted with to provide this service.

The program for screening infants for sickle cell diseases shall be conducted in addition to the programs provided for in Article 8 (§ [32.1-68](#) et seq.) of this chapter.

§ [32.1-66](#). Commissioner to notify physicians; reports to Commissioner.

Whenever a *newborn screening* test result indicates suspicion of ~~biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine Disease or any sickle cell disease~~ *any condition pursuant to § [32.1-65](#)*, the Commissioner shall notify forthwith the attending physician and shall perform or provide for any additional testing required to confirm or disprove the diagnosis of ~~biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine Disease or the sickle cell disease~~. All physicians, *certified nurse midwives*, public health nurses, *or any nurse receiving such test result*, and administrators of hospitals in ~~this~~ *the* Commonwealth, shall report the discovery of all cases of ~~biotinidase deficiency,~~

phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine Disease any condition for which newborn screening is conducted pursuant to § [32.1-65](#) to the Commissioner, as well as sickle cell diseases in infants less than one year of age for infants and children up to two years of age.

§ [32.1-67](#). Duty of Board for follow-up and referral protocols; regulations.

*Infants identified with any condition for which newborn screening is conducted pursuant to § [32.1-65](#) shall be eligible for the services of the Children with Special Health Care Needs Program administered by the Department of Health. The Board of Health shall promulgate such regulations as may be necessary to implement Newborn Screening Services and the Children with Special Health Care Needs Program. The Board's regulations shall include, but not be limited to, a list of newborn screening tests conducted pursuant to § [32.1-65](#), follow-up procedures, appropriate referral processes, and services available for infants and children who have a heritable disorder or genetic disease identified through Newborn Screening Services. The Board shall recommend procedures for the treatment of biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine Disease and sickle cell diseases, and shall provide such treatment for infants in medically indigent families. The Board shall create procedures to provide to (i) the parents or guardian of any child or (ii) any pregnant woman, who is a legal resident of the Commonwealth and who is diagnosed as requiring treatment for phenylketonuria, the special food products required in the management of phenylketonuria out of such funds as may be appropriated for this purpose. The special food products shall include medical formulas which are designed specifically for the treatment of phenylketonuria and low protein modified foods (not foods naturally low in protein) which are designed specifically for use in the treatment for inborn errors of metabolism. The parents or guardian of any such child, or the pregnant woman, shall, in the discretion of the Department, reimburse to the local health department the cost of such special medical formulas in an amount not to exceed two percent of their gross income. The parents or guardian of any such child, or the pregnant woman, shall, with such funds as are appropriated, receive reimbursement from the Department for the cost of such special low protein modified foods in an amount not to exceed \$2,000 per diagnosed person per year. The reimbursement required by this section shall be payable quarterly by the first day of January, April, July, and October.*

§ [32.1-67.1](#). Confidentiality of records; prohibition of discrimination.

The results of the *newborn* screening programs services conducted pursuant to this article may be used for research and collective statistical purposes. No publication of information, biomedical research, or medical data shall be made which ~~that~~ identifies

- any infant having a ~~genetic disease~~ *heritable or genetic disorder*. All medical records maintained as part of *newborn screening services* ~~the screening programs~~ shall be confidential and shall be accessible only to the Board, the Commissioner, or his agents.
2. That the second enactment of Chapter 440 of the 2002 Acts of Assembly is repealed.
  3. That the provisions of this act shall become effective on March 1, 2006.
  4. That, notwithstanding the provisions of the third enactment clause, the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 721 Infants; screening tests required after delivery.**

An Act to amend and reenact §§ [32.1-65](#) through [32.1-67.1](#) of the Code of Virginia and to repeal the second enactment of Chapter 440 of the 2002 Acts of Assembly, relating to newborn screening services.

[\[H 1824\]](#)

Approved March 25, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [32.1-65](#) through [32.1-67.1](#) of the Code of Virginia are amended and reenacted as follows:

Article 7.

~~Detection and Control of Phenylketonuria and Other Inborn Errors of Metabolism - Newborn Screening.~~

§ [32.1-65](#). Certain newborn screening required.

In order to prevent mental retardation; *and* permanent disability or death, every infant who is born in ~~this~~ *the* Commonwealth shall be subjected to a ~~screening test for biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, congenital adrenal hyperplasia, medium-chain acyl-CoA dehydrogenase (MCAD or MCADH) deficiency, and Maple Syrup Urine Disease,~~ and each infant determined at risk shall be subject to a ~~screening test for sickle cell diseases~~ *tests for various disorders consistent with, but not necessarily identical to, the uniform condition panel recommended by the American College of Medical Genetics in its report, Newborn Screening: Toward a Uniform Screening Panel and System, that was produced for the U.S. Department of*

*Health and Human Services. Further, upon the issuance of guidance for states' newborn screening programs by the federal Department of Health and Human Services, every infant who is born in the Commonwealth shall be screened for a panel of disorders consistent with, but not necessarily identical to, the federal guidance document.*

*Any infant whose parent or guardian objects thereto on the grounds that such ~~test con-~~  
~~flicts-tests conflict~~ with his religious practices or tenets shall not be required to receive a  
~~such screening-testtests.~~*

*The physician or certified nurse midwife in charge of the infant's care after delivery shall cause such ~~test-tests~~ to be performed. The screening tests shall be performed by the Division of Consolidated Laboratory Services or any other laboratory the Department of Health has contracted with to provide this service.*

*The program for screening infants for sickle cell diseases shall be conducted in addition to the programs provided for in Article 8 (§ [32.1-68](#) et seq.) of this chapter.*

§ [32.1-66](#). Commissioner to notify physicians; reports to Commissioner.

*Whenever a ~~newborn screening~~ test result indicates suspicion of ~~biotinidase deficiency,~~  
~~phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine~~  
~~Disease or any sickle cell disease~~ any condition pursuant to § [32.1-65](#), the Com-  
missioner shall notify forthwith the attending physician and shall perform or provide for  
any additional testing required to confirm or disprove the diagnosis of ~~biotinidase defi-~~  
~~ciency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup~~  
~~Urine Disease or the sickle cell disease~~. All physicians, *certified nurse midwives*, public  
health nurses, *or any nurse receiving such test result*, and administrators of hospitals in  
~~this~~ *the* Commonwealth, shall report the discovery of all cases of ~~biotinidase deficiency,~~  
~~phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine~~  
~~Disease any condition for which newborn screening is conducted pursuant to §~~ [32.1-65](#)  
to the Commissioner, ~~as well as sickle cell diseases in infants less than one year of age~~  
*for infants and children up to two years of age.**

§ [32.1-67](#). Duty of Board for follow-up and referral protocols; regulations.

*Infants identified with any condition for which newborn screening is conducted pursuant to § [32.1-65](#) shall be eligible for the services of the Children with Special Health Care Needs Program administered by the Department of Health. The Board of Health shall promulgate such regulations as may be necessary to implement Newborn Screening Services and the Children with Special Health Care Needs Program. The Board's regulations shall include, but not be limited to, a list of newborn screening tests conducted pursuant to § [32.1-65](#), follow-up procedures, appropriate referral processes, and services available for infants and children who have a heritable disorder or genetic disease*

~~identified through Newborn Screening Services. The Board shall recommend procedures for the treatment of biotinidase deficiency, phenylketonuria, hypothyroidism, homocystinuria, galactosemia, Maple Syrup Urine Disease and sickle cell diseases, and shall provide such treatment for infants in medically indigent families. The Board shall create procedures to provide to (i) the parents or guardian of any child or (ii) any pregnant woman, who is a legal resident of the Commonwealth and who is diagnosed as requiring treatment for phenylketonuria, the special food products required in the management of phenylketonuria out of such funds as may be appropriated for this purpose. The special food products shall include medical formulas which are designed specifically for the treatment of phenylketonuria and low protein modified foods (not foods naturally low in protein) which are designed specifically for use in the treatment for inborn errors of metabolism. The parents or guardian of any such child, or the pregnant woman, shall, in the discretion of the Department, reimburse to the local health department the cost of such special medical formulas in an amount not to exceed two percent of their gross income. The parents or guardian of any such child, or the pregnant woman, shall, with such funds as are appropriated, receive reimbursement from the Department for the cost of such special low protein modified foods in an amount not to exceed \$2,000 per diagnosed person per year. The reimbursement required by this section shall be payable quarterly by the first day of January, April, July, and October.~~

§ [32.1-67.1](#). Confidentiality of records; prohibition of discrimination.

The results of the *newborn screening programs services* conducted pursuant to this article may be used for research and collective statistical purposes. No publication of information, biomedical research, or medical data shall be made ~~which~~ *that* identifies any infant having a ~~genetic disease~~ *heritable or genetic disorder*. All medical records maintained as part of *newborn screening services* ~~the screening programs~~ shall be confidential and shall be accessible only to the Board, the Commissioner, or his agents.

2. That the second enactment of Chapter 440 of the 2002 Acts of Assembly is repealed.
3. That the provisions of this act shall become effective on March 1, 2006.
4. That, notwithstanding the provisions of the third enactment clause, the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## Chapter 841 Duck blinds; allows use in certain localities and waters.

An Act to amend and reenact Chapter 334 of the Acts of Assembly of 1928, as amended by Chapter 377 of the Acts of Assembly of 1977, and to amend and reenact Chapter 39 of the Acts of Assembly of 1942, as amended by Chapter 29 of the Acts of Assembly of 1959, Extra Session, and Chapter 305 of the Acts of Assembly of 1964, relating to duck blinds in certain localities; penalties.

[\[H 2689\]](#)

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 334 of the Acts of Assembly of 1928, as amended by Chapter 377 of the Acts of Assembly of 1977, is amended and reenacted as follows:

§ 1. ~~That~~ The owners of land adjoining the *public* waters of the Counties of ~~King George~~, Stafford, Prince William, and Fairfax, their lessees, licensees or permittees shall have the *exclusive privilege of erecting stationary blinds, as defined in § 29.1-341 of the Code of Virginia, on their shoreline and the prior right to erect* ~~stob or brush~~ *stationary blinds in the public waters* in front of their property for the purpose of hunting waterfowl, except that it shall be unlawful to place ~~stob or brush~~ *stationary blinds* in such waters at a greater distance than ~~three hundred~~ 300 yards from the shore ~~at or~~ low water mark; provided, however, that such ~~stob or brush~~ *stationary blinds* may not be set or maintained at a greater distance from the shore than one-half of the width of the tributary where said tributary is less than ~~six hundred~~ 600 yards in width. *In any year, the owners of riparian rights, their lessees, or permittees shall forfeit the privilege of erecting stationary blinds on their shoreline and the prior right to erect stationary blinds in the public waters in front of their property if they have not erected the blind by November 1.*

§ 2. It shall be unlawful to shoot waterfowl from floating blinds, *as defined in § 29.1-342 of the Code of Virginia*, unless the same are anchored. No floating blind shall be set or shot from within ~~four hundred~~ 400 yards of any other person's blind ~~or shore~~ without the written consent of such other person.

§ 3. All floating blinds shall be taken in, one-half hour after sunset; and for the purposes of this act a blind shall be construed to be taken in when it is in tow leaving the hunting grounds.

§ 4. Any person violating the provisions of this act shall be deemed guilty of a *Class 2 misdemeanor* and upon conviction shall be fined not less than ten nor more than one hundred dollars or confined in jail not exceeding one month, or both, in the discretion of the court or jury trying the case.

2. That Chapter 39 of the Acts of Assembly of 1942, as amended by Chapter 29 of the Acts of Assembly of 1959, Extra Session, and Chapter 305 of the Acts of Assembly of 1964, are amended and reenacted as follows:

§ 1. It shall be unlawful to hunt any migratory waterfowl from floating blinds, as defined in ~~§ 29-83 of the Code of Virginia~~ § [29.1-342](#) of the Code of Virginia in the Counties of Caroline, King George, Essex, Westmoreland, and Richmond in any of the public marshes, guts, streams, branches, creeks, or bays, including among others Green Bay and Port Tobago Bay, flowing into the Rappahannock River or into any of its tributaries, or in Buckner's Creek, Nomini Creek, and Nomini Bay, flowing into the Potomac River or into any of its tributaries, *except from a licensed offshore blind stake site. For the purposes of this act, an "offshore blind stake site" means a specific location in the public waters where a stake is licensed for the purpose of hunting and shooting waterfowl from a floating blind.*

§ 2. *Unless a license for a stationary blind, as defined in § [29.1-341](#) of the Code of Virginia, has been obtained pursuant to § [29.1-344](#) or [29.1-345](#) of the Code of Virginia and a stationary blind has been erected by the required time, a nonriparian owner who has not already licensed and erected a stationary blind for the year in the areas enumerated in § 1 and who holds a valid hunting license may apply to the local license agent or clerk of the circuit court of the county in which an offshore blind stake site is to be located for a license for an offshore blind stake site.*

§ 3. *Except as provided in § 4, the license for an offshore blind stake site may be obtained from November 1 through November 10 of each year. Once obtained, a stake shall be erected on the site, and a license plate supplied with the license for that season shall be affixed thereto by November 10.*

§ 4. *From November 11 through November 15 of each year, any riparian owner and any other person who has already licensed and erected a stationary blind for the year in the areas enumerated in § 1 and who holds a valid hunting license may apply to the local license agent or clerk of the circuit court of the county in which an offshore blind stake site is to be located for a license for any remaining offshore blind stake sites. Once obtained, a stake shall be erected on the site, and a license plate supplied with the license for that season shall be affixed thereto by November 15.*

§ 5. *The clerk or local license agent shall be paid the fees charged for issuing hunting licenses. With each license, the clerk or local license agent shall deliver a license plate bearing the number of the license, which shall be affixed to the offshore blind site stake where it may be easily observed. The Department of Game and Inland Fisheries shall furnish the licenses and license plates provided for in this act. The proceeds from the sale of offshore blind stake site licenses shall be paid into the Game Protection Fund established pursuant to § [29.1-101](#) of the Code of Virginia.*

§ 6. *No offshore blind stake site shall be located closer than 500 yards to another licensed stationary blind or offshore blind stake site without the written consent of the affected stationary blind or blind stake site owner.*

§ 7. *The licensee shall hunt from a floating blind that is tied to or anchored within 25 yards of the offshore blind stake site.*

§ 8. *There shall be a limit of four offshore blind stake site licenses per license applicant. The fee for an offshore blind stake site license shall be \$5 for each such license. The purchase of an offshore blind stake site license shall be in addition to the requirement of obtaining a floating blind license under § [29.1-340](#) of the Code of Virginia.*

§ 9. *If any properly licensed offshore blind stake site is destroyed or removed in any manner, it may be replaced within 30 days without losing the position that it formerly occupied.*

§ 10. *It is unlawful for any person to destroy or remove another's properly licensed offshore blind site stake.*

§ 11. *Within 15 days of the close of the waterfowl season, blind stake site licensees shall remove from the public waters each licensed stake.*

§ 12. *Any person who violates this act is guilty of a Class 2 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty nor more than two hundred and fifty dollars or by confinement in jail for not more than thirty days, or by both such fine and imprisonment and, in addition to any penalties allowed by law, the court may revoke any license to hunt waterfowl in the areas described by this act.*

## **Chapter 577 Alternative, pilot project; VITA to study.**

An Act to authorize the Virginia Information Technologies Agency to conduct an alternative dispute resolution pilot project.

[\[H 2054\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), the Virginia Information Technologies Agency is authorized to promulgate administrative rules allowing the use of alternative dispute resolution in procurement protests involving its procurement of information technology and telecommunications goods and services pursuant to § [2.2-2012](#). Such rules shall provide that deadlines specified in the Virginia Public Procurement Act for filing procurement protests are tolled during the use of alternative dispute resolution.*

*§ 2. Such rules shall not require the protesting party to exhaust all available administrative remedies prior to seeking judicial review.*

*§ 3. On or before July 1, 2006, and every July 1 thereafter until the expiration of this act, the Chief Information Officer of the Commonwealth shall submit a report to the Interagency Dispute Resolution Advisory Council (the Council) on the implementation of the provisions of this act. Pursuant to the Virginia Administrative Dispute Resolution Act (§ [2.2-4115](#) et seq.), the Council shall report on this pilot project and other council alternative dispute resolution programs to the chairs of the House and Senate Committees on General Laws, the House Committee on Science and Technology, and the Joint Commission on Technology and Science.*

2. That the provisions of this act shall expire on July 1, 2008.

## **Chapter 609 Teachers; extends provision for Superintendent of Public Instruction surveying shortage in schools.**

An Act to amend and reenact the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, relating to identification of critical teacher shortage areas by the Superintendent of Public Instruction.

[\[H 1782\]](#)

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, is amended and reenacted as follows:

5. That the provisions of this act shall expire on July 1, ~~2005~~-2010.

### **Chapter 615 Deputy Cliff Dicker Memorial Hwy.; designating as portion of Route 100 in Wythe County.**

An Act to designate that portion of the Virginia Route 100 located in Wythe County the "Deputy Cliff Dicker Memorial Highway."

[\[H 1893\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of the Virginia Route 100 located in Wythe County is hereby designated the "Deputy Cliff Dicker Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

### **Chapter 660 Willard Owens Memorial Highway; designating as Route 609 in Buchanan County.**

An Act to designate Virginia Route 609 in Buchanan County the "Willard Owens Memorial Highway."

[\[H 2905\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Virginia Route 609 in Buchanan County is hereby designated the "Willard Owens Memorial Highway." The Department of Transportation shall place and maintain*

*appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 752 Virginia Capital Trail.**

An Act to designate the bicycle and pedestrian transportation facilities within the Virginia Route 5 corridor between the City of Richmond and Jamestown the "Virginia Capital Trail."

[\[S 1033\]](#)

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the bicycle and pedestrian transportation facilities within the Virginia Route 5 corridor between the City of Richmond and Jamestown are hereby designated the "Virginia Capital Trail." This designation shall not affect any other designation heretofore or hereafter applied to these facilities.*

## **Chapter 846 Land preservation tax credit; transfer to other taxpayers.**

An Act to authorize the Tax Commissioner to recognize the transfer of certain tax credits under the Virginia Land Conservation Incentives Act.

[\[H 2788\]](#)

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Taxation is authorized to recognize the transfer of unused tax credits under the Virginia Land Conservation Incentives Act of 1999 for a donation made prior to January 1, 2002, provided that (i) the transfer occurred on or before December 31, 2004, (ii) notification of at least one transfer attributable to such donation was*

*filed with the Department on forms prescribed for that purpose on or before December 31, 2004, and (iii) the credit holder who transferred the credit can establish that the transfer was made in reliance on erroneous advice from the Department of Taxation concerning the transferability of the credits.*

## **Chapter 623 Heritage Music Trail: The Crooked Road; designating as certain highways in Southwest Virginia.**

An Act to amend Chapter 624 of the Acts of Assembly of 2004 to designate additional portions of certain highways "Virginia's Heritage Music Trail: The Crooked Road."

[\[H 2013\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The following route is hereby designated "Virginia's Heritage Music Trail: The Crooked Road": Beginning at the Blue Ridge Folklife Museum in Ferrum, thence west on U.S. Route 40 to Shooting Creek Road, thence along Shooting Creek Road to its intersection with U.S. Route 221, thence along U.S. 221 through the Town of Floyd and west on U.S. Route 221 to its intersection with U.S. Route 58 in the Town of Hillsville, thence west on U.S. 58/221 to the Town of Independence, thence west on U.S. Route 58 through the Town of Damascus to its intersection with U.S. Route 11, thence southeast on U.S. 11 through the Town of Abingdon where U.S. 11 joins with U.S. Route 19 to Interstate Route 81 (Exit 5) in the City of Bristol, thence west on U.S. 58 and Interstate Route 81 to the intersection of U.S. Route 421 (Exit 1), thence west on U.S. 58/421 to its intersection with U.S. Route 23 in the Town of Weber City, thence west and north on U.S. Route 23/58/421 to the Town of Duffield, thence north on U.S. Route 23 through the Town of Big Stone Gap and the City of Norton to the intersection of U.S. Route 23 (business) south of the Town of Pound, thence north on U.S. 23 (business) into the Town of Pound to the intersection of Virginia Route 83, thence east on Virginia Route 83 to the Town of Clintwood; *and, in addition, beginning in the Town of Floyd, south on Virginia Route 8 to the Town of Stuart, thence west on U.S. Route 58 from the Town of Stuart to the Town of Hillsville.* The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route. This designation shall not affect

any other designation heretofore or hereafter applied to this route or any portions thereof.

## **Chapter 634 Heritage Music Trail: The Crooked Road; designating as certain highways in Southwest Virginia.**

An Act to amend and reenact Chapter 624 of the Acts of Assembly of 2004, relating to Virginia's Heritage Music Trail: The Crooked Road.

[\[H 2400\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1. That Chapter 624 of the Acts of Assembly of 2004 is amended and reenacted as follows:

§ 1. The following route is hereby designated "Virginia's Heritage Music Trail: The Crooked Road": Beginning at the Blue Ridge Folklife Museum in Ferrum, thence west on U.S. Route 40 to Shooting Creek Road, thence along Shooting Creek Road to its intersection with U.S. Route 221, thence along U.S. 221 through the Town of Floyd and west on U.S. Route 221 to its intersection with U.S. Route 58 in the Town of Hillsville, thence west on U.S. 58/221 to the Town of Independence, thence west on U.S. Route 58 through the Town of Damascus to its intersection with U.S. Route 11, thence southeast on U.S. 11 through the Town of Abingdon where U.S. 11 joins with U.S. Route 19 to Interstate Route 81 (Exit 5) in the City of Bristol, thence west on U.S. 58 and Interstate Route 81 to the intersection of U.S. Route 421 (Exit 1), thence west on U.S. 58/421 to its intersection with U.S. Route 23 in the Town of Weber City, thence west and north on U.S. Route 23/58/421 to the Town of Duffield, thence north on U.S. Route 23 through the Town of Big Stone Gap and the City of Norton to the intersection of U.S. Route 23 (business) south of the Town of Pound, thence north on U.S. 23 (business) into the Town of Pound to the intersection of Virginia Route 83, thence east on Virginia Route 83 ~~to~~ *through the Town of Clintwood to the Town of Haysi, thence north on Virginia Route 80 to Breaks Interstate Park.* The Department of Transportation shall place and maintain appropriate markers indicating the designation of this route. This designation shall not affect any other designation heretofore or hereafter applied to this route or any portions thereof.

## **Chapter 852 Veterans' Care Center; Governor to request federal funds to expand capacity of beds.**

An Act to authorize funding for expanding the capacity of the Sitter-Barefoot Veterans' Care Center in Richmond, Virginia.

[\[H 2850\]](#)

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is authorized to request federal funds to expand the capacity of the Sitter-Barefoot Veterans' Care Center located in Richmond, Virginia, by an additional 80 beds. After the United States Department of Veterans Affairs has confirmed that it has officially accepted the application of the 80-bed expansion, the State Treasurer shall advance a loan of \$2,800,000 to the Department of Veterans Services for the state share of the expansion's construction in the form of a short-term treasury loan, with no interest. The purpose of these funds shall be to move Virginia forward on the priority list of the United States Department of Veterans Affairs for approval of the application.*

## **Chapter 874 Ronald Wilson Reagan Memorial Highway; designating a portion of Route 234 in Prince William County.**

An Act to designate a portion of Virginia Route 234 in Prince William County the "Ronald Wilson Reagan Memorial Highway."

[\[H 1656\]](#)

Approved March 28, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 234 between U.S. Route 1 and Interstate Route 66 in Prince William County is hereby designated the "Ronald Wilson Reagan Memorial Highway." The Department of Transportation shall place and maintain appropriate*

*markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 655 Transportation projects; removes certain designated as funded from Priority Transportation Fund.**

An Act to amend § 2 of the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 and to repeal the third enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, relating to transportation projects throughout the Commonwealth.

[\[H 2763\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 are amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia, as amended, from time to time revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, Series ...", provided that the aggregate principal amount outstanding at any time shall not exceed ~~\$800,000,000~~ *\$1.2 billion* (exclusive of any obligations that may be issued to refund such notes in accordance with § [33.1-293](#) of the Code of Virginia, as amended) plus an amount for financing expenses, (including, without limitation, any original issue discount) (the Notes). The net proceeds of the Notes shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs, incurred or to be incurred for construction or funding of such projects ~~to-listed in the Six-Year Improvement Program as may be designated adopted~~ from time to time by the General Assembly; provided, however, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

2. That the third enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 are repealed.

## Chapter 659 Heritage Music Trail: The Crooked Road; designating as certain highways in Southwest Virginia.

An Act to amend Chapter 624 of the Acts of Assembly of 2004 to designate additional portions of certain highways "Virginia's Heritage Music Trail: The Crooked Road" of Southwest Virginia.

[\[H 2856\]](#)

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The following route is hereby designated "Virginia's Heritage Music Trail: The Crooked Road" of *Southwest Virginia*: Beginning at the *intersection of U.S. Route 220 and Virginia Route 40 in the Town of Rocky Mount, thence west on Virginia Route 40 to the Blue Ridge Folklife Museum in Ferrum, thence west on U.S. Route 40 to Shooting Creek Road (Virginia Route 860), thence along Shooting Creek Road to its intersection with U.S. Route 221, thence along U.S. 221 through the Town of Floyd and west on U.S. Route 221 to its intersection with U.S. Route 58 to its intersection with U.S. Route 8, thence south on Virginia Route 8 to the intersection of Virginia Route 8 and Virginia Route 57, thence south to the Town of Stuart and the intersection of U.S. Route 58, thence west on U.S. Route 58 to Meadows of Dan, continuing west to the intersection of U.S. Route 221 in the Town of Hillsville, thence west on U.S. 58/221 to the Town of Independence, thence west on U.S. Route 58 through the Town of Damascus to its intersection with U.S. Route 11, thence southeast on U.S. 11 through the Town of Abingdon where U.S. 11 joins with U.S. Route 19 to Interstate Route 81 (Exit 5) in the City of Bristol, thence west on U.S. 58 and Interstate Route 81 to the intersection of U.S. Route 421 (Exit 1), thence west on U.S. 58/421 to its intersection with U.S. Route 23 in the Town of Weber City, thence west and north on U.S. Route 23/58/421 to the Town of Duffield, thence north on U.S. Route 23 through the Town of Big Stone Gap and the City of Norton to the intersection of U.S. Route 23 (business) south of the Town of Pound, thence north on U.S. 23 (business) into the Town of Pound to the intersection of Virginia Route 83, thence east on Virginia Route 83 to the Town of Clintwood, thence east on Virginia Route 83 north of the Town of Haysi to the intersection of Virginia Route 80, thence north on Virginia Route 80 to The Breaks Interstate Park, where the trail shall terminate. The*

Department of Transportation shall place and maintain appropriate markers indicating the designation of this route. This designation shall not affect any other designation heretofore or hereafter applied to this route or any portions thereof.

## **Chapter 838 Medical care facilities certificate of public need; reissuance of request for new nursing home beds.**

An Act to provide for the authorization and acceptance of certain certificate of public need applications.

[\[H 2639\]](#)

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain certificate of public need applications authorized.*

*A. Notwithstanding the provisions of § [32.1-102.3:2](#), any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, or the provisions of any current Request for Applications (RFAs) issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#), the Commissioner of Health shall reissue a Request for Applications for 60 new nursing home or nursing facility beds in Planning District 12 when (i) pursuant to the 1997 determination of a 240-nursing home bed need in Planning District 12 and the issuance by the Commissioner of Health of the formal legal notice of Request for Certificate of Public Need Applications, a certificate of public need for 60 new nursing home or nursing facility beds was issued to an existing nursing home in Planning District 12; and (ii) the scheduled date for completion has passed for the previously issued certificate, the company awarded the 60-bed certificate of public need has not started construction, and, thus, the relevant certificate of public need has expired.*

*B. The Commissioner shall authorize and accept applications for such 60 nursing home or nursing facility beds and may issue a certificate of public need for an increase of such 60 new beds in which nursing facility or extended care services are to be provided to establish a new facility within Planning District 12. The Commissioner shall give preference in reissuing any certificate of public need for the 60 beds to an application that proposes to establish a new nursing facility located within three miles of the boundary of*

*the county seat or within the county seat of the county for which the now-expired certificate of public need authorized construction of 60 new nursing home or nursing facility beds.*

## **Chapter 936 Capitol restoration; sale of surplus property and transfer of proceeds.**

An Act to provide for the sale of surplus property from the Virginia Capitol restoration and expansion project and to transfer all net proceeds from the sale to the Virginia Capitol Preservation Foundation.

[\[S 905\]](#)

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the Department of General Services shall conduct public sales or auctions of the surplus property from the Virginia Capitol restoration and expansion project. In addition, the Department shall provide for the sale of the chairs used in the chambers of the houses to current and former members of the General Assembly in accordance with guidelines established by the Clerk of the House of Delegates and the Clerk of the Senate. For purposes of this section, "surplus property" means any personal property including, but not limited to, any fixture, furnishing, material, supply, equipment, and recyclable item, that is determined to be salvageable surplus property as agreed to by the Clerk of the House of Delegates, the Clerk of the Senate, and the Secretary of Administration. There shall be appropriated to the Virginia Capitol Preservation Foundation a sum sufficient appropriation equal to all of the net proceeds, less actual direct costs, of the sales to support the restoration and ongoing preservation of Virginia's Capitol and Capitol Square.*

2. That an emergency exists and this act is in force from its passage.

## Uncodified Acts of Assembly - 2006

### Chapter 3 Douthat State Park; pilot program repealed.

An Act to repeal Chapter 45 of the Acts of Assembly of 1992, relating to a pilot program to keep Douthat State Park open throughout the year.

[\[H 47\]](#)

Approved February 14, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 45 of the Acts of Assembly of 1992 is repealed.

### Chapter 28 School board; referendum in Page County on question of whether should be elected biennially.

An Act to provide for a referendum in Page County on the election of the school board for staggered four-year terms.

[\[S 342\]](#)

Approved March 1, 2006

Whereas, the voters of Page County in a November 2002 election approved the biennial election of the board of supervisors for staggered four-year terms; and

Whereas, there has been confusion whether that election also reflected approval of the biennial election of the school board for staggered four-year terms, and an election on that issue is required to resolve this issue; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The officials conducting the November 7, 2006, election in Page County shall conduct a referendum on that date in the County to poll the voters on the question of whether they favor the biennial election of school board members for staggered four-year terms.*

*The question on the ballot shall be:*

*"Shall members of the County School Board be elected biennially for staggered four-year terms?"*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the County at least once in the period 45 to 60 days before the election.*

*If the voters approve the election of the school board biennially for staggered four-year terms at the November 2006 election, the members from Districts 1 and 5 shall be elected at the November 2007 election for two-year terms and the members from Districts 2, 3, and 4 shall be elected for four-year terms. Thereafter all members shall be elected for four-year terms.*

## **Chapter 39 Occoneechee State Park; lease extended.**

An Act to amend and reenact § 6 of Chapter 809 of the Acts of Assembly of 2002, as amended by Chapter 825 of the Acts of Assembly of 2004, relating to authorizing the Department of Conservation and Recreation to amend a lease by and between the Secretary of the Army, Lessor, and the Commonwealth of Virginia, Department of Conservation and Recreation, Lessee, for Occoneechee State Park in Mecklenburg County.

[\[S 52\]](#)

Approved March 7, 2006

Be it enacted by the General Assembly of Virginia:

1.

That § 6 of Chapter 809 of the Acts of Assembly of 2002, as amended by Chapter 825 of the Acts of Assembly of 2004, is amended as follows:

§ 6. The provisions of this act shall expire on July 1, ~~2006~~ 2008, unless the amendment has been incorporated into the lease agreement by July 1, ~~2006~~ 2008.

## **Chapter 49 CHAMPS program; coordinated medical care in City of Chesapeake.**

An Act to repeal Chapter 598 of the Acts of Assembly of 1991, relating to the Chesapeake CHAMPS program.

[\[H 48\]](#)

Approved March 7, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 598 of the Acts of Assembly of 1991 is repealed.

## **Chapter 105 Private roads; Counties of Dickenson & Tazewell added to provision allowing maintenance thereof.**

An Act to amend and reenact Chapter 555 of the Acts of Assembly of 2005, relating to maintenance of certain private roads in Dickenson County and Tazewell County.

[\[H 643\]](#)

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 555 of the Acts of Assembly of 2005 is amended and reenacted as follows:

§ 1. Buchanan County, *Dickenson County*, and *Tazewell County* may make appropriations in such sums and at such times as the governing body of the county deems proper, for maintenance of private roads that provide the sole access to private family cemeteries containing 10 or more graves. Appropriations shall be made for this purpose only when necessary to keep the roads passable by motor vehicle and only when such action is not in conflict with the provisions of § [57-27.1](#).

## **Chapter 124 Vendor's manual; DGS, et al to establish procedure for refunding relevant eVa transaction fees.**

An Act to require the Department of General Services to establish a procedure for refund of the eVa transaction fee in certain instances.

[\[H 930\]](#)

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services, in cooperation with the Virginia Information Technologies Agency, shall establish and publish in the vendor's manual a procedure for refunding the relevant eVa transaction fees in the event of a change order or cancellation of a contract by a vendor.*

## **Chapter 511 Higher Educational Institutions Bond Act of 2006; created.**

An Act to authorize the Treasury Board to issue bonds in an amount not to exceed \$395,428,570 pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth, and to repeal Chapters 2 and 813 of the Acts of Assembly of 2004 and Chapter 83 of the Acts of Assembly of 2005.

[\[S 28\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2006."*

*§ 2. Authorization of bonds and bond anticipation notes (BANs). The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant*

*to Article X, Section 9(c), of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series . . . ," in an aggregate principal amount not exceeding \$395,428,570, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>-</i>
<i>Amount</i>			
<i>George Mason</i>	<i>Renovate Commonwealth</i>	<i>16690</i>	
<i>University</i>	<i>and Dominion housing</i>		<i>2,-</i>
<i>537,700</i>	<i>facilities</i>		
<i>George Mason</i>	<i>Renovate student</i>	<i>17050</i>	
<i>University</i>	<i>housing, President's</i>		<i>3,-</i>
<i>340,000</i>	<i>Park I</i>		
<i>George Mason</i>	<i>Construct student</i>	<i>17056</i>	

Uncodified Acts of Assembly - 2006

<i>University</i> <i>778,000</i>	<i>housing VII</i>		<i>38,-</i>
<i>James Madison</i>	<i>Renovate Bluestone</i>	<i>16687</i>	
<i>University</i> <i>810,000</i>	<i>Residence Hall</i>		<i>6,-</i>
	<i>Phase 3</i>		
<i>The College Of</i>	<i>Renovate Commons</i>	<i>16647</i>	
<i>William And Mary</i> <i>480,000</i>	<i>Dining Hall</i>		<i>1,-</i>
<i>University of Mary</i>	<i>Acquisition of</i>	<i>16686</i>	
<i>Washington</i> <i>000,000</i>	<i>Student Residence</i>		<i>10,-</i>
	<i>Facilities</i>		
<i>University Of</i>	<i>Construct Alderman</i>	<i>16650</i>	
<i>Virginia</i> <i>500,000</i>	<i>Road Housing</i>		<i>22,-</i>
<i>Virginia Polytechnic</i>	<i>Improve major resi-</i>	<i>17008</i>	
<i>Institute and State</i> <i>000,000</i>	<i>dence and dining hall</i>		<i>4,-</i>
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Parking Auxiliary</i>	<i>14815</i>	

Uncodified Acts of Assembly - 2006

<i>Institute and State</i>	<i>Projects</i>		4,-
942,700			
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Construct New</i>	16682	
<i>Institute and State</i>	<i>Residence Hall</i>		22,-
000,000			
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Construct Dining and</i>	16683	
<i>Institute and State</i>	<i>Student Union Facility</i>		6,-
250,000			
<i>University</i>			
<i>Christopher Newport</i>	<i>Construct Residence</i>	17359	
<i>University</i>	<i>Hall V</i>		25,-
000,000			
<i>George Mason</i>	<i>Construct Housing VII</i>	17367	
<i>University</i>	<i>and Entrance</i>		
Road	48,486,000		
	<i>Realignment</i>		
<i>James Madison</i>	<i>Construct new</i>	17329	
<i>University</i>	<i>residence hall</i>		34,-
284,000			

Uncodified Acts of Assembly - 2006

<i>James Madison</i>	<i>Renovate Bluestone</i>	<i>17330</i>	
<i>University</i>	<i>Dormitories, Phase IV</i>		<i>23,-</i>
<i>909,000</i>			
<i>James Madison</i>	<i>Construct New</i>		
<i>University</i>	<i>Dining Facility</i>		<i>18,-</i>
<i>914,170</i>			
<i>Longwood University</i>	<i>Renovate Cox Hall</i>		
<i>17320</i>	<i>12,893,000</i>		
<i>Longwood University</i>	<i>Renovate Stubbs Hall</i>		
<i>17321</i>	<i>13,878,000</i>		
<i>Old Dominion</i>	<i>Renovate Student</i>	<i>16688</i>	
<i>University</i>	<i>Housing, Phase I</i>		<i>2,-</i>
<i>000,000</i>			
<i>Old Dominion</i>	<i>Construct Residence</i>		
<i>University</i>	<i>Hall, Phase II</i>	<i>17342</i>	<i>28,-</i>
<i>931,000</i>			
<i>The College Of William</i>	<i>Renovate Dormitories</i>	<i>17281</i>	
<i>And Mary</i>			
<i>In Virginia</i>		<i>5,000,000</i>	
<i>Virginia Polytechnic</i>	<i>Improve Residence and</i>	<i>17294</i>	
<i>Institute and State</i>	<i>Dining Halls</i>		<i>10,-</i>
<i>000,000</i>			

Uncodified Acts of Assembly - 2006

<i>University</i>			
<i>Virginia State</i>	<i>Construct Residence</i>	<i>17307</i>	
<i>University</i>	<i>Halls</i>		<i>17,-</i>
<i>461,000</i>			
<i>Virginia State</i>	<i>Renovate Howard Hall</i>	<i>17308</i>	
<i>University</i>			<i>7,-</i>
<i>620,000</i>			
<i>Virginia State</i>	<i>Construct Dining Hall</i>	<i>17309</i>	
<i>University</i>			<i>4,-</i>
<i>501,000</i>			
<i>Longwood University</i>	<i>Renovate Housing</i>	<i>16874</i>	
	<i>Facilities</i>		<i>8,-</i>
<i>961,000</i>			
<i>Virginia State</i>	<i>Construct Student</i>		
<i>University</i>	<i>Village 240 Bed</i>	<i>16685</i>	<i>10,-</i>
<i>952,000</i>			
	<i>Residence Hall</i>		
			<i>Total \$395,-</i>
<i>428,570</i>			

**§ 3. Application of proceeds.** *The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs,*

*(ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues*

*or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series . . . ."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose of payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the*

*bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this Act or otherwise authorized pursuant to Article X, Section 9(c), of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this Act, and Article X, Section 9(c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this Act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this Act which can be given effect without the invalid provisions or applications.*

2. That Chapters 2 and 813 of the Acts of Assembly of 2004 and Chapter 83 of the Acts of Assembly of 2005 are repealed; however, such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such acts.

3. That an emergency exists and this act is in force from its passage.

## Chapter 532 Higher Educational Institutions Bond Act of 2006; created.

An Act to authorize the Treasury Board to issue bonds in an amount not to exceed \$395,428,570 pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth, and to repeal Chapters 2 and 813 of the Acts of Assembly of 2004 and Chapter 83 of the Acts of Assembly of 2005.

[\[H 77\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2006."*

*§ 2. Authorization of bonds and bond anticipation notes (BANs). The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series . . . ," in an aggregate principal amount not exceeding \$395,428,570, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

Uncodified Acts of Assembly - 2006

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>-</i>
<i>Amount</i>			
<i>George Mason</i>	<i>Renovate Commonwealth</i>	<i>16690</i>	
<i>University</i>	<i>and Dominion housing</i>		<i>2,-</i>
<i>537,700</i>	<i>facilities</i>		
<i>George Mason</i>	<i>Renovate student</i>	<i>17050</i>	
<i>University</i>	<i>housing, President's</i>		<i>3-</i>
<i>,340,000</i>	<i>Park I</i>		
<i>George Mason</i>	<i>Construct student</i>	<i>17056</i>	
<i>University</i>	<i>housing VII</i>		<i>38,-</i>
<i>778,000</i>			
<i>James Madison</i>	<i>Renovate Bluestone</i>	<i>16687</i>	
<i>University</i>	<i>Residence Hall</i>		<i>6,-</i>
<i>810,000</i>	<i>Phase 3</i>		
<i>The College Of</i>	<i>Renovate Commons</i>	<i>16647</i>	
<i>William And Mary</i>	<i>Dining Hall</i>		<i>1,-</i>
<i>480,000</i>			
<i>University of Mary</i>	<i>Acquisition of</i>	<i>16686</i>	

Uncodified Acts of Assembly - 2006

<i>Washington</i>	<i>Student Residence</i>		<i>10,-</i>
<i>000,000</i>			
	<i>Facilities</i>		
<i>University Of</i>	<i>Construct Alderman</i>	<i>16650</i>	
<i>Virginia</i>	<i>Road Housing</i>		<i>22,-</i>
<i>500,000</i>			
<i>Virginia Polytechnic</i>	<i>Improve major resi-</i>	<i>17008</i>	
<i>Institute and</i>			
<i>State</i>	<i>dence and dining hall</i>	<i>4,000,000</i>	
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Parking Auxiliary</i>	<i>14815</i>	
<i>Institute and State</i>	<i>Projects</i>		<i>4,-</i>
<i>942,700</i>			
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Construct New</i>	<i>16682</i>	
<i>Institute and State</i>	<i>Residence Hall</i>		<i>22,-</i>
<i>000,000</i>			
<i>University</i>			
<i>Virginia Polytechnic</i>	<i>Construct Dining and</i>	<i>16683</i>	
<i>Institute</i>			
<i>and State</i>	<i>Student Union Facility</i>	<i>6,250,000</i>	

Uncodified Acts of Assembly - 2006

<i>University</i>			
<i>Christopher Newport</i>	<i>Construct Residence</i>	<i>17359</i>	
<i>University</i>	<i>Hall V</i>		<i>25,-</i>
<i>000,000</i>			
<i>George Mason</i>	<i>Construct Housing VII</i>	<i>17367</i>	
<i>University</i>	<i>and Entrance Road</i>		<i>48,-</i>
<i>486,000</i>			
	<i>Realignment</i>		
<i>James Madison</i>	<i>Construct new</i>	<i>17329</i>	
<i>University</i>	<i>residence hall</i>		<i>34,-</i>
<i>284,000</i>			
<i>James Madison</i>	<i>Renovate Bluestone</i>	<i>17330</i>	
<i>University</i>	<i>Dormitories, Phase IV</i>		<i>23,-</i>
<i>909,000</i>			
<i>James Madison</i>	<i>Construct New</i>		
<i>University</i>	<i>Dining Facility</i>		<i>18,-</i>
<i>914,170</i>			
<i>Longwood University</i>	<i>Renovate</i>		
<i>Cox Hall</i>	<i>12,893,000</i>	<i>17320</i>	
<i>Longwood University</i>	<i>Renovate Stubbs Hall</i>		
<i>17321</i>	<i>13,878,000</i>		
<i>Old Dominion</i>	<i>Renovate Student</i>	<i>16688</i>	

Uncodified Acts of Assembly - 2006

<i>University</i> <i>000,000</i>	<i>Housing, Phase I</i>		<i>2,-</i>
<i>Old Dominion</i>	<i>Construct Residence</i>		
<i>University</i> <i>931,000</i>	<i>Hall, Phase II</i>	<i>17342</i>	<i>28,-</i>
<i>The College Of William</i>	<i>Renovate Dormitories</i>	<i>17281</i>	
<i>And Mary</i> <i>In Virginia</i>		<i>5,000,000</i>	
<i>Virginia Polytechnic</i>	<i>Improve Residence and</i>	<i>17294</i>	
<i>Institute and State</i> <i>000,000</i>	<i>Dining Halls</i>		<i>10,-</i>
<i>University</i>			
<i>Virginia State</i>	<i>Construct Residence</i>	<i>17307</i>	
<i>University</i> <i>461,000</i>	<i>Halls</i>		<i>17,-</i>
<i>Virginia State</i>	<i>Renovate Howard Hall</i>	<i>17308</i>	
<i>University</i> <i>620,000</i>			<i>7,-</i>
<i>Virginia State</i>	<i>Construct Dining Hall</i>	<i>17309</i>	
<i>University</i> <i>501,000</i>			<i>4,-</i>
<i>Longwood University</i>	<i>Renovate Housing</i>	<i>16874</i>	

	<i>Facilities</i>		8,-
961,000			
<i>Virginia State</i>	<i>Construct Student</i>		
<i>University</i>	<i>Village 240 Bed</i>	16685	10,-
952,000			
	<i>Residence Hall</i>		
		<i>Total</i>	\$395,-
428,570			

*§ 3. Application of proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs*

*issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series . . . ."*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts. A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose of payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this Act or otherwise authorized pursuant to Article X, Section 9(c), of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this Act, and Article X, Section 9(c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this Act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this Act which can be given effect without the invalid provisions or applications.*

2. That Chapters 2 and 813 of the Acts of Assembly of 2004 and Chapter 83 of the Acts of Assembly of 2005 are repealed; however, such repeal shall not operate to invalidate, alter the security, or prohibit the refunding of bonds heretofore issued pursuant to such acts.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 588 Treasurers' sales; relief for certain purchasers of property sold prior to designated date.**

An Act to provide authority for the issuance of deeds for real property purchased at treasurers' sales pursuant to the provisions of former §§ 58-1029 through 58-1117 of the Code of Virginia.

[\[H 214\]](#)

Approved April 5, 2006

Whereas, under the provisions of former §§ 58-1029 through 58-1117 of the Code of Virginia, real property as to which local property taxes were delinquent could be sold to satisfy such delinquent taxes at a "treasurer's sale" convened by the city or county treasurer annually in December; and

Whereas, pursuant to these provisions, the purchaser of property at a treasurer's sale was required to pay the delinquent taxes, and further to continue to pay future real estate taxes on the property as they came due for a period of years established by law; and

Whereas, upon payment of both the delinquent taxes and the annual real property taxes for the requisite period of years, the purchaser would become eligible to make application to the circuit court of the city or county to receive a deed, thereby conveying to him clear title to the property, subject to certain limited redemption rights of the owners of the tax-delinquent property prior to the treasurer's sale; and

Whereas, in 1973, the General Assembly repealed the statutory provisions establishing this procedure for the sale of tax-delinquent property, substituting for it the process of judicial sale of tax-delinquent property now codified in Article 4 of Chapter 39 of Title 58.1 of the Code of Virginia; and

Whereas, at the time of the repeal of the prior procedures for treasurers' sales, the General Assembly provided a savings provision in former § 58-1117.11 of the Code of Virginia to make clear the entitlement of persons who had purchased properties at treasurers' sales prior to June 1, 1973, to obtain deeds for the properties they had purchased under the prior procedures, notwithstanding the repeal of the former statutes; and

Whereas, in 1984, during the recodification of Title 58 of the Code of Virginia, the savings provision in former § 58-1117.11 of the Code of Virginia was repealed because it was considered "obsolete" according to the recodification report; and

Whereas, there remain a number of persons in various counties and cities of the Commonwealth who purchased properties at treasurers' sales in good faith, paid the taxes due with respect to such properties, and have not yet received deeds to the properties purchased; and

Whereas, but for the repeal of § 58-1117.11 of the Code of Virginia, such persons would have a clear statutory entitlement to obtain deeds to the properties they purchased; and

Whereas, the General Assembly passed, during its 2005 Session, a relief bill, Chapter 10 of the Acts of Assembly of 2005, to provide a clear legal right for one such purchaser of one parcel to obtain a deed, but it has become clear that there are other purchasers similarly situated; and

Whereas, it is appropriate to provide a general legal right for such purchasers to obtain the deeds to which they were entitled under prior law and would to this day remain entitled, but for the inadvertent repeal of the savings provision contained in former § 58-1117.11; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any person who, prior to June 1, 1973, purchased real property under the provisions of former §§ 58-1029 through 58-1117 of the Code of Virginia, regarding the disposition and sale of delinquent lands, and has not received a deed for the property so purchased, may institute a proceeding in the circuit court of the county or city within which such real property is located to obtain a deed to such property in accordance with the provisions of former § 58-1027 or former §§ 58-1029 through 58-1117.*

*§ 2. The provisions of this act shall apply to those parcels of real property described generally as follows:*

*a. Parcels in Northumberland County:*

*(1) Tax parcel number 27-(1)-52, consisting of approximately 9.25 acres lying within the Fairfield District and described generally as forested land, titled in the name of the Estate of Hiram D. Bee and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(2) Tax parcel number 38-(1)-95, consisting of approximately one acre lying within the Fairfield District and described generally as lying on Cockrells Creek, titled in the name of John T. Brooks and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(3) Tax parcel number 37-(1)-53, consisting of approximately 9.19 acres lying within the Fairfield District and described generally as lying on Warehouse Creek, titled in the name of the Estate of John P. Crowther and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(4) Tax parcel number 37-(1)-242, consisting of approximately six acres lying with the Fairfield District and described generally as lying between Lilian and Fairport, titled in the name of Ada Forrest et al. and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(5) Tax parcel number 27-(1)-77, consisting of approximately eight acres lying within the Fairfield District and described generally as lying near Morris Store, titled in the name of Moses Nutt and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(6) Tax parcel number 27-(1)-158, consisting of approximately four acres lying within the Fairfield District and described generally as lying on Mob Neck Road, titled in the name of David Wesley and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(7) Tax parcel number 51-(1)-31, consisting of approximately five acres lying within the Wicomico District and described generally as part of Clifton, titled in the name of Ryland Nutt and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

*(8) Tax parcel number 51-(1)-111, consisting of approximately 6.12 acres lying within the Wicomico District and described generally as part of East Wingville, titled in the name of Daniel Pinckard and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;*

(9) Tax parcel number 11-A(1)-270, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 270, Pine Point Estates, titled in the name of Pine State Development Corporation and purchased by Walter S. Linge- bach at a treasurer's sale held on December 15, 1969;

(10) Tax parcel number 11-A(1)-272, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 272, Pine Point Estates, titled in the name of Pine State Development Corporation and purchased by Walter S. Linge- bach at a treasurer's sale held on December 15, 1969;

(11) Tax parcel number 11-A(1)-274, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 274, Pine Point Estates, titled in the name of Pine State Development Corporation and purchased by Walter S. Linge- bach at a treasurer's sale held on December 15, 1969;

(12) Tax parcel number 11-A(1)-223, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 223, Pine Point Estates, titled in the name of Milburn M. Respass and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(13) Tax parcel number 11-A(1)-224, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 224, Pine Point Estates, titled in the name of Milburn M. Respass and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(14) Tax parcel number 11-A(1)-226, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 226, Pine Point Estates, titled in the name of Milburn M. Respass and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(15) Tax parcel number 11-A(1)-229, consisting of approximately 0.11 acre lying within the Heathsville District and described generally as Lot 229, Pine Point Estates, titled in the name of Milburn M. Respass and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(16) Tax parcel number 37-(1)-250, consisting of approximately three acres lying within the Fairfields District and described generally as lying on Raisins Creek, titled in the name of Carlos Rock and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(17) Tax parcel number 11A-[1-214](#), consisting of approximately 0.15 acre lying within the Heathsville District and described generally as Lot 214, Pine Point Estates, titled in the name of Anne O. Gresham and purchased by Walter S. Lingebach at a treasurer's sale held on December 15, 1969;

(18) Tax parcel number 51-1-30, consisting of approximately five acres lying within the Wicomico District and described generally as part of Long Branch, titled in the name of William Nutt and purchased by Walter S. Lingeback at a treasurer's sale held on December 13, 1971;

(19) Tax parcel number 45B-3-1-11, consisting of approximately 0.12 acre lying within the Fairfields District and described generally as Fleeton Beach, [11-1-1](#), titled in the name of Katherine Davis and purchased by Linwood and Valorie Payne at a treasurer's sale held on December 15, 1969;

(20) Tax parcel number 51-1-24, consisting of 5 acres lying within the Wicomico District and described generally as Swamp Land, titled in the name of James S. Carter and purchased by T. W. Byrd at a treasurer's sale held on December 9, 1963.

*b. Parcels in Sussex County:*

(1) Tax parcel number 147-A-34, a lot lying in Henry Magisterial District and west of the Atlantic Coast Line Railroad, titled in the name of Mary Eppes and purchased by Alton Owen et al. at a treasurer's sale held on January 12, 1971;

(2) Tax parcel number 147-A-48, consisting of one acre lying in Henry Magisterial District and described generally as lying at Grizzard, titled in the name of Louvenia Best and purchased by C. F. and A. F. Owen at a treasurer's sale held on January 9, 1973;

(3) Tax parcel number 147-A-54, consisting of approximately 1.9 acres lying in Henry Magisterial District and described generally as lying adjacent to property now or formerly titled in the name of Willie Frazier and west of the ACL railroad, titled in the name of Louvenia Frazier and purchased by A. F. and C. F. Owen at treasurer's sale held January 11, 1972;

(4) Tax parcel number 147B[1-4](#)-16A, consisting of a lot lying in Henry Magisterial District and described generally as near Virginian Railroad, titled in the name of C. J. Patterson and purchased by A. F. and C. F. Owen at a treasurer's sale held on January 9, 1973;

(5) Tax parcel number 147-A-46, consisting of approximately 1.34 acres lying in Henry Magisterial District and described generally as lying on Atlantic Coast Line Railroad south of Jarratt, titled in the name of the Estate of Singer Woodley, and purchased by C. F. Owen et al., at a treasurer's sale held on January 13, 1970;

(6) Tax parcel number 147-A-33, consisting of a lot lying in Henry Magisterial District, described generally as lying west of the Atlantic Coast Line Railroad, titled in the name of Mary Eppes and purchased by Alton Owen et al. at treasurer's sale held January 12, 1971;

(7) Tax parcel number 66-A-22, consisting of approximately 2 acres lying in Stony Creek Magisterial District, described generally as the J. J. Mitchell property, lying adjacent to

*property now or formerly titled in the name of R. B. Mitchell, titled in the name of Robert H. Robinson and purchased by Edith G. Lewis at a treasurer's sale held January 13, 1970;*

*c. Parcels in Prince Edward County:*

- (1) Tax parcel number 23A4-13-16, described generally as Lot 10, JWW Estate, TM230316, lying within the Town of Farmville, titled in the name of R. N. White and purchased at treasurer's sale by P. F. Gay.*
- (2) Tax parcel number 23A81411-11, described generally as 12 B-11, TM281111, lying within the Town of Farmville, titled in the name of Bettie Mathews and purchased at treasurer's sale by P. F. Gay.*
- (3) Tax parcel number 23A5-16-3, described generally as 1-B-10, Serpell, TM300603, lying within the Town of Farmville, titled in the name of Junius Morton and purchased at treasurer's sale by P. F. Gay.*
- (4) Tax parcel number 23A81915-2, described generally as Lot 8, TM291502, lying within the Town of Farmville, titled in the name of Nannie Morton and purchased at treasurer's sale by P. F. Gay.*
- (5) Tax parcel number 23A4-17-4, described generally as 128, TJG, TM230704, lying within the Town of Farmville, titled in the name of Elvira Nash and purchased at treasurer's sale by P. F. Gay.*
- (6) Tax parcel number 23A81911-11, described generally as Pankey, TM291111, lying within the Town of Farmville, titled in the name of Tom Pankey and purchased at treasurer's sale by P. F. Gay.*
- (7) Tax parcel number 23A4-12-9, described generally as 131, TJG, TM230209, lying within the Town of Farmville, titled in the name of Simon Taylor and purchased at treasurer's sale by P. F. Gay.*
- (8) Tax parcel number 23A8149-16, described generally as 95, 96, 97, 98 and 123, HAS, TM280916, lying within the Town of Farmville, titled in the name of T. H. W. Ward and purchased at treasurer's sale by P. F. Gay.*
- (9) Tax parcel number 23A81410-6, described generally as Lot 8, B-10, TM281006, lying within the Town of Farmville, titled in the name of Evelyn Early and purchased at treasurer's sale by Phillip F. Gay.*

*d. Parcel in King William County:*

- (1) Tax parcel number 5-18, consisting of approximately one acre lying within the Mangohick Magisterial District and described generally as adjacent to property now or formerly titled in the name of Hill, titled in the name of Andrew Walker and purchased by John A. Walker at a treasurer's sale held in December, 1970.*

*e. Parcel in Frederick County:*

*(1) Tax parcel number 44-A-238, consisting of approximately two acres lying within Stonewall District, titled in the name of the Estate of Catherine Shreck and purchased by B. Blair Webber at a treasurer's sale held on December 11, 1967.*

2. That the provisions of this act shall expire on July 1, 2010, but such expiration date shall not in any way affect or nullify any court proceeding commenced prior to such date regardless of the date of final disposition of such proceeding.

3. That an emergency exists and this act is in effect from its passage.

## **Chapter 655 Medical assistance services; State Plan amendment or application for certain waiver.**

An Act relating to medical assistance services; State Plan amendment or application for certain waiver.

[\[H 758\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Medical assistance services; State Plan amendment or application for waiver.*

*A. By July 1, 2006, the Department of Medical Assistance Services (DMAS) shall convene a Medicaid Revitalization Committee (the Committee) to prepare recommendations for any State Plan amendments or waiver authority, including but not limited to a research and demonstration project waiver pursuant to Section 1115 of Title XIX of the Social Security Act, as amended, necessary to reform and revitalize Virginia's Medicaid program. The Committee shall consist of no less than eight and no more than 15 members and shall include representatives from the affected state agencies and from stakeholder and advocacy groups and from providers that serve Medicaid enrollees. Recommendations shall be developed that shall include fundamental elements to move toward emphasizing the state's role in purchasing healthcare services, leveraging the forces of the marketplace to customize services to meet the diverse needs of Virginia's Medicaid population, enhancing personal responsibility and empowering individuals who desire to manage their healthcare, bridging public and private coverage, max-*

*imizing access, and containing the growth of Medicaid expenditures in the Commonwealth.*

*By December 1, 2006, these recommendations developed by the Committee must be submitted by the Director of the Department of Medical Assistance Services to the House Committees on Appropriations and Health, Welfare and Institutions and the Senate Committees on Education and Health and Finance and include estimates of the costs and cost savings for implementation of the waiver or amendments to the State Plan.*

*B. Prior to convening the Committee, the Director of the Department of Medical Assistance Services shall:*

*1. Prepare a concise and precise statement of the concept of fundamental elements listed in subsection A that is focused on bridging public and private coverage through client-centered planning, individual budgeting, and self-directed quality assurance and improvement. He shall distribute the statement to all interested parties.*

*2. Consult with the Centers for Medicare and Medicaid Services concerning the concepts and options of any waiver application.*

*C. To address these fundamental elements, the options that the Committee must consider in developing its recommendations shall include:*

*1. Voluntary enhanced benefits accounts (which may be named health opportunity accounts) for (i) individuals with chronic diseases or at risk of having or developing one or more chronic diseases; (ii) individuals for whom healthcare costs are or may become high; and (iii) individuals whose current or future health may be improved through a disease management program focused on identification of chronic illnesses, incentives for healthy behavior, and training in effective and appropriate self-care; or (iv) individuals wishing to exercise the option to purchase private health insurance through their employer as described in subdivision 4.*

*2. Disease management programs or other behavior modification activities, including behavioral health, a system of monetary incentives for Medicaid recipients to make healthy decisions and to engage in self-management of their healthcare, and the deposit of incentive funds in enhanced benefits accounts to be accessed by enrollees to purchase healthcare services or items that are not covered under Virginia Medicaid and will assist enrollees in being personally responsible for their own healthcare.*

*3. Risk-adjusted premiums for Medicaid recipients enrolled in Medicaid managed care organizations (MCOs), calculated to be actuarially comparable to currently covered services under the Virginia State Plan for Medical Assistance. The actuarially developed risk-adjusted premiums shall be designed to reduce adverse selection and provide*

*incentives for cost containment through identification of chronic illness before the recipient becomes seriously ill because of lack of treatment.*

*4. Employer-sponsored insurance options, for recipients who have access to such insurance, that provides such individuals with enhanced benefits accounts having deposits of the actuarially prescribed amount referenced in subdivision 3 that may be used to purchase private health insurance through their employer, and requires these individuals to assume any costs of private health insurance that are not covered by the Medicaid premium.*

*5. A transitioning of all recipients remaining in the fee-for-service program to a disease management program, care coordination program, or enrollment in MCOs.*

*6. A requirement that all Medicaid MCOs take steps to phase in implementation of electronic funds transfer technology to add efficiencies to administrative procedures, reduce costs, and avoid mistakes and abuse.*

*7. The phased implementation of electronic benefits cards for enrollees to access voluntary enhanced benefits and services.*

*8. Criteria for determining eligibility for the various options being considered including enrollment in the waiver.*

*9. A process, amounts, and specific criteria for the award of incentive funds that can be earned by or awarded to enrollees.*

*10. A process for establishing voluntary enhanced benefits accounts into which the incentive funds may be deposited and from which enrollees may access the funds.*

*11. A determination of the services or items and insurance plans, where possible, for which the funds in the enhanced benefits accounts may be used by enrollees.*

*12. A mechanism by which (i) enrollees who lose Medicaid eligibility while enrolled in the voluntary program as identified in subdivision C 1 may retain access to the money in their enhanced benefits accounts but will only be eligible for the voluntary program for the purpose of depleting the funds in the enhanced benefits account and will not receive any other Medicaid services, and (ii) enrollees could access services in the event of a depletion of the voluntary program funding.*

*13. The contractor criteria (i) for the establishment and management of the voluntary enhanced benefits accounts; (ii) for the development of disease management plans, including training of enrollees; and (iii) for implementation of the electronic benefits funds transfer technology.*

*D. By May 15, 2007, the Department of Medical Assistance Services (DMAS) shall prepare, submit, and seek approval of any required State Plan amendments or waiver authority, including, but not limited to, a research and demonstration project waiver*

*pursuant to Section 1115 of Title XIX of the Social Security Act, as amended, to reform Virginia's Medicaid program that shall include fundamental elements to move toward greater emphasis on the state's role in purchasing healthcare services, leveraging the forces of the marketplace to customize services to meet the needs of Virginia's various Medicaid populations, enhancing personal responsibility and empowering individuals to manage their healthcare, bridging public and private coverage, and containing the growth of Medicaid expenditures in the Commonwealth.*

*E. Neither this act nor any new or revised project that may be, but is not required to be, implemented pursuant to this act shall be construed as creating any legally enforceable right or entitlement to enrollment in an enhanced benefit account program, the Virginia Plan for Medical Assistance Services, or Title XIX of the Social Security Act, as amended, on the part of any person or to create any legally enforceable right or entitlement to participation in any program by any person.*

2. That, upon the approval by the Centers for Medicare and Medicaid Services of any State Plan amendments or waiver authority pursuant to this act, expeditious implementation of the program modifications shall be deemed to be an emergency situation in accordance with § [2.2-4002](#) of the Administrative Process Act of the Code of Virginia; therefore, to meet this emergency situation, the Board of Medical Assistance Services or the Director, acting on the Board's behalf, shall promulgate emergency regulations to implement the waiver.

3. That, in order to avoid costs as much as possible during the regulatory process, the Board of Medical Assistance Services shall, when in compliance with the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia, notify, distribute, and provide public access and opportunity for comment via electronic media, including but not limited to, posting documents to and receiving comments via the Department's website, by e-mail, and fax. The Board shall, however, continue to provide public notice and participation to those persons who do not have access to the Internet or other forms of electronic media.

4. That the provisions of this act shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in the general appropriations act passed by the 2006 Session of the General Assembly, which becomes law.

## Chapter 111 Transient occupancy tax; maximum amount Nelson County may charge.

An Act to amend and reenact Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994, and carried by reference in the Code of Virginia as § [58.1-3821](#); and to repeal the second enactment of Chapter 896 of the Acts of Assembly of 1994, relating to the transient occupancy tax on certain rentals.

[\[H 779\]](#)

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 436 of the Acts of Assembly of 1990, as amended by Chapter 896 of the Acts of Assembly of 1994, and carried by reference in the Code of Virginia as § [58.1-3821](#), is amended and reenacted as follows:

§ [58.1-3821](#). Transient occupancy tax on certain rentals.

The County of Franklin and ~~any county with a population of at least 12,500 but no more than 12,800~~ *the County of Nelson* may, by ordinance, levy a transient occupancy tax on condominiums, apartments, townhouses, or like buildings when rooms or units in such buildings are rented for occupancy for fewer than thirty days at a time. The tax imposed hereunder shall not apply to rooms or units rented for continuous occupancy by the same individual or group for thirty or more days in condominiums, apartments, townhouses, or like buildings.

Such tax shall be in an amount and on such terms as the governing body, by ordinance, may prescribe; however, *in the County of Franklin* such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied *and in the County of Nelson such tax shall not exceed 5% of the amount of charge for the occupancy of any room or space occupied.* *Any revenue collected in Nelson County from that portion of the tax which exceeds 2%, shall be designated and spent for promoting tourism, travel, or business that generates tourism or travel in the county.* Any county which imposes the tax authorized in this section may allow the businesses collecting, accounting for, and remitting such consumer tax a commission for such service in the form of a deduction from the tax remitted. The commission amount shall be established by ordinance; however, the maximum commission payable shall not exceed five percent of the

amount of tax due and accounted for nor be less than a minimum of three percent of the amount of tax due. No commission shall be allowed if the amount due was delinquent.

2. That the second enactment of Chapter 896 of the Acts of Assembly of 1994 is repealed.

## **Chapter 112 School board; referendum in Page County on question of whether should be elected biennially.**

An Act to provide for a referendum in Page County on the election of the school board for staggered four-year terms.

[\[H 783\]](#)

Approved March 23, 2006

Whereas, the voters of Page County in a November 2002 election approved the biennial election of the board of supervisors for staggered four-year terms; and

Whereas, there has been confusion whether that election also reflected approval of the biennial election of the school board for staggered four-year terms, and an election on that issue is required to resolve this issue; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The officials conducting the November 7, 2006, election in Page County shall conduct a referendum on that date in the County to poll the voters on the question of whether they favor the biennial election of school board members for staggered four-year terms.*

*The question on the ballot shall be:*

*"Shall members of the County School Board be elected biennially for staggered four-year terms?"*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the County at least once in the period 45 to 60 days before the election.*

*If the voters approve the election of the school board biennially for staggered four-year terms at the November 2006 election, the members from Districts 1 and 5 shall be*

*elected at the November 2007 election for two-year terms and the members from Districts 2, 3, and 4 shall be elected for four-year terms. Thereafter all members shall be elected for four-year terms.*

## **Chapter 164 SOL assessments; fire drills, etc. prohibited in schools during periods of mandatory testing.**

An Act to limit the frequency of school fire drills during Standards of Learning assessments.

[\[S 97\]](#)

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. School fire drills during Standards of Learning assessments.*

*Notwithstanding any Statewide Fire Prevention Code regulation promulgated pursuant to Chapter 9 (§ [27-94](#) et seq.) of Title 27 of the Code of Virginia to the contrary, the Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) to prohibit fire and evacuation drills from being conducted in schools during periods of mandatory testing required by the Board of Education. In the development of the regulations, the Board of Housing and Community Development shall seek input from the Virginia Department of Education and local school divisions.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 125 T.C. Williams High School; City of Alexandria School Bd. to set school calendar prior to Labor Day.**

An Act to authorize T.C. Williams High School in Alexandria to be opened before Labor Day in 2006; sunset.

[\[H 971\]](#)

Approved March 23, 2006

Whereas, T.C. Williams High School in Alexandria, Virginia, was opened in 1971 and, at a time of racial turmoil, became famous for the role the Titans football team played in bringing the community together; and

Whereas, T.C. Williams continues to serve a uniquely integrated and united community with a diverse student population having many talents and many needs; and

Whereas, in 2007, 35-year-old T.C. Williams High School will be replaced with a new state-of-the-art building designed as a sustainable structure to be user-friendly for high school reform initiatives that is being constructed on the same property as the existing school; and

Whereas, beginning with demolition of one wing and a parking lot in December 2004, construction of the new T.C. Williams High School is scheduled to be completed in precise phases that accommodate the continuing and safe operation of the present school until the summer of 2007 when the old school will be demolished and final construction, clean-up, and relocation to the new high school will be completed; and

Whereas, § [22.1-79.1](#) of the Code of Virginia requires local school boards to set the school calendar so that the first day students are required to attend school will be after Labor Day, with waivers authorized by the Board of Education under narrow circumstances that do not address school construction; and

Whereas, a smooth, seamless, and safe relocation of the T.C. Williams students and programs to the new high school by the fall of 2007 will require that the old T.C. Williams High School begin its first day of the 2006-2007 school year prior to Labor Day 2006 in order to close its doors forever by the end of May 2007; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Opening of the 2006 school year at T.C. Williams High School in Alexandria.*

*Notwithstanding the provisions of § [22.1-79.1](#), the School Board of the City of Alexandria may set the 2006-2007 school calendar for the old T.C. Williams High School so that the first day students are required to attend the old T.C. Williams High School for the 2006-2007 school year shall be prior to Labor Day of 2006 and the last day students shall be required to attend the old T.C. Williams High Schools shall be at the end of May 2007. In setting its 2006-2007 school calendar for all other Alexandria schools, the School Board of the City of Alexandria shall comply with the provisions of § [22.1-79.1](#).*

2. That the provisions of this act shall expire on January 1, 2007.

## Chapter 174 T.C. Williams High School; opening 2006 school year.

An Act to authorize T.C. Williams High School in Alexandria to be opened before Labor Day in 2006; sunset.

[\[S 366\]](#)

Approved March 23, 2006

Whereas, T.C. Williams High School in Alexandria, Virginia, was opened in 1971 and, at a time of racial turmoil, became famous for the role the Titans football team played in bringing the community together; and

Whereas, T.C. Williams continues to serve a uniquely integrated and united community with a diverse student population having many talents and many needs; and

Whereas, in 2007, 35-year-old T.C. Williams High School will be replaced with a new state-of-the-art building designed as a sustainable structure to be user-friendly for high school reform initiatives that is being constructed on the same property as the existing school; and

Whereas, beginning with demolition of one wing and a parking lot in December 2004, construction of the new T.C. Williams High School is scheduled to be completed in precise phases that accommodate the continuing and safe operation of the present school until the summer of 2007 when the old school will be demolished and final construction, clean-up, and relocation to the new high school will be completed; and

Whereas, § [22.1-79.1](#) of the Code of Virginia requires local school boards to set the school calendar so that the first day students are required to attend school will be after Labor Day, with waivers authorized by the Board of Education under narrow circumstances that do not address school construction; and

Whereas, a smooth, seamless, and safe relocation of the T.C. Williams students and programs to the new high school by the fall of 2007 will require that the old T.C. Williams High School begin its first day of the 2006-2007 school year prior to Labor Day 2006 in order to close its doors forever by the end of May 2007; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Opening of the 2006 school year at T.C. Williams High School in Alexandria.*

*Notwithstanding the provisions of § [22.1-79.1](#), the School Board of the City of Alexandria may set the 2006-2007 school calendar for the old T.C. Williams High School so that the first day students are required to attend the old T.C. Williams High School for the 2006-2007 school year shall be prior to Labor Day of 2006 and the last day students shall be required to attend the old T.C. Williams High Schools shall be at the end of May 2007. In setting its 2006-2007 school calendar for all other Alexandria schools, the School Board of the City of Alexandria shall comply with the provisions of § [22.1-79.1](#).*

2. That the provisions of this act shall expire on January 1, 2007.

## **Chapter 180 Private roads; Counties of Dickenson & Tazewell added to provision allowing maintenance thereof.**

An Act to amend and reenact Chapter 555 of the Acts of Assembly of 2005, relating to maintenance of certain private roads in Dickenson County *and Tazewell County*.

[\[S 514\]](#)

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 555 of the Acts of Assembly of 2005 is amended and reenacted as follows:

§ 1. Buchanan County, *Dickenson County, and Tazewell County* may make appropriations in such sums and at such times as the governing body of the county deems proper, for maintenance of private roads that provide the sole access to private family cemeteries containing 10 or more graves. Appropriations shall be made for this purpose only when necessary to keep the roads passable by motor vehicle and only when such action is not in conflict with the provisions of § [57-27.1](#).

## **Chapter 201 Rappahannock River; Marine Resources Commission to convey certain lands pertaining thereto.**

An Act authorizing the Marine Resources Commission to convey certain lands in and over the Rappahannock River.

[\[H 940\]](#)

Approved March 24, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to convey on behalf of the Commonwealth to Jerry W. Ferguson, and his successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor, shall deem proper, a causeway beginning at the termination point of a 40-foot-wide easement adjacent to the Rappahannock River leading northeasterly from State Route 600, and connecting a manmade island at the end of the causeway, in and over the submerged lands lying within the Rappahannock River at Butylo, in Jamaica Magisterial District, Middlesex County, subject, however, to any and all rights of the adjoining property owner, Effie H. Bozeman, surviving spouse of Joseph W. Bozeman, and her successors and assigns, as determined by a court of competent jurisdiction, and more particularly described as follows:*

Beginning at a point on the north side of causeway at low water said point being on the southern line of property standing in the name of Joseph W. Bozeman, said point being south 89° 11' 20" east for a distance of 127.05 feet from a bent pipe at the southwest corner of Route 600, thence the following courses and distances; north 89° 40' 04" east for a distance of 718.84 feet, north 35° 53' 32" east for a distance of 104.84 feet, north 04° 58' 58" east for a distance of 51.96 feet, north 76° 18' 17" east for a distance of 67.71 feet, south 51° 51' 27" east for a distance of 93.85 feet, south 24° 55' 39" east for a distance of 26.68 feet, south 09° 32' 18" east for a distance of 29.80 feet, south 03° 16' 27" west for a distance of 69.08 feet, north 86° 39' 47" west for a distance of 13.09 feet, south 65° 33' 30" west for a distance of 103.22 feet, north 28° 35' 00" west for a distance of 17.11 feet, north 23° 05' 08" west for a distance of 27.06 feet, south 89° 53' 06" west for a distance of 821.67 feet to low water of Rappahannock River, thence north 21° 41' 23" east for a distance of 29.38 feet to the point of beginning; containing 1.20 acres per aforesaid plat.

The deed of conveyance shall be in a form approved by the Attorney General.

## **Chapter 293 Southwest Va. Veterans Cemetery; Dept. of Veterans Services authorized to accept donated property.**

An Act to authorize the Department of Veterans Services to accept donated property in the southwestern region of Virginia for the purpose of constructing the Southwest Virginia Veterans Cemetery.

[\[H 1465\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Veterans Services is authorized to accept donated property in the southwestern region of Virginia for the purpose of constructing the Southwest Virginia Veterans Cemetery. Upon the availability of federal funds, (i) the Director of the Department of Planning and Budget shall establish a capital project for the purpose of cemetery construction, and (ii) the Treasurer shall advance \$6,939,000 to the Department of Veterans Services in the form of a short-term, interest free treasury loan for the purpose of matching such federal funds. The loan shall be repaid by the Department of Veterans Services upon receipt of the federal funds.*

## **Chapter 315 Southwest Va. Veterans Cemetery; Dept. of Veterans Services authorized to accept donated property.**

An Act to authorize the Department of Veterans Services to accept donated property in the southwestern region of Virginia for the purpose of constructing the Southwest Virginia Veterans Cemetery.

[\[S 359\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Veterans Services is authorized to accept donated property*

*in the southwestern region of Virginia for the purpose of constructing the Southwest Virginia Veterans Cemetery. Upon the availability of federal funds, (i) the Director of the Department of Planning and Budget shall establish a capital project for the purpose of cemetery construction, and (ii) the Treasurer shall advance \$6,939,000 to the Department of Veterans Services in the form of a short-term, interest free treasury loan for the purpose of matching such federal funds. The loan shall be repaid by the Department of Veterans Services upon receipt of the federal funds.*

## **Chapter 224 O. Winston Link Trail; established to highlight and celebrate railroad heritage.**

An Act to establish the O. Winston Link Trail.

[\[S 213\]](#)

Approved March 24, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established the O. Winston Link Trail, a heritage trail of sites photographed by O. Winston Link, to highlight and celebrate Virginia's railroad heritage. The O. Winston Link Trail shall consist of the following sites: the Ryan Farm at Shawsville, Virginia; the White House Church at Shawsville, Virginia; the Twin Tunnels at Montgomery, Virginia; the New River Bridge "Wurno" at Radford, Virginia; the Pope House at Max Meadow, Virginia; the Bank of Crockett at Crockett, Virginia; the Rural Retreat Station at Rural Retreat, Virginia; Silent Night at Seven Mile Ford, Virginia; the Presbyterian Church at Seven Mile Ford, Virginia; Abingdon Station at Abingdon, Virginia; the Bristol Roundhouse at Bristol, Virginia; the Lone Star Shifter at Cloverdale, Virginia; Hester's Home at Lithia, Virginia; the Fishing Hole at Lithia, Virginia; Bridge 425 at Arcadia, Virginia; the Sign at Solitude, Virginia; the Station at Natural Bridge, Virginia; Gooseneck Dam at Buffalo Forge, Virginia; the Double Tanks at Buena Vista, Virginia; the Gas Pump at Vesuvius, Virginia; the Store at Vesuvius, Virginia; the Station at Waynesboro, Virginia; the Fire Station at Grottoes, Virginia; the Boxley Quarry at Pembroke, Virginia; and the Station at Narrows, Virginia.*

## Chapter 245 Public Building Authority; issuance of bonds for State Agency Radio System for State Police.

An Act to authorize the Virginia Public Building Authority to issue bonds in an amount not to exceed \$201,900,000 to pay the costs of the State Agency Radio System for the Department of State Police.

[\[H 83\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That pursuant to §§ [2.2-2261](#), [2.2-2263](#), and [2.2-2264](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to finance without limitation the development, acquisition, equipping and construction of the following project:

<i>Agency Amount</i>	<i>Project Description</i>	<i>-</i>
<i>Department of State  Police (STARS), Phase II</i>	<i>State Agency Radio System</i>	
	<i>\$201,900,000</i>	

*The STARS project may consist of but is not limited to land, mobile telecommunications equipment and towers, software, radio frequency rights and licenses, communications control buildings and facilities, related infrastructure, and other project costs necessary, incidental, or convenient to undertake, develop, acquire, and construct the integrated statewide shared land-mobile radio communications system for the Commonwealth and its localities and governmental units.*

§ 2. *The Virginia Public Building Authority is also authorized to exercise any and all powers granted to it by law in connection with the foregoing, including the power to finance the cost of the above project by the issuance of revenue bonds in a principal amount not to exceed \$201,900,000 plus amounts needed to fund issuance costs,*

*reserve funds, original issue discount, other financing expenses, and interest for up to one year after completion.*

§ 3. *The proceeds of the bonds are hereby appropriated for disbursement from the state treasury pursuant to Article X, Section 7 of the Constitution of Virginia, and § [2.2-1819](#) of the Code of Virginia. The general conditions and general provisions of the general appropriation act enacted pursuant to Chapter 15 (§ [2.2-1500](#) et seq.) of Title 2.2 of the Code of Virginia, in effect from time to time, and all of the terms and conditions contained therein shall apply to the capital projects listed in this act.*

### **Chapter 339 Health partnership authorities, local; repeals sunset provision.**

An Act to repeal the second enactment of Chapter 671 of the Acts of Assembly of 2001, as amended by the second enactment of Chapters 63 and 70 of the Acts of Assembly of 2003, relating to local health partnership authorities.

[\[H 714\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 671 of the Acts of Assembly of 2001, as amended by the second enactment of Chapters 63 and 70 of the Acts of Assembly of 2003, is repealed.

### **Chapter 368 Health partnership authorities, local; repeals sunset provision.**

An Act to repeal the second enactment of Chapter 671 of the Acts of Assembly of 2001, as amended by the second enactment of Chapters 63 and 70 of the Acts of Assembly of 2003, relating to local health partnership authorities.

[\[S 252\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 671 of the Acts of Assembly of 2001, as amended by the second enactment of Chapters 63 and 70 of the Acts of Assembly of 2003, is repealed.

## **Chapter 266 U.S. Navy Master Jet Base; land use adjacent to certain.**

An Act to establish certain land use requirements and eminent domain authority in localities containing certain jet bases and to amend the Code of Virginia by adding in Article 23.1 of Chapter 26 of Title 2.2 a section numbered [2.2-2666.3](#), relating to Ocean-  
a/Fentress Military Advisory Council.

[\[H 975\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Land use adjacent to certain jet bases.*

*A. The governing body of any locality in which a United States Navy Master Jet Base, or an auxiliary landing field used in connection with flight operations arising from such Master Jet Base, is located shall:*

- 1. Adopt zoning ordinances that require the governing body to follow Navy Air Installation Compatible Use Zone (AICUZ) guidelines in deciding discretionary applications for property in noise levels 70 dB DNL or greater;*
- 2. Undertake an evaluation of undeveloped properties located in noise zones 70 dB DNL or greater to determine the suitability of such properties for rezoning classifications that would prohibit uses incompatible under AICUZ guidelines;*
- 3. Adopt such ordinances or take such other actions as may be recommended in any Joint Land Use Study that has been officially approved by the governing body of the locality; and*
- 4. Establish programs to purchase land or development rights in the corridor of land underneath the flight path between the Master Jet Base and the auxiliary landing field known as an interfacility traffic area.*

*B. For the purpose of preventing further encroachment, the governing body of any locality in which a United States Navy Master Jet Base is located shall adopt ordinances to*

*establish a program to purchase or condemn pursuant to § 2, incompatible use property or otherwise seek to convert such property to an appropriate compatible use and to prohibit new uses or development deemed incompatible with air operations in the Accident Potential Zone 1 (APZ-1) and Clear Zone areas, as depicted in the Navy's 1999 AICUZ Pamphlet, and fund and expend no less than \$15 million annually in state and local funds in furtherance of the program, to the extent that properties or development rights are reasonably available for acquisition or their use reasonably may be converted. Such funding and expenditures shall be subject to annual appropriations from the state and locality, and shall continue until such time as all reasonably available properties or development rights have been acquired in the designated areas.*

*§ 2. Acquisition of property to prevent further encroachment in Accident Potential Zone 1 and Clear Zone areas of United States Master Jet Bases; limited power to exercise right of eminent domain.*

*A. For the purpose of preventing further encroachment, all localities in which a United States Navy Master Jet Base is located are hereby granted the power to exercise the limited right of eminent domain in acquisition of any lands, easements, and privileges for the purpose of protecting public safety by providing unobstructed airspace for the landing and takeoff of aircraft utilizing such Master Jet Base and preventing incompatible development within APZ-1 and Clear Zone areas surrounding such Master Jet Base.*

*The power to exercise the limited right of eminent domain may only be exercised where:*

- 1. The property is located wholly or partially within an APZ-1 or Clear Zone area as described in the United States Navy's 1999 AICUZ Pamphlet;*
- 2. The property is zoned for residential use, but is undeveloped, and use restrictions imposed by the locality to protect the APZ-1 or Clear Zone areas have left the property without a reasonable use;*
- 3. The locality has made a bona fide offer to purchase the property from the owner and the owner and the locality have not been able to agree on the terms thereof; and*
- 4. The owner of the property has made a written request to the locality that the property be acquired by the locality by eminent domain.*

*B. Condemnation proceedings authorized by subsection A shall be conducted under the provisions of Chapter 2 (§ [25.1-200](#) et seq.) of Title 25.1 of the Code of Virginia, mutatis mutandis.*

*C. Any property acquired by any locality pursuant to this section shall be valued as if any use restriction enacted by such locality prohibiting incompatible development in APZ-1 or Clear Zone areas surrounding the United States Master Jet Base does not apply.*

*D. With respect to any property acquired pursuant to this section, the locality (i) may use, lease, dispose, or convey the property to adjoining land owners where such disposition does not result in any incompatible use under AICUZ guidelines or increased density or intensity of use within the APZ-1 or Clear Zone areas; or (ii) may convert the use of any property to a compatible use as under the United States Navy's OPNAV Instruction 11010.36B (or any superseding Navy AICUZ program regulation) and use, lease, dispose, or convey the property for a use consistent with the AICUZ Pamphlet.*

2. That the Code of Virginia is amended by adding in Article 23.1 of Chapter 26 of Title 2.2 a section numbered [2.2-2666.3](#) as follows:

§ [2.2-2666.3](#). *Oceana/Fentress Military Advisory Council created; composition; duties; staff support.*

*A. The Oceana/Fentress Military Advisory Council (the Oceana/Fentress Council) is hereby created as a subunit of the Virginia Military Advisory Council. The Oceana/Fentress Council shall be composed of two members of the Chesapeake City Council, two members of the Virginia Beach City Council, those members of the Virginia General Assembly whose districts encompass Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress, the Commander, Navy Mid-Atlantic Region or his representative, and the Commanding Officer of Naval Air Station Oceana or his representative.*

*B. The Oceana/Fentress Council shall identify and study and provide advice and comments to the Virginia Military Advisory Council on issues of mutual concern to the Commonwealth and the Navy concerning Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress and address such other issues as the Governor or the Virginia Military Advisory Council may determine to be appropriate subjects of consideration.*

*C. Such staff support as is necessary for the conduct of the Oceana/Fentress Council's business shall be furnished by the Office of Commonwealth Preparedness.*

3. That the provisions of this act and all authority contained herein shall terminate in the event that the aircraft and activities necessary to support the operations of a Master Jet Base are designated for realignment outside of the locality.

## **Chapter 269 Grievance procedure; Albemarle County utilizing an administrative hearing officer rather than panel.**

An Act to allow the use of an administrative hearing officer to hear employee grievances in Albemarle County.

[\[H 999\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the County of Albemarle may adopt an employee grievance procedure that allows the County to utilize an administrative hearing officer in lieu of a panel to conduct an employee grievance hearing pursuant to § [15.2-1507](#) of the Code of Virginia. The administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § [2.2-4024](#) of the Code of Virginia and shall be made on a rotating basis from the geographical region in which the County of Albemarle is located. In the alternative, the County of Albemarle may request the appointment of an administrative hearing officer from the Department of Employment Dispute Resolution. The County of Albemarle shall bear all expenses associated with the administrative hearing officer's services.*

2. That if the County of Albemarle has not adopted a personnel policy pursuant to this act prior to July 1, 2007, the provisions of this act shall expire on July 1, 2007.

## **Chapter 382 Teacher education programs; Board of Education shall not condition full approval.**

An Act relating to approval of teacher education programs.

[\[S 687\]](#)

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Approval of teacher education programs.*

*Notwithstanding any current or proposed regulation to the contrary, the Board of Education shall not condition full approval of teacher education programs provided by an institution of higher education on (i) the number of students in individual licensure programs, such as, but not limited to, prekindergarten-three, Spanish, music education, high*

*school physics, or other disciplines, or (ii) documented efforts to increase enrollment in such programs.-*

## **Chapter 420 VDOT; Commissioner to report on actions & initiatives that involve outsourcing & privatization.**

An Act to direct the Commonwealth Transportation Commissioner to report on certain *actions and initiatives* of the Virginia Department of Transportation.

[\[H 676\]](#)

Approved March 31, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commonwealth Transportation Commissioner shall annually report in writing to the General Assembly, no later than November 30 of each year, on all actions and initiatives of the Virginia Department of Transportation in the preceding fiscal year that involved outsourcing, privatization, and downsizing. Further, the Commissioner shall provide, in writing to the General Assembly, detailed and specific plans for outsourcing, privatization, and downsizing in the current fiscal year.*

## **Chapter 478 Waste discharge permits; consent of local governing body required before Water Control Board issues.**

An Act to require local certification for waste discharge permits into local watershed protection districts.

[\[S 106\]](#)

Approved March 31, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That no application for a Virginia Pollutant Discharge Elimination System permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as*

*such by city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This section shall apply to applications for new or modified individual Virginia Pollutant Discharge Elimination System permits and for new or modified coverage under general Virginia Pollutant Discharge Elimination System permits. Nothing in this section shall apply to any municipal solid waste landfill in operation on or before January 1, 2006.*

2. That the provisions of this act shall expire on July 1, 2026.

## **Chapter 520 Jimmy Maloney Memorial Highway; designating as portion of Route 60W.**

An Act to designate a portion of U.S. Route 60W the "Jimmy Maloney Memorial Highway."

[\[S 484\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 60W between Virginia Route 646 and Virginia Route 1611 is hereby designated the "Jimmy Maloney Memorial Highway." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 521 Jack L. Massie Memorial Bridge; designating as Route 199 twin bridges over College Creek.**

An Act to designate each of the Virginia Route 199 twin bridges over College Creek the "Jack L. Massie Memorial Bridge."

[\[S 485\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Route 199 twin bridges over College Creek are each hereby designated the "Jack L. Massie Memorial Bridge." The Department of Transportation shall place and maintain appropriate signs indicating the designation of these bridges. This designation shall not affect any other designation heretofore or hereafter applied to these bridges or any portion thereof.*

## **Chapter 522 License plates, special; issuance to members of State Defense Force.**

An Act to authorize the issuance of special license plates for members of the Virginia State Defense Force.

[\[S 518\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. On receipt of an application and written evidence that the applicant is a member of the Virginia State Defense Force and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for members of the Virginia State Defense Force.*

## **Chapter 523 Blue Star Memorial Highway; designating as portion of Old Keene Mill Road in Fairfax County.**

An Act to amend and reenact § 1 of Chapter 453 of the Acts of Assembly of 1990, as amended by Chapter 254 of the Acts of Assembly of 2005, relating to the "Blue Star Memorial Highway."

[\[S 532\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 453 of the Acts of Assembly of 1990, as amended by Chapter 254 of the Acts of Assembly of 2005, is amended and reenacted as follows:

§ 1. That entire length of U.S. Route 1 in Fairfax County ~~is and the length of Old Keene Mill Road from Accotink Creek to Interstate Route 95 in Fairfax County are hereby designated the given the designation of~~ "Blue Star Memorial Highway." Appropriate markers ~~signs~~ shall be placed and maintained by the Department of Transportation to indicate the designation of ~~this route these routes. This designation~~ *These designations* shall not affect any other designations heretofore given this portion of U.S. Route 1, nor shall it affect the designation, made pursuant to Senate Joint Resolution No. 14 of 1948, of U.S. Route 301 in Virginia from the North Carolina boundary to the Maryland boundary as "The Blue Star Memorial Highway."

## **Chapter 525 Nicely Memorial Bridge; designating as I-64 bridge over Cowpasture River in Alleghany County.**

An Act to designate the Interstate 64 bridge over the Cowpasture River in Alleghany County the "Nicely Memorial Bridge."

[\[S 650\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Interstate 64 bridge over the Cowpasture River in Alleghany County is hereby designated the "Nicely Memorial Bridge." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portion thereof.*

## **Chapter 544 VDOT; Transportation Commissioner to report on certain accomplishments, actions, and initiatives.**

An Act directing the Commonwealth Transportation Commissioner to report on certain accomplishments, actions, and initiatives of the Virginia Department of Transportation.

[\[H 677\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth Transportation Commissioner shall annually report in writing to the General Assembly, no later than November 30 of each year, on all actions and initiatives of the Virginia Department of Transportation in the preceding fiscal year that involved outsourcing, privatization, and downsizing. Further, the Commissioner shall provide, in writing to the General Assembly, detailed and specific plans for outsourcing, privatization, and downsizing in the current fiscal year, including, but not limited to, appropriate asset management and intelligent transportation system functions and services.*

**Chapter 580 Physicians; extends sunset provision to purchase medical malpractice insurance.**

An Act to amend and reenact the third enactment of Chapter 822 of the Acts of Assembly of 2004, relating to state-operated risk management plans for physicians.

[\[S 610\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 822 of the Acts of Assembly of 2004 is amended and reenacted as follows:

3. That the provisions of this act establishing the authority and requirements for the purchase of general liability or medical malpractice insurance shall be effective July 1, ~~2006~~ 2008.

4. That the provisions of this act shall not become effective unless an appropriation of funds effectuating the purposes of this act is included in the general appropriation act for the period of July 1, 2008, through June 30, 2010, passed during the 2008 Session of the General Assembly and signed into law by the Governor.

## Chapter 526 High school diploma; Board of Education to establish requirements thereof for students with LEP.

An Act relating to the requirements for obtaining a high school diploma and students with limited English proficiency.

[\[S 683\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Certain data collection and analysis required.*

*A. The Board and Department of Education shall collect statewide data on Virginia's public school students with limited English proficiency (LEP) and school division programs for LEP students that shall include, but need not be limited to, (i) the demographics of Virginia's LEP students, including country of origin, first or native language, school attendance in the country of origin, and age and grade of first enrollment in a Virginia public school; standards of learning assessment scores; reasons for dropping out of high school; barriers to high school graduation; graduation rates; kinds of diplomas awarded to LEP students, class standing, and college aspirations and attendance; and (ii) school division programs designed to assist LEP students in academic achievement, such as exercising the option to allow LEP students to attend until attaining the age of 22, providing targeted remediation classes for students who have failed the English 11 standard of learning assessments, summer school English for Speakers of Other Languages (ESOL) classes, after-school and weekend tutoring, and other strategies to assist older high school LEP students in meeting graduation requirements.*

*B. The Board and Department shall (i) analyze the data required to be collected by subsection A in relationship to the requirements for obtaining a high school diploma as set forth in the Standards for Accrediting Public Schools in Virginia, the federal No Child Left Behind Act, and the needs of LEP students; and (ii) by December 1, 2006, recommend to the Senate Committee on Education and Health and the House Committee on Education steps to resolve the issues relating to the requirements for obtaining a high school diploma and students with limited English proficiency that will retain high academic standards and accountability, while assisting such students in their endeavors to obtain an education and to become productive Virginians.*

## **Chapter 542 Blue Star Memorial Highway; designating as portion of Old Keene Mill Road in Fairfax County.**

An Act to amend and reenact § 1 of Chapter 453 of the Acts of Assembly of 1990, as amended by Chapter 254 of the Acts of Assembly of 2005, relating to the "Blue Star Memorial Highway."

[\[H 589\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 453 of the Acts of Assembly of 1990, as amended by Chapter 254 of the Acts of Assembly of 2005, is amended and reenacted as follows:

§ 1. That the entire length of U.S. Route 1 in Fairfax County ~~is and the length of Old Keene Mill Road from Accotink Creek to Interstate Route 95 in Fairfax County are hereby designated~~ *the given the designation of "Blue Star Memorial Highway."* Appropriate markers shall be placed and maintained by the Department of Transportation to indicate the designation of ~~this route~~ *these routes*. ~~This designation~~ *These designations* shall not affect any other designations heretofore given this portion of U.S. Route 1, nor shall it affect the designation, made pursuant to Senate Joint Resolution No. 14 of 1948, of U.S. Route 301 in Virginia from the North Carolina boundary to the Maryland boundary as "The Blue Star Memorial Highway."

## **Chapter 592 Worrell Family Memorial Bridge; designating as Route 662 bridge over Burks Fork Creek.**

An Act to designate the Virginia Route 662 bridge over Burks Fork Creek the "Worrell Family Memorial Bridge."

[\[H 511\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Route 662 bridge over Burks Fork Creek is hereby designated the*

*"Worrell Family Memorial Bridge." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portion thereof.*

## **Chapter 606 James B. Tabb Sr. Memorial Highway; designating as portion of Route 615.**

An Act to designate that portion of Virginia Route 615 the "James B. Tabb Sr. Memorial Highway."

[\[H 1219\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A portion of Virginia Route 615, Ironbound Road, from the intersection with Virginia Route 616, Strawberry Plains Road, to the intersection with Virginia Route 5000, Monticello Avenue, in James City County is hereby designated the "James B. Tabb Sr. Memorial Highway." The Department of Transportation, at the request of the local governing body, shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 614 Veterans care center; Governor to request federal funds to construct in Hampton Roads area.**

An Act to authorize the Governor to request federal funds and the State Treasurer to issue a loan to construct a new veterans' care center.

[\[H 1383\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is authorized to request federal funds to construct a new 240-bed*

*veterans' care center located in the Hampton Roads area of Virginia. After the United States Department of Veterans Affairs has determined that federal funds will be allocated for the new center, the State Treasurer shall advance a loan of \$14.6 million to the Department of Veterans Services for the state share of the construction in the form of a short-term treasury loan, with no interest.*

## **Chapter 566 Rural Addition Program; funds allocated to any county.**

An Act to require that funds be allocated to counties for use under the Rural Addition Program.

[\[H 1543\]](#)

Approved April 4, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the Commonwealth Transportation Board and the Commonwealth Transportation Commissioner shall not diminish funds allocated or allocable to any county for use under the Rural Addition Program by reason of any county ordinance authorizing the use of private roads not built to standards set by the Department of Transportation or construction of subdivisions streets built to standards other than those established by the Department.*

*§ 2. In those counties where this Act is applicable, the ordinance shall also state that any and all streets that are not constructed to meet the standards necessary for inclusion in the system of state highways will be privately maintained and will not be eligible for acceptance into the system of state highways unless improved to current Department of Transportation standards with funds other than those appropriated by the General Assembly and allocated by the Commonwealth Transportation Board. For any street that is not constructed to Department of Transportation standards, the subdivision plat and all approved deeds of subdivision, or similar instruments, shall contain a statement advertising that the streets in the subdivision do not meet the standards necessary for inclusion in the system of state highways and will not be maintained by the Department of Transportation or the county approving the subdivision and are not eligible for rural addition*

*funds or any other funds appropriated by the General Assembly and allocated by the Commonwealth Transportation Board.*

## **Chapter 610 Virginia Retirement System; certain Fairfax County employees.**

An Act to amend and reenact Chapter 678 of the Acts of Assembly of 1994, relating to provisions of that Act concerning the retirement of employees transferred from state to local employment.

[\[H 1313\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That Chapter 678 of the Acts of Assembly of 1994 is amended and reenacted as follows:

§ 1. Option of certain counties to operate local health department under contract with the State Board of Health. -- Notwithstanding any other provision of law to the contrary, the governing body of any county having the urban county executive form of government may enter into a contract with the State Board of Health to provide local health services in that county. The governing body may provide such health services either through a separate local department or through another organizational arrangement as authorized by ~~§ 15.1-765~~ [§ 15.2-823](#). The governing body shall not eliminate any service required by law or reduce the level of service below that required by law. In addition, the local governing body shall not eliminate or reduce the level of any service currently delivered in connection with the Virginia Medicaid program.

Any contract executed between the county and the Board shall set forth the rights and responsibilities of the local governing body for the delivery of health services and shall require that the governing body, with the concurrence of the State Health Commissioner, appoint the local health director of health service in accordance with local procedures, who shall be employed full time as an employee of the governing body and shall be responsible for directing all state mandated public health programs. All employees of the local health department operated by the governing body of the county shall be employees of the governing body.

The local governing body shall operate the local health department, pursuant to the terms of the contract, within local appropriations and any state funds which may be made available to it, pursuant to the appropriations act. State funds for the operation of health services and facilities shall continue to be allocated to any county which has elected to provide health services by contract pursuant to this section as if such services were provided in a county without such a contract.

The local governing body shall maintain and submit such financial and statistical records as may be required by the State Board of Health.

The county shall be the sole owner of all equipment and supplies, including all equipment and supplies used by the local health department at the time of execution of the contract, which were or are purchased for providing public health services regardless of the source of the funds for such purchases.

Notwithstanding any other provision of law to the contrary, any person who is transferred from state to local employment in accordance with a contract authorized by this section, and who is a member of the Virginia Retirement System at the time of the transfer, shall continue to be a member of the Virginia Retirement System during the period of local employment. Any such transferred employee shall remain a member of the Virginia Retirement System under the same terms and conditions as would apply if the transferred employee had remained a state employee, so long as the employee is employed with a local health department or returns to state employment. For purposes of any employment of the transferred employee as a state employee after local employment, the membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System.

For any employee who is transferred to local employment in accordance with a contract authorized by this section, that employee's membership in the Virginia Retirement System during local employment shall be treated the same as any other membership in the Virginia Retirement System. The local governing body shall collect and pay all employee and employer contributions to the Virginia Retirement System for retirement and group life insurance in accordance with the provisions of Chapter 1 of Title 51.1 of the Code of Virginia, as amended.

Any city that is receiving local health services from a county that contracts with the Commonwealth to provide local health services pursuant to this section may continue to receive local health services from that county. State funds for the operation of health services and facilities to any such city shall continue to be allocated as if such services were provided in a county without such a contract. Any existing contracts between any

city and any county which contracts with the state pursuant to this section shall continue unless and until amended by the affected jurisdictions.

The power to contract conferred by this provision shall not be deemed to confer any additional authority for any county providing local health services to impose fees for local health services.

*§ 2. Provisions with respect to retirement concerning those employees transferred from state employment to local employment. -- Notwithstanding any other provision of law to the contrary, any employee transferred from state employment to local employment pursuant to the terms of this Act and the contract required under this Act between the board of supervisors of any such county and the State Board of Health, shall remain a member of the Virginia Retirement System so long as he or she shall remain employed by any such county, regardless of the position or department of county government in which he or she shall be employed.*

## **Chapter 619 Alma C. White Memorial Bridge; designating at Route 631 bridge at Little Creek Dam Road.**

An Act to designate the Virginia Route 631 bridge at Little Creek Dam Road the "Alma C. White Memorial Bridge."

[\[H 1547\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Route 631 bridge at Little Creek Dam Road is hereby designated the "Alma C. White Memorial Bridge." The Department of Transportation, at the request of the local governing body, shall place and maintain appropriate signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portion thereof.*

## **Chapter 664 Sam's Restaurant; Governor to convey to Ocean Properties, LLC in downtown section of Hampton.**

An Act to convey Sam's Restaurant in Hampton, Virginia.

[\[H 898\]](#)

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is hereby authorized to sell and convey, upon consultation with the Virginia Marine Resources Commission in regard to the terms and conditions of the sale and conveyance, and in consideration of the mutual promises of the parties and the payment of fair market value consideration, to Ocean Properties, LLC, an irregular-shaped lot, piece, or parcel of land of approximately .107 acres situate, lying and being in the downtown section of Hampton, Virginia, said parcel being known as Sam's Restaurant and further described as follows: commencing at a point on the eastern right-of-way line of Water Street at the northeast intersection of Water Street and East Mellon Street; thence departing East Mellon Street and running [S56-16](#)'08"E a distance of 116.50'; thence [S54-06](#)'08"E a distance of 66.11' to a point, this being the point of beginning; thence departing the point of beginning and running [N46-37](#)'54"E a distance of 4.91'; thence [N80-31](#)'06"E a distance of 41.74', thence [N51-35](#)'39"E a distance of 111.48'; thence [S47-45](#)'54"E a distance of 14.10'; thence [S42-25](#)'37"W a distance of 103.03'; thence [S46-20](#)'57"E a distance of 35.06'; thence [S43-38](#)'36"W a distance of 20.79'; thence [N46-31](#)'32"W a distance of 35.83'; thence [S43-10](#)'57"W a distance of 12.88'; thence [N58-38](#)'11"W a distance of 57.66' to the point of beginning. The property is delineated on the survey prepared by Jeffrey J. Vierrether, dated September 15, 2004.*

*§ 2. Such sale and conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the sale and conveyance.*

## **Chapter 776 Certificate of public need; authorization of certain amendment.**

An Act to authorize an amendment to a certain certificate of public need.

[\[H 381\]](#)

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1

. § 1. *Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision 10 of § [32.1-102.3:2](#) as in effect on June 30, 1996, or the provisions of Chapter 868 of the Acts of Assembly of 2000 and Chapter 486 of the Acts of Assembly of 2003, the Commissioner of Health may accept and approve a request, pursuant to this act, to amend the conditions of a certificate of need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds for three years from the date of issuance of a certificate of occupancy for the third mid-rise residential unit building associated with such facility or June 30, 2009, whichever shall occur first, when such facility (i) is operated by an association described in § [55-458](#); (ii) was created in connection with a real estate cooperative; (iii) offers its residents a level of nursing services consistent with the definition of continuing care in Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2; and (iv) was issued a certificate of need prior to October 3, 1995.*

## **Chapter 816 Nursing home bed projects; conditions for issuance of certificate of public need.**

An Act to authorize certain certificate of public need applications; emergency.

[\[H 267\]](#)

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Certain certificate of public need applications authorized.*

*Notwithstanding the provisions of § [32.1-102.3:2](#) of the Code of Virginia, any standards promulgated by the Board of Health in regulations pursuant thereto, or the provisions of any current Request for Applications (RFAs) issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#), the Commissioner of Health shall accept applications and may approve certificates of public need authorizing an increase in nursing home beds, either on-site or through relocation within the same city or county, from any facility licensed for*

*less than 40 beds, provided that (1) the facility experienced operating losses in 2003 and 2004, (2) the facility is not part of a hospital or continuing care retirement community, (3) the total number of beds that would be licensed would not be more than 90, (4) the bed need forecast in that planning district exceeds the current inventory of beds in that planning district, and (5) the estimated average occupancy of all existing Medicaid-certified nursing facility beds in the planning district was at least 93% over the most recent two years reported by Virginia Health Information as of the date of enactment of this legislation (excluding the bed inventory and utilization of the Virginia Veterans Care Centers).*

2. That the provisions of this act shall expire on June 30, 2007.

3. That the approval of any beds under this act shall affect the number of beds for which Requests for Applications may be issued for planning districts in which such beds are approved but shall not affect whether Requests for Applications are issued before such beds have been operated for two years.

4. That an emergency exists and this act is in force from its passage.

## **Chapter 821 Local government & school divisions; cooperative transportation agreements between.**

An Act to authorize cooperative transportation agreements between local governments and local school divisions.

[\[H 1582\]](#)

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any local government or combination of governments within Planning District 16 is hereby authorized to enter into cooperative agreements with a local school division or divisions for the use of school vehicles for public transportation purposes during non-school hours. Such agreements may utilize public or private funds for addressing the costs of the program.*

2. If no agreements are entered into pursuant to this act by July 1, 2010, the provisions of this act shall expire on July 1, 2010.

## **Chapter 879 No Child Left Behind; Bd. of Education to develop plan to identify initiatives funded thereby.**

An Act to direct the Virginia Board of Education to develop a plan in relation to No Child Left Behind.

[\[H 1427\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No Child Left Behind; identification plan.*

*A. That the Virginia Board of Education shall develop a plan to identify initiatives or conditions that are currently being funded by the federal act known as No Child Left Behind, that are not an integral or necessary component of the Commonwealth's own Standards of Quality, Standards of Accreditation, or Standards of Learning as authorized by the Virginia General Assembly and the Board of Education. Included in this plan will be information on the consequences (including any potential loss of Federal funding) if the Commonwealth elected to not comply with the identified components.*

*B. Upon the development of the plan required by subsection A, the Office of the Attorney General of Virginia shall provide the Board and the General Assembly an estimate of the costs for providing legal services in the event that the elimination of any initiatives or conditions results in withholding of Title I funds.*

*C. The Board of Education shall report its plan to the Senate Committee on Education and Health, the House Committee on Education, the Senate Committee on Finance, and the House Committee on Appropriations by October 1, 2006.*

## **Chapter 880 No Child Left Behind Act; Board of Education encouraged to request waivers and exemptions.**

An Act to request certain waivers and exemptions to the federal No Child Left Behind Act.

[\[H 1428\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No Child Left Behind; waiver and exemption requests.*

*A. The President of the Board of Education is encouraged to request from the U.S. Department of Education, in calendar year 2006, the following waivers and exemptions of the statutory and regulatory requirements of the federal No Child Left Behind Act (Public Law 107-110):*

*1. Additional flexibility for the Commonwealth to apply sanctions regarding supplemental services and public school choice.*

*2. The identification of schools in improvement to consider those schools that fail to make adequate yearly progress for two consecutive years in the same subject and for the same subgroup.*

*3. The modification of adequate yearly progress calculation policies to accommodate appropriate measures of progress for students with disabilities and those students who are limited English proficient.*

*4. The ability to count the passing scores of students on retests in the calculation of adequate yearly progress in a manner that increases the validity of adequate yearly progress determinations across tested grade levels.*

*Nothing in this section shall be construed to prohibit the Board of Education from making additional requests as it deems necessary.*

*B. The President of the Board of Education shall make a report on the status of all requests provided in subsection A of this act to the Governor, the Chairmen of the Senate Education and Health and House Education Committees, and the Chairmen of the Senate Finance and House Appropriations Committees no later than the first day of the 2007 Session of the General Assembly. If such report indicates that the response from the U.S. Department of Education to the requests in subsection A of this act is unsatisfactory, then the President of the Board of Education shall make recommendations to the Governor and the General Assembly regarding additional actions. Such actions may include, but need not be limited to (i) the nullification and revocation of the Virginia Consolidated State Application submitted to the U.S. Department of Education; (ii) legal actions that may be taken by the Office of the Attorney General; and (iii) additional negotiations with the U.S. Department of Education.*

## **Chapter 887 Blue Star Memorial Highway.**

An Act to designate the entire portion of Route 236, Little River Turnpike, and a portion of Braddock Road the "Blue Star Memorial Highway."

[\[H 1597\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the entire portion of U.S. Route 236, Little River Turnpike, and that portion of Braddock Road between Route 123 and Route 28 is hereby designated the "Blue Star Memorial Highway." The Department of Transportation shall place and maintain appropriate signs indicating the designation of these highways. These designations shall not affect any other designations heretofore or hereafter applied to these highways or any portions thereof.*

## **Chapter 918 License plates, special; issuance to supporters of childhood cancer awareness, youth soccer, etc.**

An Act to authorize the issuance of certain special license plates; fees.

[\[S 617\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of childhood cancer awareness; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of [§ 46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of childhood cancer awareness.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of*

*1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Childhood Cancer Awareness Fund established within the Department of Accounts. These funds shall be paid annually to CureSearch and used to promote childhood cancer awareness in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 2. Special license plates for supporters of USO; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend:*

*SUPPORT THE USO.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the United Service Organizations Fund, established within the Department of Accounts. These funds shall be paid annually to the United Service Organizations and used to support its programs and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 3. Special license plates; supporters of the National D-Day Memorial Foundation; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner shall issue special license plates to supporters of the National D-Day Memorial Foundation.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the National D-Day Memorial Foundation Fund, established within the Department of Accounts. These funds shall be paid annually to the National D-Day Memorial Foundation and used to assist in its programs, activities, and operation. All other fees imposed under the provisions of this section shall*

*be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 4. Special license plates for supporters of the United States troops; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend:*

*SUPPORT OUR TROOPS.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Support Our Troops Fund established within the Department of Accounts. These funds shall be paid annually to Virginia Support Our Troops, Inc. and used to support its programs and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 5. Special license plates for supporters of the National Multiple Sclerosis Society; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the National Multiple Sclerosis Society.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the National Multiple Sclerosis Society Fund established within the Department of Accounts. These funds shall be paid annually to the National Multiple Sclerosis Society and used to support its programs and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 6. Special license plates for immediate family members of persons who have died in military service to their country; fees.*

*The Commissioner of the Department of Motor Vehicles shall issue special license plates, as prescribed herein, on receipt of an application and written evidence that the applicant is the owner of a motor vehicle and is a member of the immediate family of a member of the armed forces of the United States who lost his or her life under any of the following conditions:*

- 1. During World War I, World War II, or any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;*
- 2. Anytime after June 30, 1958:*
  - a. While engaged in an action against an enemy of the United States;*
  - b. While engaged in military operations involving conflict with an opposing foreign force;*
  - c. While serving with friendly forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or*
- 3. Anytime after March 28, 1973, as a result of:*
  - a. An international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the U.S. Secretary of Defense; or*
  - b. Military operations while serving outside the United States, including commonwealths, territories, and possessions of the United States, as part of a peacekeeping force.*

*For the purposes of this section, a member of the immediate family shall include (i) a widow or widower, remarried or not; (ii) a mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis; (iii) each child, stepchild, and adopted child; and (iv) each brother, half-brother, sister, and half-sister.*

*For each set of license plates issued under this section, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.*

*The provisions of subdivisions B 1 and B 2 of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued under this section.*

*§ 7. Special license plates for veterans of U.S. military operations since September 11, 2001, in Afghanistan and Iraq.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia and written evidence that the applicant is a veteran of U.S. military operations in Afghanistan or Iraq, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates to veterans of U.S. military operations in Afghanistan and Iraq.*

*§ 8. Special license plates for supporters of the Boy Scouts of America.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Boy Scouts of America.*

*§ 9. Special license plates for supporters of 9-1-1 communications professionals.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue special license plates to supporters of 9-1-1 communications professionals.*

*§ 10. Special license plates for supporters of youth soccer.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of youth soccer.*

*§ 11. Special license plates honoring Robert E. Lee.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates honoring Robert E. Lee.*

*§ 12. Special license plates bearing the legend I VOTED.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend: I VOTED.*

## **Chapter 933 Higher educational institutions; management agreements, report.**

An Act providing management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and the University of Virginia, respectively, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of the Code of Virginia.

[\[H 1502\]](#)

Approved May 18, 2006

Be it enacted by the General Assembly of Virginia:

1. That the following Chapter 1 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University:"

CHAPTER 1.

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and Virginia Polytechnic Institute and State University (hereafter, Virginia Tech, to be abbreviated as the University) provides as follows:*

RECITALS

*WHEREAS, Virginia Tech has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

- 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of Virginia Tech held on September 24, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;*
- 2. Written Application to the Governor. Virginia Tech has submitted to the Governor a written Application dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that Virginia Tech is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that Virginia Tech has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and*
- 3. Finding by the Governor. In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that Virginia Tech has fulfilled the requirements of subdivision A 2 of*

§ [23-38.97](#) of the Act, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with Virginia Tech; and WHEREAS, Virginia Tech is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and Virginia Tech do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Board of Visitors of Virginia Tech.

"Covered Employee" means any person who is employed by Virginia Tech on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

"Management Agreement" means this agreement between the Commonwealth of Virginia and Virginia Tech as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and Virginia Tech.

"Public institution of higher education" means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.

*"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

**ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

**SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.**

*Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, Virginia Tech shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

**SECTION 2.1.1. Assessments and Accountability.** *Virginia Tech and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors policies attached hereto as Exhibits A through F, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

**SECTION 2.1.2. Express Grant of Powers and Authority.** *Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of Virginia Tech attached hereto as Exhibits A through F and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2) the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) the procurement of goods, services, including certain*

*professional services, insurance, and construction (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the University.*

**SECTION 2.1.3. Reimbursement by Virginia Tech of Certain Costs.**

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

**SECTION 2.1.4. Potential Impact on Virginia College Savings Plan.** *As required by subdivision D 2 c of § [23-38.88](#) of the Act, Virginia Tech has given consideration to potential*

*future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to Virginia Tech and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act and subject to the provisions of this Management Agreement, Virginia Tech may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment I constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that Virginia Tech identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide Virginia Tech with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position Virginia Tech to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable Virginia Tech to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, Virginia Tech's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both Virginia Tech and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the*

*Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by Virginia Tech, the parties agree that Virginia Tech is not in a position to quantify any such cost savings at this time, although Virginia Tech expects that there will be cost savings resulting from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that Virginia Tech shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to Virginia Tech by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by Virginia Tech's Board of Visitors and attached hereto as Exhibits A through F.*

*SECTION 2.1.9. Exercise of Authority. Virginia Tech and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon Virginia Tech the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, Virginia Tech shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached*

*hereto as Exhibits A through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F.*

*Virginia Tech and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of Virginia Tech shall assume full responsibility for management of Virginia Tech, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of Virginia Tech as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

*SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Act, prior to August 1, 2005, the Board of Visitors of Virginia Tech adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B.*

*In addition to the above commitments, the University commits to furthering these State goals by:*

*1. In addition to its six-year target of achieving \$227 million in external research by 2011-12 [which is the last year of the six-year plan], the University commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.*

*2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the University commits to work with the University of Virginia and the College of William and Mary in Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, the University of Virginia and the College of William and Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number*

enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.

3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.

SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, Virginia Tech, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing Virginia Tech's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) of the Code of Virginia, requires Virginia Tech to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as Virginia Tech's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year Plan submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.

Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of Virginia Tech to include in this Management Agreement Virginia Tech's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that

*encourages student enrollment and progression without respect to potential increases in tuition and fees. Virginia Tech's commitment in this regard is clear. Virginia Tech recognizes that the cost of higher education as a percentage of family income has increased steadily in recent years for low and moderate income families. Since the University anticipates further increases in tuition and fees during the six year period of 2006-2012, the University developed its Funds for the Future program, which shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of Virginia Tech and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations. The Funds for the Future program was developed to increase institutional funds and other fund sources to moderate the impact of future tuition and fees increases for Virginia undergraduates from families with adjusted gross income of \$100,000 or less, as determined by federal financial aid regulations.*

*The Funds for the Future program works on a sliding scale of family responsibility for coverage of tuition and fees. For example, students with a family adjusted gross income of \$30,000 or less (approximately 150% of the poverty level for a family of four) will receive incremental grant aid sufficient to completely offset any increase in their tuition and mandatory fees during their four years of enrollment at Virginia Tech. For students with family adjusted gross income of \$30,001 to \$99,999, the University will provide varying levels of financial aid awards to reduce the impact of tuition and fee increases.*

*Virginia Tech serves a large number of students with financial need. Based on 2003-04 enrollment data, the University estimates that for the 2006-07 academic year approximately 5,636 students, representing over 36% of the Virginia Tech undergraduate student body, will receive incremental benefits under the Funds for the Future program. The institution will draw upon the full range of available resources to increase grant aid to these students and has established very aggressive goals for its institutional and private funds resources to create and sustain this program. As such, the University program is also based on the commitment of additional state General Fund support, consistent with the levels identified in its Six-Year Financial Plan; these amounts are based upon SCHEV calculations for incremental General Fund appropriations. Consistent with the current financial aid environment, the University also anticipates that existing federal, state, and University loan programs will be available, as needed, to assist students in addressing their annual costs of education not addressed by existing grant aid programs, the Funds for the Future program, or other available resources.*

*The Commonwealth and Virginia Tech agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to Virginia Cooperative Extension and the Agriculture Experiment Station Division. Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits A through F are implemented by Virginia Tech on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station Division shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, Virginia Tech shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and Virginia Tech's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and Virginia Tech agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. Virginia Tech's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and Virginia Tech's Enabling Legislation, the Enabling Legislation shall control.*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to Virginia Tech as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#). [23-1.01](#). [23-1.1](#), [23-2](#), [23-2.1](#), [23-](#)*

[2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, Virginia Tech shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, Virginia Tech shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.

SECTION 2.4.5. *Public Access to Information.* As provided in § [23-38.95](#) of the Act, Virginia Tech shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#), if expressly named therein, and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § [2.2-3708](#).

SECTION 2.4.6. *Conflicts of Interests.* As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) of the Code of Virginia, that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of Virginia Tech and to its Covered Employees.

SECTION 2.4.7. *Other Provisions of the Code of Virginia.* Other than as specified above, any other powers and authorities granted to Virginia Tech pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits A through F.

## ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. *Amendments.* Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on

*Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

*SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.*

*SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § 23.38.88, and § [23-38.98](#), of the Act, if the Governor makes a written determination that Virginia Tech is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of Virginia Tech and to the members of the General Assembly, and (ii) Virginia Tech shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by Virginia Tech, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, Virginia Tech shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until Virginia Tech has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

*SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this Management Agreement.*

*ARTICLE 4. GENERAL PROVISIONS.*

*SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, Virginia Tech and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if Virginia Tech were not governed by the Act; provided that the Virginia Tort Claims Act, (§ 8.01.195.1 et seq.) of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to Virginia Tech.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT A*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*CAPITAL PROJECTS*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

## *POLICY GOVERNING CAPITAL PROJECTS*

### *I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

### *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“State Tax Supported Debt” means bonds, notes, or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. CAPITAL PROGRAM.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant. It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS.**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those preappropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.*

*It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

**VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:*

- A. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*
- B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*
- C. Making procurement rules clear in advance of any competition;*
- D. Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*
- E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*

*F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

*The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:*

*A. A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*B. A prequalification procedure for contractors or products;*

*C. A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*D. A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

#### *VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to*

*perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.*

#### **IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

#### **X. BUILDING DEMOLITIONS.**

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in*

*accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

#### *XI. BUILDING OR LAND ACQUISITIONS.*

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

##### *A. Environmental and Land Use Considerations.*

*It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

##### *B. Infrastructure and Site Condition.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any*

*environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors*

*policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.*

#### *XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

#### *EXHIBIT B*

#### *MANAGEMENT AGREEMENT*

#### *BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, Virginia Polytechnic Institute and State University may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

*II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the University.*

*“Income Lease” means an Operating Lease of real property under the control of the University to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Operating Lease” means any lease involving real property, or improvements thereon that is not a Capital Lease.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

### *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all University Leases.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. REQUIREMENTS FOR LEASES.*

#### *A. Factors to Be Considered When Entering into Leases.*

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that*

*the plan for the space to be leased is consistent with the purpose for which the space is intended.*

*B. Competition to Be Sought to Maximum Practicable Degree.*

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Executive Vice President and Chief Operating Officer, it is impractical to procure Leases through competition.*

*C. Approval of Form of Lease Required.*

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

*D. Execution of Leases.*

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with § [23-38.109](#) and § 23- 38.112 of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

EXHIBIT C

MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING  
INFORMATION TECHNOLOGY

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2. of the Code of Virginia, and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management*

Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.

The Board of Visitors of Virginia Polytechnic Institute and State University is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.

## II. DEFINITIONS.

As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:

“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.

“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia, as it currently exists and from time to time may be amended.

“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia, as it currently exists and from time to time may be amended.

“Policy” means this Information Technology Policy adopted by the Board of Visitors.

“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.

“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).

## III. SCOPE OF POLICY.

This Policy is intended to cover and implement the authority that may be granted to Virginia Polytechnic Institute and State University pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University’s enabling legislation as that term is defined in § [23-38.89](#) of the Act.

This Policy shall govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University.

Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#) of the Code of Virginia, therefore, the University shall be exempt from those provisions of the Code of

*Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2- 2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### **IV. GENERAL PROVISIONS.**

##### **A. Board of Visitors Accountability and Delegation of Authority.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

##### **B. Strategic Planning.**

*The President, acting through the Vice President for Information Technology and Chief Information Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan. At least 45 days prior to each fiscal year, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall make available the*

*University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia and into which the University's plan is to be incorporated.*

*C. Expenditure Reporting and Budgeting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures. The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended;*

*§§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the appropriate designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project man-*

*agement policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Vice President for Information Technology and Chief Information Officer in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management) as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management) as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the Vice President for Information Technology and Chief Information Officer, in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time. For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT D*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*THE PROCUREMENT OF GOODS, SERVICES,*

*INSURANCE, AND CONSTRUCTION AND*

*THE DISPOSITION OF SURPLUS MATERIALS*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that Virginia Polytechnic Institute and State University, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Effective Date” means the effective date of the Management Agreement.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Code of Virginia, between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University. “Rules” means the “Rules Governing Procurement of Goods, Services, Insurance, and Construction” attached to this Policy as Attachment 1.*

*“Services” as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further*

*delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The University has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as a surplus materials disposition system for the University as a whole. Any University electronic procurement system shall integrate or interface with the Commonwealth's electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer or his designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer.*

##### *B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

##### *C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the*

*University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

- i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system and comply with the business plan for the Commonwealth's electronic procurement system, as modified by an agreement between the Commonwealth and the University, which agreement shall not be substantially different than the agreement attached to this Policy as Attachment 2; and*
- iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88](#)(D)(4) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to*

*purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).*

#### *V. UNIVERSITY PROCUREMENT POLICIES.*

##### *A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the University is committed to:*

- 1. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*
- 2. Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*
- 3. Making procurement rules clear in advance of any competition;*
- 4. Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*
- 5. Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*
- 6. Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

##### *B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), [2.2-3705.1](#) (12), or [2.2-3705.4](#) (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

##### *C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*A. The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the University, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*B. Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*C. The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the*

*effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### **VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

##### **A. Protests, Appeals and Debarment.**

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### **B. Prompt Payment of Contractors and Subcontractors.**

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

##### **C. Types of Procurements.**

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

**ATTACHMENT 1**

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the  
Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to [§ 23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the*

*purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*“Best value,” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution’s needs.*

*“Business” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*“Competitive negotiation” is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services’ central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for*

*services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting*

*proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.*

*“Competitive sealed bidding” is a method of contractor selection, other than for professional services, which includes the following elements:*

- 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*
- 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services’ central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*
- 3. Public opening and announcement of all bids received.*
- 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*
- 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*“Construction” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*“Construction management contract” means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*“Covered Institution” or “Institution” means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act. “Design-build contract” means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software. “Informality” means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. “Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.*

*“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement. -*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after*

*competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This*

*notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or*

*other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the*

*amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.*

*Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis*

*prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be*

*the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

*1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*

*2. The contractor does not have appropriate experience to perform the construction project in question;*

*3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*

*4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause.*

*The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*

*5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;*

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. Negotiation with lowest responsible bidder. -

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. Cancellation, rejection of bids; waiver of informalities. -

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. Exclusion of insurance bids prohibited. -

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. Debarment. -

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. Purchase programs for recycled goods; Institution responsibilities. -

A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-](#)

[1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided*

*the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than*

*5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds. -*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company*

*selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the*

*contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be*

*served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii)*

*identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

*1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

*2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

*3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The University of Virginia Medical Center.*

*5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs*

*funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objec-*

*tion, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*
- 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
- 8. Royalties; or*
- 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

*§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

*§ 39. Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution..*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) of the Code of Virginia.*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

*3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.*

*4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."*

*Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject*

*to the same payment and interest requirements with respect to each lower-tier subcontractor.*

*A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.*

*§ 46. Interest penalty; exceptions. -*

*A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.*

*B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.*

*C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.*

*D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.*

*E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act ([§ 2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility. -*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

*3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a*

*responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to*

*challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of*

*Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent,*

*arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

## ATTACHMENT 2

### *Memorandum of Agreement*

*The Commonwealth of Virginia and Virginia Polytechnic Institute and State University  
ERP/SciQuest Implementation with eVA*

*The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute and State University (University) agree to the following:*

*I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Banner).*

*II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.*

*III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.*

*IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.*

*V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense.*

*The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.*

*VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:*

*A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay the eVA transaction fees for these orders.*

*B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor*

*contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.*

*The University further agrees that:*

- 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*
- 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*
- 3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.*

*VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.*

*IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.*

#### *Guidelines*

- 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.*
- 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.*

3. *Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.*

4. *Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.*

5. *Cancellations are to be transmitted to eVA complying with the eVA standard format.*

6. *eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.*

#### *Schedule*

*The University shall implement this agreement no later than July 2006.*

#### *Metrics*

A. *The University shall comply with the following Governor's eVA Management Objective:*

*Ninety-five percent of all nonexempt orders to be processed by eVA. Includes nonexempt orders issued by end users (PCard & LPO) and the central purchasing office.*

*Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.*

B. *The University shall meet the following management objectives for electronic procurement:*

1. *Provide end users, including purchase-card users, access to an electronic system for buying;*

2. *Conduct business with eVA registered vendors whenever possible;*

3. *Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;*

4. *To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;*

5. *To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item*

*descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible. The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS.*

*The University further agrees that:*

*a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*

*b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*

*c. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*6. Timely process electronic change orders and cancellations;*

*7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as specifically exempted by DPS;*

*8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the accuracy of contract catalog pricing loaded into the ERP/SciQuest;*

*9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);*

*10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified;*

*11. Complete and certify the monthly eVA Dashboard Report; and*

*12. Timely remit any eVA transaction and non-use fees incurred by the institution.*

*C. The University shall be subject to eVA fees assessed per the eVA Business Plan.*

*D. The University shall assure that payments to CGI-AMS are current.*

*EXHIBIT E*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*POLICY GOVERNING HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and*

*provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act "are state employees of" the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies*

*and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*“Covered Employee” means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Employee” means Covered Employee unless the context clearly indicates otherwise.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.*

*“Effective Date” means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*“Governing Law” means the Act and the University’s Enabling Legislation.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.*

*“Participating Covered Employee” means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by Virginia Polytechnic Institute and State University, (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all nonsalaried nonfaculty University employees without regard to when they were hired, (iv) all faculty University employees without regard to when they were hired.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

*“University employee” means a Covered Employee.*

*“University Human Resources System” means the human resources system for University employees as provided for herein.*

### *III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.*

*The University has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the University are expressly*

*exempt from the Virginia Personnel Act. The University has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices; the administration of separate retirement plans.*

*The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all University employees. On that Effective Date, and until changed by the University or unless otherwise specified in this Policy, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

#### **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY HUMAN RESOURCES SYSTEMS.**

*A. Adoption and Implementation of University Human Resources Systems. The President, acting through the Executive Vice President and Chief Operating Officer, is hereby authorized to adopt and implement human resources systems for University employees that implement and are consistent with the Governing Law, other applicable provisions of law, these University human resources policies, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless University employees are exempted from those other human resources policies by law or policy. The University Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the University Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University commits to regularly engage employees in appropriate discussions and to receive employee input as the new University Human Resources Systems are developed. The University will regularly communicate the details of new proposals to all employees who are eligible to participate in the new University Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current human resources system for faculty described in the Virginia Tech Faculty Handbook and Special Research Faculty Handbook as posted on the University's website, <http://www.policies.vt.edu/>, and periodically amended;*
- 2. The current human resources system for "Classified Employees" as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html> and the University's website, <http://www.policies.vt.edu/>, and Human Resources' website, <http://www.hr.vt.edu/>, as periodically amended;*
- 3. The Human Resources System for salaried nonfaculty "Participating Covered Employees," as posted on the University's website, <http://www.policies.vt.edu/>, and Human Resources' website, <http://www.hr.vt.edu/>, as periodically amended; and*
- 4. The Human Resources System for wage employees as set forth in the current Virginia Tech policies, procedures, and guidelines, as posted on the University's website, <http://www.policies.vt.edu/>, and Human Resources' website, <http://www.hr.vt.edu/>, as periodically amended, and for graduate students employed on assistantships as set forth in the Virginia Tech Graduate School policies, as posted on the Graduate School website, <http://www.grads.vt.edu/>, as periodically amended.*

*All the systems described above, except the system described in paragraph 2, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer, consistent with these human resources policies. The system described in paragraph 2 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that the University officials*

*who develop, implement and administer the University Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

#### *VI. HUMAN RESOURCES POLICIES.*

*The Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above shall embody the following human resources policies and principles:*

##### *A. Election by Salaried Nonfaculty University Employees.*

*Upon the adoption by the University of a University Human Resources System, all salaried nonfaculty University employees who were in the employment of the University as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, shall be given written notice of their right to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management, or (ii) the University Human Resources System. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the University Human Resources System, also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that University Human Resources System.*

*Each such salaried nonfaculty University employee, shall be given at least 90 days to make the election required by the prior paragraph. Such 90 day period shall begin to run on the date on which the University Human Resources System becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the University Human Resources System. If such a salaried nonfaculty University employee elects to participate in the University Human Resources System, that election*

*shall be irrevocable. At least every two years, the University shall offer to salaried non-faculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the University Human Resources System; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the University Human Resources System, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*1. General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*2. Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the University, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*3. Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed*

*by the Department of Human Resource Management, the compensation plan for Classified Employees shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*4. Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*5. Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*6. Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

*7. Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

*C. Benefits.*

*The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.*

*Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. If, however, the University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty retirement plan or plans, such alternative health insurance or faculty retirement plan or plans shall apply to and govern the University employees included in such plan or plans.*

*The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the University to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the programs.*

*Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefit plans, other than Classified Employee benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees.*

*Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to assignment as provided in subsection A of § [23-38.119](#) of the Act.*

*D. Employee Relations.*

*1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*

*2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*

*3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*

*4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.*

*5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.*

*6. Unemployment Compensation. The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.*

*7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers Compensation Program administered by the Department of Human Resource Management.*

*8. Performance Planning and Evaluation. The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the University. On or after that Effective Date, nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.*

*9. Standards of Conduct and Performance. In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire,*

shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.

11. *Discrimination Complaints.* If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management, Office of Equal Employment Services, with the appropriate University office, or with the appropriate federal agencies. All Participating Covered Employees and applicants for employment after the Effective Date of the University's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate University office or with the appropriate federal agencies.

12. *Layoff Policy.* The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia.

Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) of the Code of Virginia, on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource

*Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

*13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.*

*14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the Virginia Polytechnic Institute and State University Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the*

*Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law. In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.*

*On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Classified Employees who change jobs within the University through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness*

*and integrity of the data transmitted to the Department of Human Resources Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

*ATTACHMENT 3*

*Memorandum of Understanding*

*Between Virginia Polytechnic Institute and State University and the*

*Department of Human Resources Management Regarding*

*The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between Virginia Polytechnic Institute and State University and the Department of Human Resource Management (DHRM).*

*I. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.

a. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

b. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.

3. The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).

4. Other reports to be provided by the University include the following:

a. Monthly Employee Position Report.

b. Annual report on salaried, wage, and contract employees.

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

Virginia Polytechnic Institute and State University:

By: .....Date.....  
Executive Vice President and Chief Operating Officer

Department of Human Resources Management:

By: .....Date.....  
Director, Department of Human Resource Management

*EXHIBIT F*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*FINANCIAL OPERATIONS AND MANAGEMENT*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations and management.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

## *III. SCOPE OF POLICY.*

*This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform*

*system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.*

*Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station Division shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of*

*finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) of the Code of Virginia, are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) of the Act, shall receive certain financial incentives, including the interest on the tuition and fees and other non-*

*general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.*

*Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:*

*i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;*

*ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;*

*iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#) of the Act, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

*iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

vi) *On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

vii) *The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and*

*Compliance Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

**VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

*The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

**IX. DISBURSEMENT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission,*

*including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

*i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*

*ii) The University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*

*iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those*

*programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### **X. DEBT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to § [23-38.108\(B\)](#) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.*

*The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of*

*the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

#### *XII. INSURANCE AND RISK MANAGEMENT.*

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

2. That the following Chapter 2 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The College of William and Mary in Virginia:"

*CHAPTER 2.*

*MANAGEMENT AGREEMENT*

*BY AND BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and The College of William and Mary in Virginia (hereafter, the College) provides as follows:*

*RECITALS*

*WHEREAS, the College has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

- 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the College held on April 22, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;*
- 2. Written Application to the Governor. The College has submitted to the Governor a written Application, dated November 2, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the College is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the College has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and*
- 3. Finding by the Governor. In accordance with subsection B of § [23-38.97](#) of the Act the Governor has found that the College has fulfilled the requirements of subdivision A 2 of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the College; and*

*WHEREAS, the College is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

**AGREEMENT**

*NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now agree as follows:*

**ARTICLE 1. DEFINITIONS.**

*As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary in Virginia and the Virginia Institute of Marine Science.*

*“College” means the College of William and Mary in Virginia (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).*

*“Covered Employee” means any person who is employed by the College on either a salaried or wage basis.*

*“Covered Institution” means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*“Enabling legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Management Agreement” means this agreement between the Commonwealth of Virginia and the College as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*“Parties” means the parties to this Management Agreement, the Commonwealth of Virginia and the College.*

*“Public institution of higher education” means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.*

**ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

*SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.*

*Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, the College shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. The College and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits G through L, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the College agree that the Commonwealth has granted to the College by this Management agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the College attached hereto as Exhibits G through L and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit G), (2) the leasing of property, including capital leases (Exhibit H), (3) information technology (Exhibit I), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit J), (5) human resources (Exhibit K), and (6) its system of financial management (Exhibit L), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-*

*general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits G through L, the Commonwealth and the College agree that the Commonwealth has expressly granted to the College all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits G through L, to a person or persons within the College.*

*SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the College through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or risk management program, the College shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2 c of § [23-38.88](#) of the Act, the College has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has*

*provided to the College and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act and subject to the provisions of this Management Agreement, the College may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that the College identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the College with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the College to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the College to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the College's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the College and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the College, the parties agree that the College is not in a position to quantify any such cost*

*savings at this time, although the College expects that there will be cost savings resulting from the additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the College by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as Exhibits G through L.*

*SECTION 2.1.9. Exercise of Authority. The College and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the College the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the College shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L.*

*The College and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the College shall assume full responsibility for management of the College, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the College as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

*SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Act, prior to August 1, 2005, the Board of Visitors of the College adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the College commits to furthering these State goals by:*

- 1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the College, including the Virginia Institute of Marine Science, commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.*
- 2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the College commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and the University of Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the College, Virginia Tech and the University of Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutu-*

*ally determine how to divide the responsibility for these additional transfer students equitably among themselves.*

*3. As an institutional priority and obligation, the College commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags the Commonwealth in education, income, employment, and other factors. The College commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the College's programmatic strengths and uses the College's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school, schools, or the school system in that area. The College shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the College, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the College's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) requires the College to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the College's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the College's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the College's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the College to include in this Management Agreement the College's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The College's commitment in this regard is clear.*

*The College of William and Mary, under the leadership of its new president, has set as a goal increasing the economic and social diversity of the student body at the College.*

*The College is absolutely committed to assuring access to any qualified and admitted Virginian regardless of family income. The primary initiative in this area is Gateway William and Mary, which shall be substantially as described in the remainder of this Section 2.2.2, as may amended from time to time by the Board of Visitors of the College and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.*

*At the present time, any needy Virginian at the College receives a combination of grants and loans so that his or her indebtedness will not exceed one year's cost of education. This is as generous as any other public institution in the state or region. Nonetheless, this means that many needy Virginians, including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This burdensome level of debt may discourage students from lower SES groups from applying to or accepting admission from the College. And, if they do attend, their legitimate concern with respect to debt repayment may discourage them from some career choices like K-12 education or from going on to graduate or professional school for fear of adding even more to their personal indebtedness. Hence, over the period of the six-year plan, the College of William and Mary is committed to seeking, from all sources - state-appropriated scholarship funds, federal, and private support -- sufficient funds to assure that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's annual income is less than \$40,000 can spend four years at the College and graduate debt-free. The Gateway William and Mary initiative is one of the highest priorities for our new president. In addition, both through our goal to increase the numbers of VCCS graduates who transfer to the College and aggressive efforts to recruit in-state students from lower SES groups, we hope to double the number of students who would receive assistance through the Gateway initiative from 280 students to 560 students by the end of the six-year planning period.*

*As noted, we will continue our commitment to providing additional financial aid through grants and loans to those Virginians whose families are not in the lower SES groups, but who still have demonstrable need. Currently approximately 900 in-state undergraduate students receive need-based aid. The College commits to meeting 100% of the need for these students consistent with the federal definition of unmet needs over the six year planning period. In addition, as tuition and fees increase over the period of the six-year plan, we will readjust the level of financial aid for all students to assure that insufficiency of family resources will not be a barrier to attending the College.*

*The Commonwealth and the College agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute of Marine Science (hereafter, the Institute) shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the Institute, but the Institute shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the College shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the College's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's Enabling Legislation, the Enabling Legislation shall control.*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the College as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.2:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#),*

and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the College shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the College shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.

SECTION 2.4.5. *Public Access to Information.* As provided in § [23-38.95](#) of the Act, the College shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#) if expressly named therein and, in all cases, may conduct business as a “state public body” for purposes of subsection B of § [2.2-3708](#).

SECTION 2.4.6. *Conflicts of Interests.* As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the College and to its Covered Employees.

SECTION 2.4.7. *Other Provisions of the Code of Virginia.* Other than as specified above, any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits G through L.

### ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. *Amendments.* Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the College's website. The change or deviation

*shall become effective unless one of the above persons notifies the College in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

**SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.**

**SECTION 3.2.1. Governor.** Pursuant to subdivision D 4 of § [23-38.88](#), and § [23-38.98](#), of the Act, if the Governor makes a written determination that the College is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the College and to the members of the General Assembly, and (ii) the College shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the College, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the College shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the College has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

**SECTION 3.2.2. General Assembly.** As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the College fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management Agreement.

**ARTICLE 4. GENERAL PROVISIONS.**

**SECTION 4.1. No Third-Party Beneficiary Status.** Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, the College and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the College were not governed by the Act; provided that the Virginia Tort Claims Act, § [8.01-195.1](#) et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the College.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of the legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT G*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING CAPITAL PROJECTS*

*THE RECTOR AND VISITORS OF*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*POLICY GOVERNING CAPITAL PROJECTS*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.*

*This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Visitors of the College of William and Mary in Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), and [51.1-126.3](#).*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the*

*appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### **V. CAPITAL PROGRAM.**

*The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be College policy that each capital project program shall meet the College's mission and institutional objectives, and be appropriately authorized by the College.*

*Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the College's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.*

*It shall be the policy of the College that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the*

*President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement.*

*Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through his designee, to be justified.*

*Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the College that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:*

*Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

*The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.*

#### *VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code. The President shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring*

*such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College on the same capital project.*

**IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the College to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

**X. BUILDING DEMOLITIONS.**

*It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the*

*acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

*A. Environmental and Land Use Considerations.*

*It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The College shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the College to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through his designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the College to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to*

*do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.*

*XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported*

*Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT H*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*LEASES OF REAL PROPERTY*

*THE RECTOR AND VISITORS OF*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the College of William and Mary in Virginia, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College may have the authority to establish its own system for the leasing of real property. The College's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the College.*

*This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

*II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” means the Rector and Visitors of the College of William and Mary in Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the College.*

*“Income Lease” means an Operating Lease of real property under the control of the College to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Operating Lease” means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

### *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all College Leases.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College’s usual delegation policies and procedures.*

### *V. REQUIREMENTS FOR LEASES.*

#### *A. Factors to Be Considered When Entering into Leases.*

*All Leases shall be for a purpose consistent with the mission of the College. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through his designee, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

#### *B. Competition to Be Sought to Maximum Practicable Degree.*

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through his designee, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through his designee, it is impractical to procure Leases through competition.*

#### *C. Approval of Form of Lease Required.*

*The form of Leases entered into by the College shall be approved by the College’s legal counsel.*

#### *D. Execution of Leases.*

*All Leases entered into by the College shall be executed only by those College officers or persons authorized by the President or as may subsequently be authorized by the*

*Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the College's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the College, no other College approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the College.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the College shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the College under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

*EXHIBIT I*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*INFORMATION TECHNOLOGY*

THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the College of William and Mary in Virginia that incorporates this Policy.*

*The Board of Visitors of the College is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

II. DEFINITIONS.

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary in Virginia.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Policy” means this Information Technology Policy adopted by the Board of Visitors.*

*“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.*

### *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to the College pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the College pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the College’s enabling legislation as that term is defined in § [23-38.89](#) of the Act.*

*This Policy shall govern the College’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College.*

*Upon the effective date of a Management Agreement between the Commonwealth and the College, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#), therefore, the College shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the College’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided, however, that the College still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.)*

*(Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the College.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

### *IV. GENERAL PROVISIONS.*

*A. Board of Visitors Accountability and Delegation of Authority.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

*B. Strategic Planning.*

*The President shall be responsible for overall IT strategic planning at the College, which shall be linked to and in support of the College's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President shall make available the College's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the College's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the College's plan is to be incorporated.*

*C. Expenditure Reporting and Budgeting.*

*The President shall approve and be responsible for overall IT budgeting and investments at the College. The College's IT budget and investments shall be linked to and in support of the College's IT strategic plan, and shall be consistent with general College policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.*

*The College shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended;*

*§§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the College. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through his designee, shall oversee the management of all College IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through his designee, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the College's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The College shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the College. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through his designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing College employee to serve as a liaison between the College and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the College, which provide for Independent Validation and Verification (IV&V) of the College's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the College's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT J*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*THE PROCUREMENT OF GOODS, SERVICES,  
INSURANCE, AND CONSTRUCTION AND  
THE DISPOSITION OF SURPLUS MATERIALS*

*THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM AND MARY  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that the College of William and Mary in Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the College.*

*C. This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the College's Enabling Legislation are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” means the Rector and Visitors of the College of William and Mary in Virginia.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Effective Date” means the effective date of the Management Agreement.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia, and the College of William and Mary in Virginia.*

*“Rules” means the “Rules Governing Procurement of Goods, Services, Insurance, and Construction” attached to this Policy as Attachment 1.*

*“Services” as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the College.*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the*

*appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The College has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a surplus materials disposition system. Any College electronic procurement system shall integrate or interface with the Commonwealth's electronic procurement system.*

*This Policy shall be effective on the Effective Date of the College's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the College, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President.*

##### *B. Scope and Purpose of College Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the College that procurements conducted by the College result in the purchase of high quality goods and services at reasonable prices, and that the College be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the College to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the College, regardless of the source of funds.*

##### *C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The College is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and*

*Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the College and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The College is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the College:*

- i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the College shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system; and*
- iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the College remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88](#)(D)(4) and the requirements of Chapter 4.10 of the Act, the College's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and*

*any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of College capital projects and construction-related professional services (§ [2.2-1132](#)).*

#### **V. COLLEGE PROCUREMENT POLICIES.**

##### **A. General Competitive Principles.**

*In connection with College procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the College is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the College, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

##### **B. Access to Records.**

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), § [2.2-3705.1](#) (12), or § [2.2-3705.4](#) (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

##### **C. Cooperative Procurements and Alliances.**

*In circumstances where the College determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the College that meet its business goals and objectives, the College is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy are furthered. In the event the College engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, or his designee, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through his designee, shall take all necessary and reasonable steps to assure (i) that all College officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The College shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and College Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2.*

#### **VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.**

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention of the resulting proceeds by the College.*

#### **VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

*The President shall adopt one or more comprehensive sets of specific procurement policies and procedures for the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the College. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate College officials who shall oversee College procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the College's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the College on behalf of the College for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the College shall not affect existing contracts already in effect.*

*The Rules and College implementing policies and procedures for all College procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and College implementing policies and procedures shall implement a system of competitive*

*negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### **VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

##### **A. Protests, Appeals and Debarment.**

*The Rules and College implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and College implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### **B. Prompt Payment of Contractors and Subcontractors.**

*The Rules and College implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the College.*

##### **C. Types of Procurements.**

*The Rules and College implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the College. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

##### **D. Approval and Public Notice of Procurements.**

*The Rules and College implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of*

*procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and College implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and College implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

**ATTACHMENT 1**

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the*

*Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is*

*monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § [23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive,*

*upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*“Best value,” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution’s needs.*

*“Business” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*“Competitive negotiation” is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services’ central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information*

*developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining*

*factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

- 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*
- 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*
- 3. Public opening and announcement of all bids received.*
- 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*
- 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of*

*the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*“Covered Institution” or “Institution” means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.*

*“Design-build contract” means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Informality” means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.*

*“Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.*

*“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, land-*

*scape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

**§ 5. Methods of procurement. -**

**A.** *All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system,*

*or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid*

*specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose,*

*including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a*

*bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.-*

*The Institution shall include in every contract over \$10,000 the following provisions:*

*During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

- 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- 2. The contractor does not have appropriate experience to perform the construction project in question;*
- 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*
- 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*
- 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;*
- 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and*
- 7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

*§ 15. Negotiation with lowest responsible bidder. -*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

*§ 16. Cancellation, rejection of bids; waiver of informalities. -*

*A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

*B. The Institution may waive informalities in bids.*

*§ 17. Exclusion of insurance bids prohibited. -*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debaring a prospective insurer pursuant to § 18.*

*§ 18. Debarment. -*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

*§ 19. Purchase programs for recycled goods; Institution responsibilities. -*

*A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia and §§ 20 and 22 of these Rules.*

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the*

*contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

§ 28. Bid bonds. -

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

1. *The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

2. *The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

3. *Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

4. *The University of Virginia Medical Center.*

5. *The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of*

*the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's*

*selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*
- 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
- 8. Royalties; or*
- 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

*§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close*

*relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

*§ 39. Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) of the Code of Virginia.*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

*3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.*

*4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."*

*Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.*

*A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.*

*§ 46. Interest penalty; exceptions. -*

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act ([§ 2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

**§ 47. Ineligibility. -**

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so*

determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.

The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.

If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has*

*begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state*

*law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

*EXHIBIT K*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*AND*

*THE VIRGINIA INSTITUTE OF MARINE SCIENCE*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER COLLEGE EMPLOYEES*

*THE RECTOR AND VISITORS OF*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER COLLEGE EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the College of William and Mary in Virginia shall have responsibility and accountability for human resources management for all College employees, defined in the Act as “Covered Employees,” who pursuant to subsection A of § [23-38.114](#) of the Act, “are state employees of” the College. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or College-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the College for its employees.*

*This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary and the Virginia Institute of Marine Science.*

*“Classified Employees” means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*“College” means the College of William and Mary in Virginia, formerly known as (State Agency 204) and the Virginia Institute of Marine Science, formerly known as (State Agency 268).*

*“College employee” means a Covered Employee.*

*“College Human Resources System” means the human resources system for College employees as provided for herein.*

*“Covered Employee” means any person who is employed by the College on either a salaried or nonsalaried (wage) basis.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Employee” means Covered Employee unless the context clearly indicates otherwise.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.*

*“Effective Date” means the effective date of the initial Management Agreement between the College and the Commonwealth.*

*“Governing Law” means the Act and the College’s Enabling Legislation.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the College and the Commonwealth.*

*“Participating Covered Employee” means (i) all salaried nonfaculty College employees who were employed as of the day prior to the Effective Date of the College’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act, to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by the College, (ii) all salaried*

*nonfaculty College employees who are employed by the College on or after the Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii) all nonsalaried nonfaculty College employees without regard to when they were hired, (iv) all faculty College employees without regard to when they were hired.*

*“Systems” means collectively the College Human Resources System that is in effect from time to time.*

### *III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.*

*The College has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the College are expressly exempt from the Virginia Personnel Act. The College has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices.*

*The Act extends and reinforces the human resources autonomy previously granted to the College. This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all College employees. On that Effective Date, and until changed by the College or unless otherwise specified in this Policy, the systems for College employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College’s usual delegation policies and procedures.*

### *V. COLLEGE OF WILLIAM AND MARY HUMAN RESOURCES SYSTEMS.*

#### *A. Adoption and Implementation of College Human Resources Systems.*

*The President is hereby authorized to adopt and implement human resources systems for employees of the College that are consistent with the Governing Law, other*

*applicable provisions of law, these College human resources policies for College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for College personnel, unless College employees are exempted from those other human resources policies by law or policy. The College Human Resources Systems shall include a delegation of personnel authority to appropriate College officials responsible for overseeing and implementing the College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The College commits to regularly engage employees in appropriate discussions and to receive employee input as the new College Human Resources Systems are developed. The College will regularly communicate the details of new proposals to all employees who are eligible to participate in the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the College's human resources systems shall consist of the following:*

- 1. The current "College of William and Mary Faculty Handbook," as it is posted on the Provost's website, <http://www.wm.edu/provost/index.php>, and periodically amended; and*
- 2. The current human resources system for Classified Employees in the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and*
- 3. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the College Human Resources website, <http://www.wm.edu/hr.html> and periodically amended.*

*All the systems describe above, except the system described in paragraph 3, may be amended by the President, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, or designee, shall take all necessary and reasonable steps to assure (i) that the College officials who develop, implement and administer the College Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable*

*provisions of law, these College human resources policies, and other applicable Board of Visitors' human resources policies affecting College employees, and (ii) that compliance with such laws and human resources policies is achieved.*

#### *VI. HUMAN RESOURCES POLICIES.*

*The College Human Resources Systems adopted by the College pursuant to Governing Law and this Policy, as set forth in Section V above, shall embody the following human resources policies and principles:*

##### *A. Election by College Salaried Nonfaculty Employees.*

*Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty College employee who was in the employment of the College, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in and be governed by either (i) the*

*State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the College Human Resources System, as appropriate. A salaried nonfaculty College employee who elects to continue to be*

*governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty College*

*employee who elects to participate in and be governed by the College Human Resources System, by that election, shall be deemed to have elected to be eligible to*

*participate in and to be governed by the College human resources program, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the College as part of that College Human Resources System.*

*The College shall provide each of its salaried nonfaculty College employees who was in the employment of the College as of the day prior to the Effective Date of the College's initial Management Agreement with the Commonwealth at least 90 days after the date*

*on which the College Human Resources System becomes effective for that College employee's classification of employees to make the election required by the prior*

*paragraph. If such a salaried nonfaculty College employee does not make an election by the end of that specified election period, that College employee shall be deemed not to have elected to participate in the College Human Resources System. If such a salaried nonfaculty College employee elects to participate in the College Human Resources*

*System, that election shall be irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ [22.-2800](#) et*

seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the College Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty College employees, and at least once every two years after the effective date of the College Human Resources System, the College shall make available to each of its salaried nonfaculty College employees a comparison of its human resources program for that classification of salaried nonfaculty College employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.

*B. Classification and Compensation.*

*General.* The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of College financial resources. The plans adopted by the College Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The College shall provide information on its classification and compensation plans to all College employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the College's compensation plans.

*Classification Plan.* The Systems shall include one or more classification plans for College employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the College, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.

*Compensation Plan.* The Systems shall include one or more compensation plans for each College employee classification or group. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the College, the compensation plan or plans for

*all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The College may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to College employees shall be authorized and approved only by designated College officers delegated such authority by the College, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all College employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

*Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President deems appropriate.*

#### *C. Benefits.*

*The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs,*

*employee intramural and recreational passes, and other wellness programs. As provided in § [23-38.119](#) B and C of the Act, the College may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by § [23-38.119](#) B and D of the Act or any other provision of law.*

*Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible College employees.*

*The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the College to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the College shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for College employees other than Classified Employees.*

*Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

*1. General. The Systems shall contain provisions that protect the rights and privileges of College employees consistent with sound management principles and fair employment practice law.*

*2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*

*3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*

*4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing College employees, including but not limited to those who have performed particularly meritorious service for the College, have been employed by the College for specified periods of time, or have retired from the College after lengthy service.*

*5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a College Employee Assistance Program to any eligible College employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.*

*6. Unemployment Compensation. The Systems shall ensure that College employees receive the full unemployment compensation benefits to which they are legally entitled, and that the College's liability is limited to legitimate claims for such benefits.*

*7. Workers' Compensation. The Systems shall ensure that College employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees Workers' Compensation Program administered by the Department of Human Resource Management.*

*8. Performance Planning and Evaluation. The Systems shall include one or more performance planning and evaluation processes for College employees that (i) establish and communicate the College's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all College employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of College employees. On the Effective Date of the College's initial Management*

*Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.*

*9. Standards of Conduct and Performance. In order to protect the well-being and rights of all employees and to ensure safe, efficient College operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for College salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the College in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed College salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of College employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty College employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the College's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services. All Covered Employees*

*and applicants for employment after the Effective Date of the College's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate College office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the College. These College layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the College or its respective major divisions and within other parts of the College, (v) the preferential employment rights, if any, of various College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the College shall recognize the hiring preference conferred by § [2.2-3201](#) on State employees who were hired by a State agency or executive branch institution before the Effective Date of the College's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the College has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the College shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The College may include separate policies for reasonably distinguishable groups of College employees. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the College under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

*13. Severance Benefits. In accordance with the terms of the Act, the College shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who*

*otherwise would be eligible and were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.*

*14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) establish and maintain a work environment at the College that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the College of William and Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide College employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the College is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to College employees of the scope and content of the College alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for College positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the College, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed College employees, an employee suggestion program, the responsibility of College employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the College.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the College shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the College may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of College employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of College employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies through the College's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.*

*In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. College Classified Employees who change jobs within the College through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the College to separate the employee from the College in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The College shall provide an electronic file transfer of information on all salaried College employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the College is specifically exempted from those requirements. The College shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the College have entered into a Memorandum of Understanding, attached hereto as Attachment 2, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The College shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.*

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, College employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the College. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all College employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to College personnel unless College employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

## ATTACHMENT 2

### *Memorandum of Understanding*

*Between The College of William and Mary and the  
Department of Human Resources Management Regarding  
The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other College Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the College of William and Mary and the Department of Human Resource Management (DHRM).*

*I. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

*1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.*

*a. The College will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The College will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*b. The College will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated*

*data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the College's compliance with relevant federal and state employment laws and regulations.*

*3. The College may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).*

*4. Other reports to be provided by the College include the following:*

*a. Monthly Employment Position Report.*

*b. Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

*APPROVALS:*

*The College of William and Mary:*

By: .....Date.....

*Vice President for Administration*

*Department of Human Resources Management:*

By: .....Date.....

*Director, Department of Human Resources Management*

*EXHIBIT L*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005*

*POLICY GOVERNING  
FINANCIAL OPERATIONS AND MANAGEMENT*

*THE RECTOR AND BOARD OF VISITORS  
OF THE COLLEGE OF WILLIAM AND MARY  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the College of William and Mary's financial operations and management. This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William and Mary and the Virginia Institute of Marine Science.*

*"College" means the College of William and Mary (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).*

*“Covered Institution” means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.*

*“Effective Date” means the effective date of the initial Management Agreement between the College and the Commonwealth.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the College and the Commonwealth of Virginia.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the College’s responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the College’s financial resources.*

*The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is implemented by the College on behalf of the Institute, but the Institute shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the College’s initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be*

*fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### **V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

*The President, or designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of College financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the College and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the College pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the College's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the College. Upon the Effective Date of the initial Management Agreement between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS, or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of*

*Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, or designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all College financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the College's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure College financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of College programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the College shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the College shall remain subject to the appropriations process.*

Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#), shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Education and General Revenues deposited into the State Treasury by the public institution of higher education.

Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the College is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

- i) The College shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;
- ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;
- iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are

*permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

*iv) If in any given year the College does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the College until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

*vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College may draw down all cash balances held by the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the College as specified in Section IX below.*

*The College also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the College*

*that the College shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the College that the College shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the College by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, or designee, shall continue to provide oversight of the College's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the College shall periodically audit the College's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the College shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia, as it currently exists and from time to time may be amended.*

#### **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

*The President, or designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of College financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the College shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to College customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all College accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the College shall continue to utilize the Commonwealth's Debt Set Off Collection programs and procedures, shall develop*

*procedures acceptable to the Tax Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

**IX. DISBURSEMENT MANAGEMENT.**

*The President, or designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of College financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the College's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's mission, including travel-related disbursements. Further, the College's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the College may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the College for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

- i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*
- ii) The College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- iii) The College anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the College*

*projects a cost deficit in activities supported by general fund appropriations, the College may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, or designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the College shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The College shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The College's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the College.*

#### **X. DEBT MANAGEMENT.**

*The President, or designee, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of College financial resources.*

*Pursuant to § [23-38.108\(B\)](#) of the Act, the College shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or*

*agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the College.*

*The College recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, or designee*

*within the context of the overall portfolio to ensure that any financial product or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on College creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act, shall be authorized by resolution of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.*

*The College will establish guidelines relating to the total permissible amount of outstanding debt by monitoring College-wide ratios that measure debt compared to College balance-sheet resources and annual debt service burden. These measures will be monitored and reviewed regularly in light of the College's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the College's debt capacity and debt management guidelines. Any change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the College.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the College to invest its operating and reserve funds solely in the interest of the College and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the College's operating and reserve funds.*

## **XII. INSURANCE AND RISK MANAGEMENT.**

*By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and the Commonwealth.*

3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The University of Virginia:"

### **CHAPTER 3.**

#### **MANAGEMENT AGREEMENT**

#### **BY AND BETWEEN**

**THE COMMONWEALTH OF VIRGINIA**

**AND**

**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and the Rector and Visitors of the University of Virginia (hereafter, the University) provides as follows:*

#### **RECITALS**

*WHEREAS, the University has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia, to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.)*

of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:

1. *Board of Visitors Approval.* The minutes of a meeting of the Board of Visitors of the University held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;
  2. *Written Application to the Governor.* The University has submitted to the Governor a written Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and
  3. *Finding by the Governor.* In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that the University has fulfilled the requirements of subdivision A 2 of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and
- WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

“Academic Division” means that part of the University known as (State Agency 207).

“Act” means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

“Agreement” means “Management Agreement.”

“Board of Visitors” means the Rector and Board of Visitors of the University of Virginia.

“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).

*“Covered Employee” means any person who is employed by the University on either a salaried or wage basis.*

*“Covered Institution” means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*“Enabling legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.*

*“Management Agreement” means this agreement between the Commonwealth of Virginia and the University as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“Parties” means the parties to this Management Agreement, the Commonwealth of Virginia and the University.*

*“Public institution of higher education” means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

## ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

### SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

*Subchapter 3 of the Act, provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act, that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act, and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and*

*fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors policies attached hereto as Exhibits M through R, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit M), (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management (Exhibit R), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by*

*it and attached hereto as Exhibits M through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the University.*

*SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D (2) (c) of § [23-38.88](#) of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act, and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of*

*Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act, requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act, requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act, and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians*

*attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center shall continue to be characterized as a state government-owned or operated and state-owned teaching hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to (§ [32.1-325](#) et seq.). The University has committed to serve indigent and medically indigent patients through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of § [23-38.93](#) of the Act, the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat the Medical Center as a Type One Hospital for purposes of such reimbursement.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as Exhibits M through R.*

*SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in*

*Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R.*

*The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the University shall assume full responsibility for management of the University, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the University as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

**SECTION 2.2. State Goals.**

**SECTION 2.2.1. Furthering State Goals.** *As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Code of Virginia, prior to August 1, 2005, the Board of Visitors of the University adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the University commits to furthering these State goals by:*

- 1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the University commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.*
- 2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the University commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and the College of William and Mary in Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, Virginia Tech and the College of William and Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05,*

*for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.*

*3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The University's commitment in this regard is clear.*

*The Academic Division will continue to offer enrollment to in-state undergraduate students without regard to ability to pay and shall continue implementation of AccessUVa, a financial aid program designed to keep higher education affordable for all undergraduate students, including Virginians and non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVa was modified to provide expanded benefits for qualifying Virginia Community College System transfer students. The program shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.*

*The Academic Division currently offers financial aid packages to **meet 100% of demonstrated need to all qualified undergraduate students**. This goal was met in 2004-05.*

*The Academic Division will eliminate all need-based loans, replacing them with grants, in the financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering class. At this time low-income is defined as families with an income equivalent to 200% of the federal poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this component of the program include:*

- 1. Increase enrollment by low-income students.*
- 2. Improve the socio-economic diversity at the University.*
- 3. Enable low-income financial aid recipients to have an enhanced student experience.*
- 4. Improve satisfaction in post graduate choices of low-income financial aid recipients.*

*Success in attaining these goals will be measured by five metrics, 1) applications from low-income students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4) yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06 applications from low-income students rose 13.1% from the previous year for a total of 875. The University offered admission to 357 applicants, 10% more than in the prior year. Almost 40% more of those low-income students to whom the University offered admission for the 2005-06 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50% to over 64%.*

*The trend in the percentage of low-income students in the student body has also improved over the last two years increasing from 4.29% in 2004-05 to 6.45% in 2005-06.*

*The University expects to increase the numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the Six-Year Plan.*

*The Academic Division will cap the amount of need-based loans to any undergraduate student who qualifies for some form of financial aid to a maximum of 25% of the total in-state cost of attendance over four years and will meet the remaining need with grants,*

*beginning with the fall 2005 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level. This phase will be fully implemented by fall 2008. This particular component of the program is targeted at middle-income students whose families earn between \$75,000 and \$149,999. The University's goals for this component of the program include:*

- 1. Improve the socio-economic diversity at the University.*
- 2. Enable financial aid recipients to have an enhanced student experience.*
- 3. Improve satisfaction in post graduate choices.*

*Success will be measured in this area by three metrics, 1) applications from middle-income students, 2) participation of financial aid recipients in study abroad, internships, volunteer work, student activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for AccessUVa benefits.*

*The Academic Division will provide comprehensive counseling to prospective and current students and their families, assisting them in the financial aid application process and presenting them with financing options outside of need-based financial aid. This last component of the program has three main goals:*

- 1. Improve the perception of the University as affordable.*
- 2. Increase the socio-economic diversity of the University.*
- 3. Improve student understanding of financial planning and debt management.*

*The University's financial aid educational programs are currently being designed. We expect to measure trends in the following ways in order to gage success: 1) usage figures of educational programs provided on financial planning and debt management, 2) percent of financial aid applicants participating in financial management programs, and 3) evaluation of effectiveness of the educational programs.*

*The Commonwealth and the University agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are implemented by the University on behalf of the College, but the College shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the University shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's Enabling Legislation, the Enabling Legislation shall control, except as provided in subdivision A. 1.b of § [23-38.112](#) of the Act, regarding § [23-77.1](#).*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the University as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the University shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the University shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter*

4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.

SECTION 2.4.5. *Public Access to Information.* As provided in § [23-38.95](#) of the Act, the University shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#) and, in all cases, may conduct business as a “state public body” for purposes of subsection B of § [2.2-3708](#).

SECTION 2.4.6. *Conflicts of Interests.* As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.

SECTION 2.4.7. *Other Provisions of the Code of Virginia.* Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits M through R.

### ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.

SECTION 3.1. *Amendments.* Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.

SECTION 3.2. *Right and Power to Void, Revoke, or Reinstate Management Agreement.*

*SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § [23-38.88](#), and § [23-38.98](#), of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

*SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the University fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this Management Agreement.*

#### **ARTICLE 4. GENERAL PROVISIONS.**

*SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort Claims Act, (§ [8.01-195.1](#) et seq.) of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the University.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT M*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING CAPITAL PROJECTS*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA*

*POLICY GOVERNING CAPITAL PROJECTS*

*I. PREAMBLE.*

*Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, delegated nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy Statement).*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Visitors of the University of Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the Medical Center.*

*“Existing Policy Statement” means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

#### **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. CAPITAL PROGRAM.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests. It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:*

- Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*
- Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*
- Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

#### **VIII. DESIGN REVIEWS AND CODE APPROVALS.**

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project*

*authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.*

#### **IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major*

*Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

**X. BUILDING DEMOLITIONS.**

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

**A. Environmental and Land Use Considerations.**

*It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or*

*archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.*

*XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT N*

MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE UNIVERSITY OF VIRGINIA  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING  
LEASES OF REAL PROPERTY

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING LEASES OF REAL PROPERTY

*I. PREAMBLE.*

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University of Virginia may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as*

*defined in § [23-38.89](#) of the Act, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” means the Rector and Visitors of the University of Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the University.*

*“Income Lease” means an Operating Lease of real property under the control of the University to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Operating Lease” means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

## *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all University Leases.*

## *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the*

*appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. REQUIREMENTS FOR LEASES.**

##### **A. Factors to Be Considered When Entering into Leases.**

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

##### **B. Competition to Be Sought to Maximum Practicable Degree.**

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Executive Vice President and Chief Operating Officer, it is impractical to procure Leases through competition.*

##### **C. Approval of Form of Lease Required.**

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

##### **D. Execution of Leases.**

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state*

*approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

*EXHIBIT O*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*INFORMATION TECHNOLOGY*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA*

*POLICY GOVERNING INFORMATION TECHNOLOGY*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of the University of Virginia is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

*II. DEFINITIONS.*

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Policy” means this Information Technology Policy adopted by the Board of Visitors.*

*“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to the University of Virginia pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University’s enabling legislation as that term is defined in § [23-38.89](#) of the Act. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

*This Policy shall govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#), therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules*

*Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Board of Visitors Accountability and Delegation of Authority.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

##### *B. Strategic Planning.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the University's plan is to be incorporated.*

##### *C. Expenditure Reporting and Budgeting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures. The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended; §§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT P*

*MANAGEMENT AGREEMENT*

*BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE UNIVERSITY OF VIRGINIA  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005*

*POLICY GOVERNING  
THE PROCUREMENT OF GOODS, SERVICES,  
INSURANCE, AND CONSTRUCTION AND  
THE DISPOSITION OF SURPLUS MATERIALS  
THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” means the Rector and Visitors of the University of Virginia.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Effective Date” means the effective date of the Management Agreement.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the Medical Center.*

*“Existing Medical Center Policy Statement” means the Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board of Visitors for the Medical Center.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia and the University of Virginia.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Rules” means the “Rules Governing Procurement of Goods, Services, Insurance, and Construction” attached to this Policy as Attachment 1.*

*“Services” as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### **III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### **IV. GENERAL PROVISIONS.**

*A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The Academic Division and the College, through its administrative relationship with the University, have had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. Effective July 1, 1996, the University was granted autonomy to establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system for the Academic Division and the College, as well as a surplus materials disposition system for the University as a whole, and to continue the existing procurement system and policies of the Medical Center. Any University electronic procurement system, other than the Medical Center's electronic procurement system, shall integrate or interface with the Commonwealth's electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer or his designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer.*

*B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

*C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration*

*and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

- i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia, unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system and comply with the business plan for the Commonwealth's electronic procurement system, as modified by an agreement between the Commonwealth and the University, which agreement shall not be substantially different than the agreement attached to this Policy as Attachment 2; and*
- iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88](#)(D)(4) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency*

*requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).*

#### *V. UNIVERSITY PROCUREMENT POLICIES.*

##### *A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the University is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

##### *B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), [2.2-3705.1](#) (12), or [2.2-3705.4](#) (4),*

*or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the Academic Division and the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### *VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

##### *A. Protests, Appeals and Debarment.*

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### *B. Prompt Payment of Contractors and Subcontractors.*

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

##### *C. Types of Procurements.*

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and*

*procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

**ATTACHMENT 1**

*Rules Governing Procurement of Goods, Services, Insurance, and Construction*

*by a Public Institution of Higher Education of the Commonwealth of Virginia*

*Governed by Subchapter 3 of the*

*Restructured Higher Education Financial and Administrative Operations Act,*

*Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insur-*

*ance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to [§ 23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*“Affiliate” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*“Best value,” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution’s needs.*

*“Business” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*“Competitive negotiation” is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services’ central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that*

*offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing*

*that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

- 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*
- 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*
- 3. Public opening and announcement of all bids received.*
- 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

“Construction” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

“Construction management contract” means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

“Covered Institution” or “Institution” means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.

“Design-build contract” means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.

“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.

“Informality” means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

“Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.

“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a

*contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services*

*for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement. -*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such*

*competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or*

*entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. -*

*The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. -*

*The Institution shall include in every contract over \$10,000 the following provisions:*

*During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the*

*written notification to the contractor shall state the reasons for the denial of pre-qualification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

- 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- 2. The contractor does not have appropriate experience to perform the construction project in question;*
- 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*
- 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*
- 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;*

6. *The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and*

7. *The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

§ 15. *Negotiation with lowest responsible bidder. -*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

§ 16. *Cancellation, rejection of bids; waiver of informalities. -*

A. *An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

B. *The Institution may waive informalities in bids.*

§ 17. *Exclusion of insurance bids prohibited. -*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.*

§ 18. *Debarment. -*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

§ 19. *Purchase programs for recycled goods; Institution responsibilities. -*

A. *The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-](#)*

[1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided*

*the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than*

*5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds. -*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company*

*selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with*

*substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the*

*protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

- 1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*
- 2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*
- 3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*
- 4. The University of Virginia Medical Center.*
- 5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution*

*shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*
- 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
- 8. Royalties; or*
- 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

§ 38. *Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

§ 39. *Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

§ 40. *Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

§ 41. *Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

§ 42. *Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

*3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.*

*4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."*

*Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.*

*A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A*

*contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.*

*§ 46. Interest penalty; exceptions. -*

*A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.*

*B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.*

*C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.*

*D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.*

*E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act ([§ 2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility. -*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the*

*Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

*3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation*

*to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the*

*proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution*

*has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied,*

*may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The*

*Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

## ATTACHMENT 2

### *Memorandum of Agreement*

*The Commonwealth of Virginia and the University of Virginia*

*ERP/SciQuest Implementation with eVA*

*The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the following:*

*I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle).*

*II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.*

*III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt*

*orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.*

*IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.*

*V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.*

*VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:*

*A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay the eVA transaction fees for these orders.*

*For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS. The University further agrees that:*

*1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days,*

*unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*

*2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*

*3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.*

*VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.*

*IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.*

#### *Guidelines*

*1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.*

*2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.*

*3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See*

*eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.*

*4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.*

*5. Cancellations are to be transmitted to eVA complying with the eVA standard format.*

*6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.*

#### *Schedule*

*The University shall implement this agreement no later than December 2006.*

#### *Metrics*

*A. The University shall comply with the following Governor's eVA Management:*

##### *Objective*

*Ninety-five percent of all nonexempt orders to be processed by eVA. Includes nonexempt orders issued by end users (PCard & LPO) and the central purchasing office.*

*Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.*

*B. The University shall meet the following management objectives for electronic procurement:*

*1. Provide end users, including purchase-card users, access to an electronic system for buying;*

*2. Conduct business with eVA registered vendors whenever possible;*

*3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;*

*4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;*

*5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders.*

*DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible.*

*The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS.*

*The University further agrees that:*

*a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*

*b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*

*c. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*6. Timely process electronic change orders and cancellations;*

*7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as specifically exempted by DPS;*

*8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the accuracy of contract catalog pricing loaded into the ERP/SciQuest;*

*9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);*

*10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified;*

*11. Complete and certify the monthly eVA Dashboard Report; and*

*12. Timely remit any eVA transaction and non-use fees incurred by the institution.*

*C. The University shall be subject to eVA fees assessed per the eVA Business Plan. The University shall assure that payments to CGI-AMS are current.*

*EXHIBIT Q*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEE*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA*

*POLICY GOVERNING HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) grant the University of Virginia authority regarding the adoption of an alternative human resources system and alternative retirement, health care and other insurance plans for University of Virginia Medical Center employees. Further, the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act "are state employees of" the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all*

*Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Academic Division Human Resources System” means the human resources system for Academic Division employees as provided for herein.*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.*

*“Classified Employees” means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies*

*and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).*

*“College Human Resources System” means the human resources system for College employees as provided for herein.*

*“Covered Employee” means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Employee” means Covered Employee unless the context clearly indicates otherwise.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.*

*“Effective Date” means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*“Existing Medical Center Policy Statement” means the Policy Statement Governing the Exercise of Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.*

*“Governing Law” means the Act and the University’s Enabling Legislation.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“Medical Center Human Resources System” means the human resources system for Medical Center employees as provided for herein.*

*“Participating Covered Employee” means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the University on*

*or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all nonsalaried nonfaculty University employees without regard to when they were hired, (iv) all faculty University employees without regard to when they were hired, and (v) all employees of the University of Virginia Medical Center without regard to when they were hired.*

*“Systems” mean collectively the Academic Division Human Resources System, the College Human Resources System, and the Medical Center Human Resources System that are in effect from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

*“University employee” means a Covered Employee.*

### *III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.*

*The University has had human resources system autonomy through decentralization and codified autonomy for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The Academic Division and the College have had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices; the administration of separate health insurance and retirement plans. Effective July 1, 1996, all Medical Center employees were exempted from the Virginia Personnel Act and the policies and procedures of the Virginia Department of Human Resource Management (formerly the Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center Policy Statement in 1996. A separate human resources system is in place for all Medical Center employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of the Medical Center differ in certain respects from those of the Academic Division and the College.*

*The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all University employees in the Academic Division and the College, and to continue the existing human resources system for Medical Center employees. On that Effective Date, and until changed by the University or unless otherwise specified in this Policy, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

**V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.**

**A. Adoption and Implementation of Academic Division and College Human Resources Systems for the Academic Division and the College; Continuation of Medical Center Human Resources System for the Medical Center.**

*The President, acting through the Executive Vice President and Chief Operating Officer, in consultation with the Vice President and Provost, is hereby authorized to adopt and implement human resources systems for employees of the Academic Division and for employees of the College that implement and are consistent with the Governing Law, other applicable provisions of law, these University human resources policies for Academic Division and College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless Academic Division employees or College employees are exempted from those other human resources policies by law or policy. The University Academic Division and College Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the Academic Division and College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University and the College commit to regularly engage employees in appropriate discussions and to receive employee input as the new Academic Division and College Human Resources Systems are developed. The University and the College will regularly communicate the details of new proposals to all employees who are eligible to participate in the new Academic Division Human Resources System or the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current human resources system for "Academic Division General Faculty" as posted on the Vice President and Provost's web, <http://www.virginia.edu/provost/index.html>, and periodically amended;*
- 2. The current human resources system for "College General Faculty" as included in the University of Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;*
- 3. The current human resources system for Classified Employees in the Academic Division and the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's website at <http://www.hrs.virginia.edu/policies.html>, as periodically amended;*
- 4. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the University Human Resources website, [www.hrs.virginia.edu](http://www.hrs.virginia.edu), and periodically amended; and*
- 5. The current human resources system for Medical Center employees, which shall continue, including the policies and procedures set forth in the University of Virginia Medical Center Human Resources Policies and Procedures Manual, as such Manual may be amended from time to time. The Medical Center Human Resources System is and shall continue to be consistent with Governing Law, other provisions of applicable law, and any other human resources policies adopted by the Board of Visitors for Medical Center employees. All current delegations of authority to University and Medical Center officials who oversee the Medical Center Human Resources System are hereby ratified and continue.*

*All the systems described above, except the system described in paragraph 3, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that the University officials who develop, implement and administer the Academic Division and College Human Resources Systems and the Medical Center Human Resources System authorized by Governing Law and these human resources policies are knowledgeable regarding the*

*requirements of the Governing Law, other applicable provisions of law, these University human resources policies, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

*VI. HUMAN RESOURCES POLICIES.*

*The Academic Division and College Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human Resources System, shall embody the following human resources policies and principles:*

*A. Election by Academic Division and College Salaried Nonfaculty Employees.*

*Upon the adoption by the University of an Academic Division Human Resources System, or a College Human Resources System, or both, all salaried nonfaculty University employees who were in the employment of the Academic Division or the College, as appropriate, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, except employees of the Medical Center, shall be given written notice of their right to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the Academic Division Human Resources System or the College Human Resources System, as appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the Academic Division Human Resources System or the College Human Resources System, as appropriate, also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that Academic Division Human Resources System or College Human Resources System, as appropriate.*

*Each such salaried nonfaculty University employee shall be given at least 90 days to make the election required by the prior paragraph. Such 90-day period shall begin to run on the date on which the Academic Division Human Resources System or the College Human Resources System, as appropriate, becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that*

*University employee shall be deemed not to have elected to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate. If such a salaried nonfaculty University employee elects to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the Academic Division Human Resources System or the College Human Resources System, or both, as appropriate, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty, Medical Center employees, and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees.*

*The plans applicable to Participating Covered Employees and Medical Center employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the University's initial Management Agreement*

*with the Commonwealth, and until changed by the University, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the Academic Division and College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. On that Effective Date, and until changed by the University, the compensation plan for Medical Center employees in effect immediately prior to that Effective Date shall continue as the compensation plan for Medical Center employees. Any major change in compensation plans for Participating Covered Employees or Medical Center employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*Work Schedule and Workweek.* The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.

*Other Classification and Compensation Policies and Procedures.* The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

*C. Benefits.*

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, and life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.

Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. If, however, the University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty or Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center retirement plan or plans shall apply to and govern the University employees included in such plan or plans. The University shall be responsible for managing its non-Medicare eligible retiree health insurance. Subject to the Act, the University may offer an alternative health insurance plan for Medicare-eligible retirees.

*The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the University to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefits plans, other than Classified Employee benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees. Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

- 1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*
- 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*
- 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*
- 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.*

5. *Counseling Services.* The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

6. *Unemployment Compensation.* The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.

7. *Workers' Compensation.* The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers Compensation Program administered by the Department of Human Resource Management.

8. *Performance Planning and Evaluation.* The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty and Medical Center employees shall continue, until amended by the University. On or after that Effective Date, Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.

9. *Standards of Conduct and Performance.* In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise

*representing the University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried non-faculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services, with the appropriate University office, or with the appropriate federal agencies. All Participating Covered Employees and applicants for employment after the Effective Date of the University's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate University office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University*

employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.

13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free

*Workplace Act of 1988 and with the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its*

*initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.*

*In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Academic Division and College Classified Employees who change jobs within the Academic Division or the College through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the*

*University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

*ATTACHMENT 3*

*Memorandum of Understanding*

*Between the University of Virginia and the*

*Department of Human Resources Management Regarding*

*The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the University of Virginia and the Department of Human Resource Management (DHRM).*

*This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.*

*The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service). For the self-administered health plans provided by the University of Virginia Academic Division (State Agency 207) and Medical Center (State Agency 209), this section is not relevant.*

*Other reports to be provided by the University include the following:*

*Monthly Employee Position Report.*

*Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

*APPROVALS:*

*The University of Virginia:*

By: .....Date.....  
*Executive Vice President and Chief Operating Officer*

*Department of Human Resources Management:*

By: .....Date.....  
*Director, Department of Human Resources Management*

*EXHIBIT R*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*FINANCIAL OPERATIONS AND MANAGEMENT*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Academic Division" means that part of the University known as (State Agency 207).*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the University of Virginia.*

*"College" means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the University’s responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University’s financial resources.*

*The University of Virginia’s College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of*

*Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education. Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:

- i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.
- ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.
- iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation

*Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

*iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

*vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general*

*provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

#### **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

*The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the*

*Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

**IX. DISBURSEMENT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

- i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*
- ii) The University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*

*iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### **X. DEBT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to § [23-38.108\(B\)](#) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and*

*management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.*

*The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

*The University currently has established guidelines relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt capacity and debt management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar*

*with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

#### **XII. INSURANCE AND RISK MANAGEMENT.**

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

4. That the provisions of the first, second, and third enactments of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.

5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight on June 30, 2010. The expiration of such enactments shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act.

## Chapter 943 Higher educational institutions; management agreements, report.

An Act providing management agreements between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and the University of Virginia, respectively, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of the Code of Virginia.

[\[S 675\]](#)

Approved May 18, 2006

Be it enacted by the General Assembly of Virginia:

1. That the following Chapter 1 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University:"

*CHAPTER 1.*

*MANAGEMENT AGREEMENT*

*BY AND BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY*

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and Virginia Polytechnic Institute and State University (hereafter, Virginia Tech, to be abbreviated as the University) provides as follows:*

*RECITALS*

*WHEREAS, Virginia Tech has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

1. *Board of Visitors Approval.* The minutes of a meeting of the Board of Visitors of Virginia Tech held on September 24, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;
2. *Written Application to the Governor.* Virginia Tech has submitted to the Governor a written Application dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that Virginia Tech is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that Virginia Tech has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and
3. *Finding by the Governor.* In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that Virginia Tech has fulfilled the requirements of subdivision A 2 of § [23-38.97](#) of the Act, and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with Virginia Tech; and WHEREAS, Virginia Tech is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and Virginia Tech do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Board of Visitors of Virginia Tech.

"Covered Employee" means any person who is employed by Virginia Tech on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

*"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*"Management Agreement" means this agreement between the Commonwealth of Virginia and Virginia Tech as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and Virginia Tech.*

*"Public institution of higher education" means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.*

*"University" means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

## **ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

### **SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.**

*Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, Virginia Tech shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. Virginia Tech and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits A through F, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Tech-*

nology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of Virginia Tech attached hereto as Exhibits A through F and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2) the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the Commonwealth and Virginia Tech agree that the Commonwealth has expressly granted to Virginia Tech all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the University.*

*SECTION 2.1.3. Reimbursement by Virginia Tech of Certain Costs.*

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group*

*insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2 c of § [23-38.88](#) of the Act, Virginia Tech has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to Virginia Tech and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act and subject to the provisions of this Management Agreement, Virginia Tech may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment I constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that Virginia Tech identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide Virginia Tech with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought*

*to the maximum extent feasible. This autonomy will better position Virginia Tech to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable Virginia Tech to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, Virginia Tech's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both Virginia Tech and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by Virginia Tech, the parties agree that Virginia Tech is not in a position to quantify any such cost savings at this time, although Virginia Tech expects that there will be cost savings resulting from the additional authority granted to Virginia Tech pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that Virginia Tech shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to Virginia Tech by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by Virginia Tech's Board of Visitors and attached hereto as Exhibits A through F.*

*SECTION 2.1.9. Exercise of Authority. Virginia Tech and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon Virginia Tech the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, Virginia Tech shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits A through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F.*

*Virginia Tech and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of Virginia Tech shall assume full responsibility for management of Virginia Tech, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of Virginia Tech as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

*SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Act, prior to August 1, 2005, the Board of Visitors of Virginia Tech adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B.*

*In addition to the above commitments, the University commits to furthering these State goals by:*

1. In addition to its six-year target of achieving \$227 million in external research by 2011-12 [which is the last year of the six-year plan], the University commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.

2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the University commits to work with the University of Virginia and the College of William and Mary in Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, the University of Virginia and the College of William and Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.

3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.

SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, Virginia Tech, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State

*Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing Virginia Tech's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) of the Code of Virginia, requires Virginia Tech to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as Virginia Tech's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in Virginia Tech's Six-Year Plan submitted to SCHEV, and the parties therefore agree that Virginia Tech's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of Virginia Tech to include in this Management Agreement Virginia Tech's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. Virginia Tech's commitment in this regard is clear. Virginia Tech recognizes that the cost of higher education as a percentage of family income has increased steadily in recent years for low and moderate income families. Since the University anticipates further increases in tuition and fees during the six year period of 2006-2012, the University developed its Funds for the Future program, which shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of Virginia Tech and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations. The Funds for the Future program was developed to increase institutional funds and other fund sources to moderate the impact of future tuition and fees increases for Virginia undergraduates from families with adjusted gross income of \$100,000 or less, as determined by federal financial aid regulations.*

*The Funds for the Future program works on a sliding scale of family responsibility for coverage of tuition and fees. For example, students with a family adjusted gross income of \$30,000 or less (approximately 150% of the poverty level for a family of four) will receive incremental grant aid sufficient to completely offset any increase in their tuition and mandatory fees during their four years of enrollment at Virginia Tech. For students with family adjusted gross income of \$30,001 to \$99,999, the University will provide varying levels of financial aid awards to reduce the impact of tuition and fee increases.*

*Virginia Tech serves a large number of students with financial need. Based on 2003-04 enrollment data, the University estimates that for the 2006-07 academic year*

*approximately 5,636 students, representing over 36% of the Virginia Tech undergraduate student body, will receive incremental benefits under the Funds for the Future program. The institution will draw upon the full range of available resources to increase grant aid to these students and has established very aggressive goals for its institutional and private funds resources to create and sustain this program. As such, the University program is also based on the commitment of additional state General Fund support, consistent with the levels identified in its Six-Year Financial Plan; these amounts are based upon SCHEV calculations for incremental General Fund appropriations. Consistent with the current financial aid environment, the University also anticipates that existing federal, state, and University loan programs will be available, as needed, to assist students in addressing their annual costs of education not addressed by existing grant aid programs, the Funds for the Future program, or other available resources.*

*The Commonwealth and Virginia Tech agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to Virginia Cooperative Extension and the Agriculture Experiment Station Division. Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits A through F are implemented by Virginia Tech on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station Division shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, Virginia Tech shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and Virginia Tech's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and Virginia Tech agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. Virginia Tech's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and Virginia Tech's Enabling Legislation, the Enabling Legislation shall control.*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to Virginia Tech as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, Virginia Tech shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, Virginia Tech shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.*

*SECTION 2.4.5. Public Access to Information. As provided in § [23-38.95](#) of the Act, Virginia Tech shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#), if expressly named therein, and, in all cases, may conduct business as a "state public body" for purposes of subsection B of § [2.2-3708](#).*

*SECTION 2.4.6. Conflicts of Interests. As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) of the Code of Virginia, that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of Virginia Tech and to its Covered Employees.*

*SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other powers and authorities granted to Virginia Tech pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits A through F.*

**ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.**

*SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

*SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.*

*SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § [23-38.88](#), and § [23-38.98](#), of the Act, if the Governor makes a written determination that Virginia Tech is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of Virginia Tech and to the members of the General Assembly, and (ii) Virginia Tech shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by Virginia Tech, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement.*

*Upon the Governor voiding this Management Agreement, Virginia Tech shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until Virginia Tech has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

*SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, Virginia Tech's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if Virginia Tech fails to meet the requirements of Subchapter 3 of the Act, or (ii) if Virginia Tech fails to meet the requirements of this Management Agreement.*

**ARTICLE 4. GENERAL PROVISIONS.**

*SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, Virginia Tech and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if Virginia Tech were not governed by the Act; provided that the Virginia Tort Claims Act, (§ 8.01.195.1 et seq.) of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to Virginia Tech.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

**EXHIBIT A**

**MANAGEMENT AGREEMENT**

**BETWEEN**

**THE COMMONWEALTH OF VIRGINIA**

**AND**

**VIRGINIA POLYTECHNIC INSTITUTE**

AND STATE UNIVERSITY  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005

POLICY GOVERNING  
CAPITAL PROJECTS

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING CAPITAL PROJECTS

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional preauthorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources. This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the*

*Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“State Tax Supported Debt” means bonds, notes, or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. CAPITAL PROGRAM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University’s published Master Plan. This process may or may not mirror the Commonwealth’s requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth’s requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant. It shall be University policy that each capital project program shall meet the University’s mission and institutional objectives, and be*

*appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS.**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those preappropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests. It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:*

- A. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*
- B. Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*
- C. Making procurement rules clear in advance of any competition;*
- D. Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*
- E. Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*
- F. Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

*The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:*

- A. A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*
- B. A prequalification procedure for contractors or products;*
- C. A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*
- D. A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

*VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.*

*IX. ENVIRONMENTAL IMPACT REPORTS.*

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

*X. BUILDING DEMOLITIONS.*

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

*XI. BUILDING OR LAND ACQUISITIONS.*

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

*A. Environmental and Land Use Considerations.*

*It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

#### **XIII. PROJECT MANAGEMENT SYSTEMS.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.*

#### **XIV. REPORTING REQUIREMENTS.**

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on*

*the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT B*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, Virginia Polytechnic Institute and State University may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is*

*to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the University.*

*“Income Lease” means an Operating Lease of real property under the control of the University to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Operating Lease” means any lease involving real property, or improvements thereon that is not a Capital Lease.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

## *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all University Leases.*

## *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the*

*appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. REQUIREMENTS FOR LEASES.**

##### **A. Factors to Be Considered When Entering into Leases.**

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

##### **B. Competition to Be Sought to Maximum Practicable Degree.**

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Executive Vice President and Chief Operating Officer, it is impractical to procure Leases through competition.*

##### **C. Approval of Form of Lease Required.**

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

##### **D. Execution of Leases.**

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state*

*approval required except in the case of leases of real property as may be governed by general state law in accordance with § [23-38.109](#) and § 23- 38.112 of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

*EXHIBIT C*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*INFORMATION TECHNOLOGY*

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2. of the Code of Virginia, and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of Virginia Polytechnic Institute and State University is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

II. DEFINITIONS.

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia, as it currently exists and from time to time may be amended.*

*“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia, as it currently exists and from time to time may be amended.*

*“Policy” means this Information Technology Policy adopted by the Board of Visitors.*

*“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

### *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to Virginia Polytechnic Institute and State University pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University’s enabling legislation as that term is defined in § [23-38.89](#) of the Act.*

*This Policy shall govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#) of the Code of Virginia, therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ 2.2- 2457 et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

### *IV. GENERAL PROVISIONS.*

*A. Board of Visitors Accountability and Delegation of Authority.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

*B. Strategic Planning.*

*The President, acting through the Vice President for Information Technology and Chief Information Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan. At least 45 days prior to each fiscal year, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia and into which the University's plan is to be incorporated.*

*C. Expenditure Reporting and Budgeting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures. The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended; §§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the appropriate designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Vice President for Information Technology and Chief Information Officer, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Vice President for Information Technology and Chief Information Officer in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management) as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management) as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#)*

*and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the Vice President for Information Technology and Chief Information Officer, in cooperation with the Provost and Executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time. For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT D*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

AND

VIRGINIA POLYTECHNIC INSTITUTE

AND STATE UNIVERSITY

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

POLICY GOVERNING

THE PROCUREMENT OF GOODS, SERVICES,

INSURANCE, AND CONSTRUCTION AND

THE DISPOSITION OF SURPLUS MATERIALS

THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE

AND STATE UNIVERSITY

POLICY GOVERNING THE PROCUREMENT OF

GOODS, SERVICES, INSURANCE AND CONSTRUCTION

AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that Virginia Polytechnic Institute and State University, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors

*policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Effective Date” means the effective date of the Management Agreement.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Code of Virginia, between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University. “Rules” means the “Rules Governing Procurement of*

*Goods, Services, Insurance, and Construction” attached to this Policy as Attachment 1.*

*“Services” as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services,*

*law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agricultural Experiment Station Division (State Agency 229).*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *IV. GENERAL PROVISIONS.*

#### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The University has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as a surplus materials disposition system for the University as a whole. Any University electronic procurement system shall integrate or interface with the Commonwealth’s electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University’s initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer or his designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken*

*without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer.*

*B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

*C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

- i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system and comply with the business plan for the Commonwealth's electronic*

*procurement system, as modified by an agreement between the Commonwealth and the University, which agreement shall not be substantially different than the agreement attached to this Policy as Attachment 2; and*

*iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et. seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).*

*V. UNIVERSITY PROCUREMENT POLICIES.*

*A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the University is committed to:*

- 1. Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*
- 2. Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*
- 3. Making procurement rules clear in advance of any competition;*

4. *Providing access to the University 's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

5. *Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

6. *Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

*B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), [2.2-3705.1](#) (12), or [2.2-3705.4](#) (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make*

*available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*A. The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the University, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and*

*procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*B. Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*C. The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### **VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

##### **A. Protests, Appeals and Debarment.**

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### **B. Prompt Payment of Contractors and Subcontractors.**

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

*C. Types of Procurements.*

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a nondiscriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

ATTACHMENT 1

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the*

*Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § [23-38.88](#)(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that*

*competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*“Affiliate” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*“Best value,” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution’s needs.*

*“Business” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*“Competitive negotiation” is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation*

*in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*

*3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed,*

*(b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

*1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*

2. *Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

3. *Public opening and announcement of all bids received.*

4. *Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

5. *Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act. "Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software. "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured. "Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or*

*subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.*

*“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement. -*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that*

*which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

*1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*

*2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.*

*Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States*

*Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. - The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the*

*unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the*

*prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

*1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*

*2. The contractor does not have appropriate experience to perform the construction project in question;*

*3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*

*4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the*

*terms and conditions of comparable construction contracts with another public body without good cause.*

*The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*

*5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;*

*6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and*

*7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

*§ 15. Negotiation with lowest responsible bidder. -*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

*§ 16. Cancellation, rejection of bids; waiver of informalities. -*

*A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

*B. The Institution may waive informalities in bids.*

*§ 17. Exclusion of insurance bids prohibited. -*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the*

*Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debaring a prospective insurer pursuant to § 18.*

*§ 18. Debarment. -*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

*§ 19. Purchase programs for recycled goods; Institution responsibilities. -*

*A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.*

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the*

*submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and sub-contractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of*

*the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds. -*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not*

*been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

*1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

*2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

*3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The University of Virginia Medical Center.*

*5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding*

*the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however,*

*this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

*1. The purchase of goods or services that are produced or performed by or related to:*

*a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*

*b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*

*c. Private educational institutions; or*

*d. Other public educational institutions.*

*2. Speakers and performing artists;*

*3. Memberships and Association dues;*

4. *Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
5. *Group travel in foreign countries;*
6. *Conference facilities and services;*
7. *Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
8. *Royalties; or*
9. *The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

*§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

*§ 39. Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution..*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) of the Code of Virginia.*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

*E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ [2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility. -*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after*

*receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

*3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at*

*such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with §*

4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.

E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure. -

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals

*from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

## ATTACHMENT 2

### *Memorandum of Agreement*

*The Commonwealth of Virginia and Virginia Polytechnic Institute and State University  
ERP/SciQuest Implementation with eVA*

*The Commonwealth of Virginia (CoVA) and Virginia Polytechnic Institute and State University (University) agree to the following:*

*I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Banner).*

*II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.*

*III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.*

*IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.*

*V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense.*

*The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.*

*VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:*

*A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and*

conditions." *The University agrees that it will pay the eVA transaction fees for these orders.*

*B. For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS.*

*The University further agrees that:*

- 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*
- 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*
- 3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.*

*VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.*

*IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.*

*Guidelines*

- 1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.*
- 2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.*
- 3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.*
- 4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.*
- 5. Cancellations are to be transmitted to eVA complying with the eVA standard format.*
- 6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.*

*Schedule*

*The University shall implement this agreement no later than July 2006.*

*Metrics*

*A. The University shall comply with the following Governor's eVA Management Objective:*

*Ninety-five percent of all nonexempt orders to be processed by eVA. Includes nonexempt orders issued by end users (PCard & LPO) and the central purchasing office. Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.*

*B. The University shall meet the following management objectives for electronic procurement:*

1. *Provide end users, including purchase-card users, access to an electronic system for buying;*
2. *Conduct business with eVA registered vendors whenever possible;*
3. *Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;*
4. *To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;*
5. *To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders. DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible. The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS. The University further agrees that:
  - a. *It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*
  - b. *It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*
  - c. *In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.**
6. *Timely process electronic change orders and cancellations;*
7. *Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as specifically exempted by DPS;*
8. *To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will*

*be responsible for the accuracy of contract catalog pricing loaded into the ERP/S-ciQuest;*

*9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);*

*10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified;*

*11. Complete and certify the monthly eVA Dashboard Report; and*

*12. Timely remit any eVA transaction and non-use fees incurred by the institution.*

*C. The University shall be subject to eVA fees assessed per the eVA Business Plan.*

*D. The University shall assure that payments to CGI-AMS are current.*

*EXHIBIT E*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE  
AND STATE UNIVERSITY  
POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act "are state employees of" the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Vir-*

ginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

“Board of Visitors” or “Board” means the Board of Visitors of Virginia Polytechnic Institute and State University.

“Classified Employees” means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.

“Covered Employee” means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.

“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

“Employee” means Covered Employee unless the context clearly indicates otherwise.

“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.

“Effective Date” means the effective date of the initial Management Agreement between the University and the Commonwealth.

“Governing Law” means the Act and the University’s Enabling Legislation.

“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.

“Participating Covered Employee” means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by Virginia Polytechnic Institute and State University, (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all nonsalaried nonfaculty

*University employees without regard to when they were hired, (iv) all faculty University employees without regard to when they were hired.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

*“University employee” means a Covered Employee.*

*“University Human Resources System” means the human resources system for University employees as provided for herein.*

### **III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.**

*The University has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The University has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices; the administration of separate retirement plans.*

*The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all University employees. On that Effective Date, and until changed by the University or unless otherwise specified in this Policy, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

### **IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### **V. VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY HUMAN RESOURCES SYSTEMS.**

*A. Adoption and Implementation of University Human Resources Systems. The President, acting through the Executive Vice President and Chief Operating Officer, is hereby authorized to adopt and implement human resources systems for University employees that implement and are consistent with the Governing Law, other applicable provisions of law, these University human resources policies, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless University employees are exempted from those other human resources policies by law or policy. The University Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the University Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University commits to regularly engage employees in appropriate discussions and to receive employee input as the new University Human Resources Systems are developed. The University will regularly communicate the details of new proposals to all employees who are eligible to participate in the new University Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current human resources system for faculty described in the Virginia Tech Faculty Handbook and Special Research Faculty Handbook as posted on the University's website, <http://www.policies.vt.edu/>, and periodically amended;*
- 2. The current human resources system for "Classified Employees" as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html> and the University's website, <http://www.policies.vt.edu/>, and Human Resources' website, <http://www.hr.vt.edu/>, as periodically amended;*
- 3. The Human Resources System for salaried nonfaculty "Participating Covered Employees," as posted on the University's website, <http://www.policies.vt.edu/>, and Human Resources' website, <http://www.hr.vt.edu/>, as periodically amended; and*
- 4. The Human Resources System for wage employees as set forth in the current Virginia Tech policies, procedures, and guidelines, as posted on the University's website,*

*http://www.policies.vt.edu/, and Human Resources' website, http://www.hr.vt.edu/, as periodically amended, and for graduate students employed on assistantships as set forth in the Virginia Tech Graduate School policies, as posted on the Graduate School website, http://www.grads.vt.edu/, as periodically amended.*

*All the systems described above, except the system described in paragraph 2, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer, consistent with these human resources policies. The system described in paragraph 2 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that the University officials who develop, implement and administer the University Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

#### *VI. HUMAN RESOURCES POLICIES.*

*The Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above shall embody the following human resources policies and principles:*

*A. Election by Salaried Nonfaculty University Employees.*

*Upon the adoption by the University of a University Human Resources System, all salaried nonfaculty University employees who were in the employment of the University as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, shall be given written notice of their right to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia and administered by the Department of Human Resource Management, or (ii) the University Human Resources System. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the University Human Resources System, also, by that election, shall be deemed to have*

*elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that University Human Resources System.*

*Each such salaried nonfaculty University employee, shall be given at least 90 days to make the election required by the prior paragraph. Such 90 day period shall begin to run on the date on which the University Human Resources System becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the University Human Resources System. If such a salaried nonfaculty University employee elects to participate in the University Human Resources System, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the University Human Resources System; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the University Human Resources System, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*1. General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the*

*availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*2. Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the University, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*3. Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*4. Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

5. *Payment of Compensation.* The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.

6. *Work Schedule and Workweek.* The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and tele-commuting policies and procedures.

7. *Other Classification and Compensation Policies and Procedures.* The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.

*C. Benefits.*

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.

Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. If, however, the University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty retirement plan or plans, such alternative health insurance or faculty retirement plan or plans shall apply to and govern the University employees included in such plan or plans.

*The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the University to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefit plans, other than Classified Employee benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees. Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to assignment as provided in subsection A of § [23-38.119](#) of the Act.*

*D. Employee Relations.*

- 1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*
- 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*
- 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*
- 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.*

5. *Counseling Services.* The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

6. *Unemployment Compensation.* The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.

7. *Workers' Compensation.* The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers Compensation Program administered by the Department of Human Resource Management.

8. *Performance Planning and Evaluation.* The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the University. On or after that Effective Date, nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.

9. *Standards of Conduct and Performance.* In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the University in an official or work-related capacity, unless otherwise

*specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management, Office of Equal Employment Services, with the appropriate University office, or with the appropriate federal agencies. All Participating Covered Employees and applicants for employment after the Effective Date of the University's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate University office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for*

*severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia.*

*Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) of the Code of Virginia, on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

*13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.*

*14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the Virginia Polytechnic Institute and State University*

*Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial*

*Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law. In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation.*

*On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Classified Employees who change jobs within the University through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

*ATTACHMENT 3*

*Memorandum of Understanding*

*Between Virginia Polytechnic Institute and State University and the  
Department of Human Resources Management Regarding  
The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between Virginia Polytechnic Institute and State University and the Department of Human Resource Management (DHRM).*

*I. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

*1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.*

*a. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*b. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.*

*3. The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).*

*4. Other reports to be provided by the University include the following:*

*a. Monthly Employee Position Report.*

*b. Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

*APPROVALS:*

*Virginia Polytechnic Institute and State University:*

By: .....Date.....  
*Executive Vice President and Chief Operating Officer*

*Department of Human Resources Management:*

By: .....Date.....  
*Director, Department of Human Resource Management*

*EXHIBIT F*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*FINANCIAL OPERATIONS AND MANAGEMENT*

*THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE*

*AND STATE UNIVERSITY*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Polytechnic Institute and State University's financial operations and management.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Board of Visitors of Virginia Polytechnic Institute and State University.*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20,*

*2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means Virginia Polytechnic Institute and State University, consisting of the University Division (State Agency 208) and Virginia Cooperative Extension and the Agriculture Experiment Station Division (State Agency 229).*

### *III. SCOPE OF POLICY.*

*This Policy applies to the University’s responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University’s financial resources.*

*Virginia Cooperative Extension and the Agriculture Experiment Station Division shall receive the benefits of this Policy as it is implemented by the University on behalf of Virginia Cooperative Extension and the Agriculture Experiment Station Division, but Virginia Cooperative Extension and the Agriculture Experiment Station Division shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the*

*Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

*VI. FINANCIAL MANAGEMENT POLICIES.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

*VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.*

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the*

*Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) of the Code of Virginia, are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) of the Act, shall receive certain financial incentives, including the interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.*

*Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:*

- i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;*
- ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;*
- iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#) of the Act, the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*
- iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current*

*Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

*vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the*

*Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts. For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

#### **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

*The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

#### **IX. DISBURSEMENT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

- i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*
- ii) The University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### **X. DEBT MANAGEMENT.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to § [23-38.108](#)(B) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule*

*for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.*

*The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice President and Chief Operating Officer, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

#### *XII. INSURANCE AND RISK MANAGEMENT.*

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such*

*withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

2. That the following Chapter 2 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The College of William and Mary in Virginia:"

CHAPTER 2.

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and The College of William and Mary in Virginia (hereafter, the College) provides as follows:*

RECITALS

*WHEREAS, the College has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

- 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the College held on April 22, 2005, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;*
- 2. Written Application to the Governor. The College has submitted to the Governor a written Application, dated November 2, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the College is qualified to be, and should be, governed*

by Subchapter 3 of the Act, and substantiating that the College has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and

3. Finding by the Governor. In accordance with subsection B of § [23-38.97](#) of the Act the Governor has found that the College has fulfilled the requirements of subdivision A 2 of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the College; and WHEREAS, the College is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the College do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

“Act” means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

“Agreement” means “Management Agreement.”

“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary in Virginia and the Virginia Institute of Marine Science.

“College” means the College of William and Mary in Virginia (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).

“Covered Employee” means any person who is employed by the College on either a salaried or wage basis.

“Covered Institution” means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

“Enabling legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.

*“Management Agreement” means this agreement between the Commonwealth of Virginia and the College as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.*

*“Parties” means the parties to this Management Agreement, the Commonwealth of Virginia and the College.*

*“Public institution of higher education” means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.*

## ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

### SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

*Subchapter 3 of the Act provides that, upon the execution of, and as of the effective date for, this Management Agreement, the College shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. The College and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits G through L, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the College agree that the Commonwealth has granted to the College by this Management agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the*

*College attached hereto as Exhibits G through L and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit G), (2) the leasing of property, including capital leases (Exhibit H), (3) information technology (Exhibit I), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit J), (5) human resources (Exhibit K), and (6) its system of financial management (Exhibit L), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits G through L, the Commonwealth and the College agree that the Commonwealth has expressly granted to the College all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached as Exhibits G through L. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits G through L, to a person or persons within the College.*

*SECTION 2.1.3. Reimbursement by the College of Certain Costs. By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the College through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the College is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from such health or other group insurance or risk management program, the College shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such*

*additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2 c of § [23-38.88](#) of the Act, the College has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the College and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act and subject to the provisions of this Management Agreement, the College may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that the College identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the College with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the College to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the College to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the College's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education*

*community nationally. Further, these changes will provide efficiencies to both the College and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the College, the parties agree that the College is not in a position to quantify any such cost savings at this time, although the College expects that there will be cost savings resulting from the additional authority granted to the College pursuant to Subchapter 3 of the Act and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the College shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the College by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the College's Board of Visitors and attached hereto as Exhibits G through L.*

*SECTION 2.1.9. Exercise of Authority. The College and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the College the enhanced authority and operating flexibility described above, all of which is*

*in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the College shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement, the policies adopted by its Board of Visitors attached hereto as Exhibits G through L, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L.*

*The College and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the College shall assume full responsibility for management of the College, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the College as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

**SECTION 2.2. State Goals.**

**SECTION 2.2.1. Furthering State Goals.** *As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Act, prior to August 1, 2005, the Board of Visitors of the College adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the College commits to furthering these State goals by:*

- 1. In addition to its six-year target of achieving \$68 million in external research by 2011-12, the College, including the Virginia Institute of Marine Science, commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.*
- 2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the College commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and the University of Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the College,*

*Virginia Tech and the University of Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.*

*3. As an institutional priority and obligation, the College commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags the Commonwealth in education, income, employment, and other factors. The College commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the College's programmatic strengths and uses the College's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school, schools, or the school system in that area. The College shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the College, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the College's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) requires the College to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the College's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the College's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the College's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the College to include in this Management Agreement the College's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The College's commitment in this regard is clear.*

*The College of William and Mary, under the leadership of its new president, has set as a goal increasing the economic and social diversity of the student body at the College.*

*The College is absolutely committed to assuring access to any qualified and admitted Virginian regardless of family income. The primary initiative in this area is Gateway William and Mary, which shall be substantially as described in the remainder of this Section 2.2.2, as may amended from time to time by the Board of Visitors of the College and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.*

*At the present time, any needy Virginian at the College receives a combination of grants and loans so that his or her indebtedness will not exceed one year's cost of education.*

*This is as generous as any other public institution in the state or region. Nonetheless, this means that many needy Virginians, including those with low family incomes, will graduate with more than \$16,000 in indebtedness. This burdensome level of debt may discourage students from lower SES groups from applying to or accepting admission from the College. And, if they do attend, their legitimate concern with respect to debt repayment may discourage them from some career choices like K-12 education or from going on to graduate or professional school for fear of adding even more to their personal indebtedness. Hence, over the period of the six-year plan, the College of William and Mary is committed to seeking, from all sources - state-appropriated scholarship funds, federal, and private support -- sufficient funds to assure that 1) we meet 100% of financial need for in-state undergraduates and 2) any student whose family's annual income is less than \$40,000 can spend four years at the College and graduate debt-free. The Gateway William and Mary initiative is one of the highest priorities for our new president. In addition, both through our goal to increase the numbers of VCCS graduates who transfer to the College and aggressive efforts to recruit in-state students from lower SES groups, we hope to double the number of students who would receive assistance through the Gateway initiative from 280 students to 560 students by the end of the six-year planning period.*

*As noted, we will continue our commitment to providing additional financial aid through grants and loans to those Virginians whose families are not in the lower SES groups, but who still have demonstrable need. Currently approximately 900 in-state undergraduate*

*students receive need-based aid. The College commits to meeting 100% of the need for these students consistent with the federal definition of unmet needs over the six year planning period. In addition, as tuition and fees increase over the period of the six-year plan, we will readjust the level of financial aid for all students to assure that insufficiency of family resources will not be a barrier to attending the College.*

*The Commonwealth and the College agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to the Virginia Institute of Marine Science. The Virginia Institute of Marine Science (hereafter, the Institute) shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits G through L are implemented by the College on behalf of the Institute, but the Institute shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the College shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the College's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and the College agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits G through L, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. The College's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the College's Enabling Legislation, the Enabling Legislation shall control.*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the College as provided by the express terms of this Management Agreement. As further provided in subsection C of §*

[23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.

SECTION 2.4.4. *Educational Policies of the Commonwealth.* As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.2:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the College shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the College shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.

SECTION 2.4.5. *Public Access to Information.* As provided in § [23-38.95](#) of the Act, the College shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#) if expressly named therein and, in all cases, may conduct business as a “state public body” for purposes of subsection B of § [2.2-3708](#).

SECTION 2.4.6. *Conflicts of Interests.* As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the College and to its Covered Employees.

SECTION 2.4.7. *Other Provisions of the Code of Virginia.* Other than as specified above, any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits G through L.

*ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.*

*SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits G through L shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the College's website. The change or deviation shall become effective unless one of the above persons notifies the College in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

*SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.*

*SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § [23-38.88](#), and § [23-38.98](#), of the Act, if the Governor makes a written determination that the College is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the College and to the members of the General Assembly, and (ii) the College shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the College, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the College shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the College has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

*SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, the College's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General*

*Assembly (i) if the College fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the College fails to meet the requirements of this Management Agreement.*

**ARTICLE 4. GENERAL PROVISIONS.**

**SECTION 4.1. No Third-Party Beneficiary Status.** *Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

**SECTION 4.2. Sovereign Immunity.** *Pursuant to subsection E of § [23-38.88](#) of the Act, the College and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the College were not governed by the Act; provided that the Virginia Tort Claims Act, § [8.01-195.1](#) et seq. of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the College.*

**SECTION 4.3. Term of Agreement.** *This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of the legislation enacted into law providing for the terms of such Agreement.*

**EXHIBIT G**

**MANAGEMENT AGREEMENT**

**BETWEEN**

**THE COMMONWEALTH OF VIRGINIA**

**AND**

**THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA**

**PURSUANT TO**

**THE RESTRUCTURED HIGHER EDUCATION**

**FINANCIAL AND ADMINISTRATIVE OPERATIONS**

**ACT OF 2005**

**POLICY GOVERNING CAPITAL PROJECTS**

THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.*

*This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

II. DEFINITIONS.

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), and [51.1-126.3](#).*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building*

*demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### *V. CAPITAL PROGRAM.*

*The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be College policy that each capital project program shall meet the College's mission and institutional objectives, and be appropriately authorized by the College.*

*Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the College's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### *VI. AUTHORIZATION OF CAPITAL PROJECTS*

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-*

*appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.*

*It shall be the policy of the College that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement.*

*Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through his designee, to be justified.*

*Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the College that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:*

*Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona*

*vide occupational qualification reasonably necessary to the contractor's normal operations;*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers. The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.*

#### *VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code. The President shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be a full-time employee, a*

*registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College on the same capital project.*

#### **IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the College to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

#### **X. BUILDING DEMOLITIONS.**

*It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding*

*from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

**A. Environmental and Land Use Considerations.**

*It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The College shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the College to comply with local zoning laws and ordinances.*

**B. Infrastructure and Site Condition.**

*The President, acting through his designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the College to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that*

*the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of*

*such projects provide appropriate and timely reports to the President on the status of such projects during construction.*

*XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT H*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

LEASES OF REAL PROPERTY

THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
POLICY GOVERNING LEASES OF REAL PROPERTY

I. PREAMBLE.

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the College of William and Mary in Virginia, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College may have the authority to establish its own system for the leasing of real property. The College's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the College.*

*This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

II. DEFINITIONS.

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” means the Rector and Visitors of the College of William and Mary in Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the College.*

*“Income Lease” means an Operating Lease of real property under the control of the College to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Operating Lease” means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

### *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all College Leases.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College’s usual delegation policies and procedures.*

### *V. REQUIREMENTS FOR LEASES.*

#### *A. Factors to Be Considered When Entering into Leases.*

*All Leases shall be for a purpose consistent with the mission of the College. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through his designee, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

#### *B. Competition to Be Sought to Maximum Practicable Degree.*

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through his designee, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under*

*guidelines that may be developed and adopted by the President, acting through his designee, it is impractical to procure Leases through competition.*

*C. Approval of Form of Lease Required.*

*The form of Leases entered into by the College shall be approved by the College's legal counsel.*

*D. Execution of Leases.*

*All Leases entered into by the College shall be executed only by those College officers or persons authorized by the President or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the College's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the College, no other College approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the College.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the College shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the College under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

*EXHIBIT I*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA*

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
OPERATIONS ACT OF 2005

POLICY GOVERNING

INFORMATION TECHNOLOGY

THE RECTOR AND VISITORS OF

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the College of William and Mary in Virginia that incorporates this Policy.*

*The Board of Visitors of the College is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

II. DEFINITIONS.

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary in Virginia.*

*“College” means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Policy” means this Information Technology Policy adopted by the Board of Visitors.*

*“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.*

### *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to the College pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the College pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the College’s enabling legislation as that term is defined in § [23-38.89](#) of the Act.*

*This Policy shall govern the College’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College.*

*Upon the effective date of a Management Agreement between the Commonwealth and the College, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#), therefore, the College shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the College’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the College; provided, however, that the College still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.)*

*(Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the College.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Board of Visitors Accountability and Delegation of Authority.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

##### *B. Strategic Planning.*

*The President shall be responsible for overall IT strategic planning at the College, which shall be linked to and in support of the College's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President shall make available the College's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the College's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the College's plan is to be incorporated.*

##### *C. Expenditure Reporting and Budgeting.*

*The President shall approve and be responsible for overall IT budgeting and investments at the College. The College's IT budget and investments shall be linked to and in support of the College's IT strategic plan, and shall be consistent with general College policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.*

*The College shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended; §§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the College. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through his designee, shall oversee the management of all College IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through his designee, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the College's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The College shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the College with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the College. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through his designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing College employee to serve as a liaison between the College and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the College, which provide for Independent Validation and Verification (IV&V) of the College's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the College's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT J*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

POLICY GOVERNING

THE PROCUREMENT OF GOODS, SERVICES,

INSURANCE, AND CONSTRUCTION AND

THE DISPOSITION OF SURPLUS MATERIALS

THE RECTOR AND VISITORS OF THE COLLEGE OF WILLIAM AND MARY

POLICY GOVERNING THE PROCUREMENT OF

GOODS, SERVICES, INSURANCE AND CONSTRUCTION

AND THE DISPOSITION OF SURPLUS MATERIALS

I. PREAMBLE.

A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that the College of William and Mary in Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.

B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the College.

*C. This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the College's Enabling Legislation are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Agreement" means "Management Agreement."*

*"Board of Visitors" means the Rector and Visitors of the College of William and Mary in Virginia.*

*"College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the Management Agreement.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth.*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia, and the College of William and Mary in Virginia.*

*"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.*

*"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services,*

*law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the College.*

### **III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College’s usual delegation policies and procedures.*

### **IV. GENERAL PROVISIONS.**

#### **A. Adoption of This Policy and Continued Applicability of Other Board of Visitors’ Procurement Policies.**

*The College has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the College in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the College to develop a procurement system, as well as a surplus materials disposition system. Any College electronic procurement system shall integrate or interface with the Commonwealth’s electronic procurement system.*

*This Policy shall be effective on the Effective Date of the College’s initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the College, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President.*

#### **B. Scope and Purpose of College Procurement Policies.**

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the College that procurements conducted by the College result in the purchase of high quality goods and services at reasonable prices, and that the College be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the College to do business in a competitive*

*environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the College, regardless of the source of funds.*

*C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The College is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the College and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The College is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the College:*

- i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the College shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system; and*
- iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the College remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the College's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public*

*Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of College capital projects and construction-related professional services (§ [2.2-1132](#)).*

#### *V. COLLEGE PROCUREMENT POLICIES.*

##### *A. General Competitive Principles.*

*In connection with College procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the College is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the College, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

##### *B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), § [2.2-3705.1](#) (12), or § [2.2-3705.4](#) (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the College determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the College that meet its business goals and objectives, the College is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy are furthered. In the event the College engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, or his designee, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through his designee, shall take all necessary and reasonable steps to assure (i) that all College officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by*

*the President to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The College shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and College Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2.*

*VI. COLLEGE SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the College and the retention of the resulting proceeds by the College.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*The President shall adopt one or more comprehensive sets of specific procurement policies and procedures for the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. College procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the College. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate College officials who shall oversee College procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the College's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the College on behalf of the College for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the College shall not affect existing contracts already in effect.*

*The Rules and College implementing policies and procedures for all College procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with College procedures specific to the Acquisition of Goods and Services. The Rules and College implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### *VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

##### *A. Protests, Appeals and Debarment.*

*The Rules and College implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and College implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### *B. Prompt Payment of Contractors and Subcontractors.*

*The Rules and College implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the College.*

##### *C. Types of Procurements.*

*The Rules and College implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the College. Such policies and*

*procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and College implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and College implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and College implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

**ATTACHMENT 1**

*Rules Governing Procurement of Goods, Services, Insurance, and Construction*

*by a Public Institution of Higher Education of the Commonwealth of Virginia*

*Governed by Subchapter 3 of the*

*Restructured Higher Education Financial and Administrative Operations Act,*

*Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act, has adopted the following Rules Governing Procurement of Goods, Services, Insur-*

*ance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to [§ 23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*“Affiliate” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*“Best value,” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution’s needs.*

*“Business” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*“Competitive negotiation” is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services’ central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that*

*offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing*

*that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

- 1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*
- 2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*
- 3. Public opening and announcement of all bids received.*
- 4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

5. *Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*“Construction” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*“Construction management contract” means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*“Covered Institution” or “Institution” means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.*

*“Design-build contract” means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Informality” means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.*

*“Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.*

*“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a*

*contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services*

*for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement. -*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such*

*competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or*

*entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. -*

*The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions.-*

*The Institution shall include in every contract over \$10,000 the following provisions:*

*During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the "performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the*

*written notification to the contractor shall state the reasons for the denial of pre-qualification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

- 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- 2. The contractor does not have appropriate experience to perform the construction project in question;*
- 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*
- 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*
- 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;*

6. *The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and*

7. *The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

§ 15. *Negotiation with lowest responsible bidder. -*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

§ 16. *Cancellation, rejection of bids; waiver of informalities. -*

A. *An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

B. *The Institution may waive informalities in bids.*

§ 17. *Exclusion of insurance bids prohibited. -*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.*

§ 18. *Debarment. -*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

§ 19. *Purchase programs for recycled goods; Institution responsibilities. -*

A. *The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-](#)*

[1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia and §§ 20 and 22 of these Rules.

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided*

*the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than*

*5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds. -*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company*

*selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with*

*substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the*

*protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

*1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

*2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

*3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The University of Virginia Medical Center.*

*5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution*

*shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*
- 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
- 8. Royalties; or*
- 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

§ 38. *Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

§ 39. *Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

§ 40. *Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

§ 41. *Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

§ 42. *Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) of the Code of Virginia.*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

*3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.*

*4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."*

*Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject*

*to the same payment and interest requirements with respect to each lower-tier subcontractor.*

*A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.*

*§ 46. Interest penalty; exceptions. -*

*A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.*

*B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.*

*C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.*

*D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.*

*E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act ([§ 2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility. -*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

*3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder*

*is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to*

*challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and*

*acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of*

*discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall*

*be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

## EXHIBIT K

### MANAGEMENT AGREEMENT

### BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

AND

THE VIRGINIA INSTITUTE OF MARINE SCIENCE

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

*POLICY GOVERNING  
HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER COLLEGE EMPLOYEES*

*THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER COLLEGE EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the College of William and Mary in Virginia shall have responsibility and accountability for human resources management for all College employees, defined in the Act as “Covered Employees,” who pursuant to subsection A of § [23-38.114](#) of the Act, “are state employees of” the College. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v)*

*may, subject to certain specified conditions, continue to participate in either state- or College-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the College for its employees.*

*This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the College of William and Mary and the Virginia Institute of Marine Science.*

*“Classified Employees” means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*“College” means the College of William and Mary in Virginia, formerly known as (State Agency 204) and the Virginia Institute of Marine Science, formerly known as (State Agency 268).*

*“College employee” means a Covered Employee.*

*“College Human Resources System” means the human resources system for College employees as provided for herein.*

*“Covered Employee” means any person who is employed by the College on either a salaried or nonsalaried (wage) basis.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Employee” means Covered Employee unless the context clearly indicates otherwise.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.*

*“Effective Date” means the effective date of the initial Management Agreement between the College and the Commonwealth.*

*“Governing Law” means the Act and the College’s Enabling Legislation.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the College and the Commonwealth.*

*“Participating Covered Employee” means (i) all salaried nonfaculty College employees who were employed as of the day prior to the Effective Date of the College’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act, to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by the College, (ii) all salaried nonfaculty College employees who are employed by the College on or after the Effective Date of the initial Management Agreement between the College and the Commonwealth, (iii) all nonsalaried nonfaculty College employees without regard to when they were hired, (iv) all faculty College employees without regard to when they were hired.*

*“Systems” means collectively the College Human Resources System that is in effect from time to time.*

### *III. SCOPE AND PURPOSE OF COLLEGE HUMAN RESOURCES POLICIES.*

*The College has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the College are expressly exempt from the Virginia Personnel Act. The College has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices.*

*The Act extends and reinforces the human resources autonomy previously granted to the College. This Policy therefore is adopted by the Board of Visitors to enable the College to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all College employees. On that Effective Date, and until changed by the College or unless otherwise specified in this Policy, the systems for College employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### *V. COLLEGE OF WILLIAM AND MARY HUMAN RESOURCES SYSTEMS.*

##### *A. Adoption and Implementation of College Human Resources Systems.*

*The President is hereby authorized to adopt and implement human resources systems for employees of the College that are consistent with the Governing Law, other applicable provisions of law, these College human resources policies for College employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for College personnel, unless College employees are exempted from those other human resources policies by law or policy.*

*The College Human Resources Systems shall include a delegation of personnel authority to appropriate College officials responsible for overseeing and implementing the College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The College commits to regularly engage employees in appropriate discussions and to receive employee input as the new College Human Resources Systems are developed. The College will regularly communicate the details of new proposals to all employees who are eligible to participate in the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the College's human resources systems shall consist of the following:*

- 1. The current "College of William and Mary Faculty Handbook," as it is posted on the Provost's website, <http://www.wm.edu/provost/index.php>, and periodically amended; and*

2. The current human resources system for Classified Employees in the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>; and

3. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the College Human Resources website, <http://www.wm.edu/hr.html> and periodically amended.

All the systems describe above, except the system described in paragraph 3, may be amended by the President, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

The President, or designee, shall take all necessary and reasonable steps to assure (i) that the College officials who develop, implement and administer the College Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these College human resources policies, and other applicable Board of Visitors' human resources policies affecting College employees, and (ii) that compliance with such laws and human resources policies is achieved.

#### *VI. HUMAN RESOURCES POLICIES.*

The College Human Resources Systems adopted by the College pursuant to Governing Law and this Policy, as set forth in Section V above, shall embody the following human resources policies and principles:

*A. Election by College Salaried Nonfaculty Employees.*

Upon the adoption by the College of a College Human Resources System, each salaried nonfaculty College employee who was in the employment of the College, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth shall be permitted to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the College Human Resources System, as appropriate. A salaried nonfaculty College employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty College employee who elects to participate in and be governed by the College Human Resources System, by that election, shall be deemed to have elected to be eligible to

*participate in and to be governed by the College human resources program, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the College as part of that College Human Resources System. The College shall provide each of its salaried nonfaculty College employees who was in the employment of the College as of the day prior to the Effective Date of the College's initial Management Agreement with the Commonwealth at least 90 days after the date on which the College Human Resources System becomes effective for that College employee's classification of employees to make the election required by the prior paragraph. If such a salaried nonfaculty College employee does not make an election by the end of that specified election period, that College employee shall be deemed not to have elected to participate in the College Human Resources System. If such a salaried nonfaculty College employee elects to participate in the College Human Resources System, that election shall be irrevocable. At least every two years, the College shall offer to salaried nonfaculty College employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the College Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty College employees, and at least once every two years after the effective date of the College Human Resources System, the College shall make available to each of its salaried nonfaculty College employees a comparison of its human resources program for that classification of salaried nonfaculty College employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of College financial resources. The plans adopted by the College Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The College shall provide information on its classification and compensation plans to all College employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial*

*resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the College's compensation plans.*

*Classification Plan. The Systems shall include one or more classification plans for College employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the College, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*Compensation Plan. The Systems shall include one or more compensation plans for each College employee classification or group. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the College, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The College may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to College employees shall be authorized and approved only by designated College officers delegated such authority by the College, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*Payment of Compensation.* The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.

*Work Schedule and Workweek.* The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all College employees, including alternative work schedules and sites, and telecommuting policies and procedures.

*Other Classification and Compensation Policies and Procedures.* The Systems may include any other reasonable classification and compensation policies and procedures the President deems appropriate.

*C. Benefits.*

The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in § [23-38.119](#) B and C of the Act, the College may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by § [23-38.119](#) B and D of the Act or any other provision of law.

Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible College employees.

The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the College to Classified Employees and Participating Covered Employees shall be the

*benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative College group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the College shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in College employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for College employees other than Classified Employees. Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

- 1. General. The Systems shall contain provisions that protect the rights and privileges of College employees consistent with sound management principles and fair employment practice law.*
- 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*
- 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*
- 4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing College employees, including but not limited to those who have performed particularly meritorious service for the College, have been employed by the College for specified periods of time, or have retired from the College after lengthy service.*
- 5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a College Employee Assistance Program to any eligible College employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.*

6. *Unemployment Compensation.* The Systems shall ensure that College employees receive the full unemployment compensation benefits to which they are legally entitled, and that the College's liability is limited to legitimate claims for such benefits.

7. *Workers' Compensation.* The Systems shall ensure that College employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees Workers' Compensation Program administered by the Department of Human Resource Management.

8. *Performance Planning and Evaluation.* The Systems shall include one or more performance planning and evaluation processes for College employees that (i) establish and communicate the College's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all College employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of College employees. On the Effective Date of the College's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty shall continue, until amended by the College. On or after that Effective Date, College nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.

9. *Standards of Conduct and Performance.* In order to protect the well-being and rights of all employees and to ensure safe, efficient College operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for College salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the College in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed College salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards

*of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of College employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty College employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the College's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the College, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services. All Covered Employees and applicants for employment after the Effective Date of the College's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate College office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried College employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the College. These College layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the College or its respective major divisions and within other parts of the College, (v) the preferential employment rights, if any, of various College employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, College employees who: (i) were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the College shall recognize the hiring preference conferred by § [2.2-3201](#) on*

*State employees who were hired by a State agency or executive branch institution before the Effective Date of the College's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the College has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the College shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The College may include separate policies for reasonably distinguishable groups of College employees. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions who are placed by the College under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

*13. Severance Benefits. In accordance with the terms of the Act, the College shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the College's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The College and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.*

*14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) establish and maintain a work environment at the College that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the College of William and Mary Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide College employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the College is required to*

*report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the College's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to College employees of the scope and content of the College alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for College positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the College, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed College employees, an employee suggestion program, the responsibility of College employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the College.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the College shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the College may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of College employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of College employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the College shall post all salaried nonfaculty position vacancies through the College's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.*

*In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the College's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. College Classified Employees who change jobs within the College through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the College to separate the employee from the College in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The College shall provide an electronic file transfer of information on all salaried College employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the College is specifically exempted from those requirements. The College shall conduct assessments to demonstrate its accountability*

*for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the College have entered into a Memorandum of Understanding, attached hereto as Attachment 2, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The College shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

**VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING COLLEGE PERSONNEL.**

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, College employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the College. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all College employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to College personnel unless College employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

**ATTACHMENT 2**

*Memorandum of Understanding*

*Between The College of William and Mary and the*

*Department of Human Resources Management Regarding*

*The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other College Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the College of William and Mary and the Department of Human Resource Management (DHRM).*

*I. This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the*

*Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

*1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.*

*a. The College will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The College will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*b. The College will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*2. DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the College's compliance with relevant federal and state employment laws and regulations.*

*3. The College may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).*

*4. Other reports to be provided by the College include the following:*

*a. Monthly Employment Position Report.*

*b. Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

*APPROVALS:*

*The College of William and Mary:*

*By: .....Date.....*

*Vice President for Administration*

*Department of Human Resources Management:*

By: .....Date.....  
*Director, Department of Human Resources Management*

*EXHIBIT L*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE COLLEGE OF WILLIAM AND MARY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*FINANCIAL OPERATIONS AND MANAGEMENT*

*THE RECTOR AND BOARD OF VISITORS*

*OF THE COLLEGE OF WILLIAM AND MARY*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the College of William and Mary's financial operations and management. This Policy is intended to cover the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of the College of William and Mary and the Virginia Institute of Marine Science.*

*"College" means the College of William and Mary (State Agency 204) and the Virginia Institute of Marine Science (State Agency 268).*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the College.*

*"Effective Date" means the effective date of the initial Management Agreement between the College and the Commonwealth.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the College and the Commonwealth of Virginia.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

## *III. SCOPE OF POLICY.*

*This Policy applies to the College's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform*

*system of accounting, financial reporting, and internal controls adequate to protect and account for the College's financial resources.*

*The Virginia Institute of Marine Science (the Institute) shall receive the benefits of this Policy as it is implemented by the College on behalf of the Institute, but the Institute shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the College's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.*

#### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, or designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of College financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the College and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the College pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and*

*the College's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the College, the accounting and bookkeeping system of the College shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, or designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the College. Upon the Effective Date of the initial Management Agreement between the College and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the College shall not be required to record its financial transactions in of the Commonwealth's Accounting and Reporting System ("CARS"), including the current monthly interfacing with CARS , or be a part of any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The College's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, or designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all College financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the College, but rather will focus on the internal operations of the College's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the College's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and*

*Procedures such as establishing strong risk management and internal accounting controls to ensure College financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of College programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the College.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the College shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the College shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#), shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Education and General Revenues deposited into the State Treasury by the public institution of higher education.*

*Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the College is authorized to hold and invest tuition, Educational and General (E&G) fees, research and*

*sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:*

*i) The College shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit;*

*ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below;*

*iii) The College shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the College's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the College has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the College may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the College in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

*iv) If in any given year the College does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the College until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

*vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the College may draw down all cash balances held by the State Treasurer on behalf of the College related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the College as specified in Section IX below.*

*The College also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the College that the College shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the College that the College shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the College by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, or designee, shall continue to provide oversight of the College's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the College shall periodically audit the College's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the College shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia, as it currently exists and from time to time may be amended.*

*VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.*

*The President, or designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of College financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the College shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to College customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all College accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the College shall continue to utilize the Commonwealth's Debt Set Off Collection programs and procedures, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

*IX. DISBURSEMENT MANAGEMENT.*

*The President, or designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of College financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the College's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the College's mission, including travel-related disbursements. Further, the College's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the College no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the College shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the College may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the College for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

- i) The College may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*
- ii) The College may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- iii) The College anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the College projects a cost deficit in activities supported by general fund appropriations, the College may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, or designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the College shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The College shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in*

*accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The College's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the College shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the College.*

#### *X. DEBT MANAGEMENT.*

*The President, or designee, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of College financial resources.*

*Pursuant to § [23-38.108](#)(B) of the Act, the College shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the College shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the College.*

*The College recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, or designee*

*within the context of the overall portfolio to ensure that any financial product or structure is consistent with the College's objectives. Regardless of the financing structure(s) utilized, the President, or designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on College creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act,*

*shall be authorized by resolution of the Board of Visitors, providing that they do not constitute State Tax Supported Debt.*

*The College will establish guidelines relating to the total permissible amount of outstanding debt by monitoring College-wide ratios that measure debt compared to College balance-sheet resources and annual debt service burden. These measures will be monitored and reviewed regularly in light of the College's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the College's debt capacity and debt management guidelines. Any change in the guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the College.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the College to invest its operating and reserve funds solely in the interest of the College and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the College's operating and reserve funds.*

#### *XII. INSURANCE AND RISK MANAGEMENT.*

*By July 1 of each odd-numbered year, the College shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the College through the Commonwealth's Division of Risk Management and in which the College is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the College proceeds to withdraw from the insurance or risk management program, the College shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the College and the Commonwealth.*

3. That the following Chapter 3 shall hereafter be known as the "2006 Management Agreement Between the Commonwealth of Virginia and The University of Virginia:"

CHAPTER 3.

MANAGEMENT AGREEMENT

BY AND BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2005, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and the Rector and Visitors of the University of Virginia (hereafter, the University) provides as follows:*

RECITALS

*WHEREAS, the University has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia, to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

- 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University held on June 10, 2005, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;*
- 2. Written Application to the Governor. The University has submitted to the Governor a written Application, dated October 27, 2005, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and*
- 3. Finding by the Governor. In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that the University has fulfilled the requirements of subdivision A*

2 of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

“Academic Division” means that part of the University known as (State Agency 207).

“Act” means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

“Agreement” means “Management Agreement.”

“Board of Visitors” means the Rector and Board of Visitors of the University of Virginia.

“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).

“Covered Employee” means any person who is employed by the University on either a salaried or wage basis.

“Covered Institution” means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

“Enabling legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.

“Management Agreement” means this agreement between the Commonwealth of Virginia and the University as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“Parties” means the parties to this Management Agreement, the Commonwealth of Virginia and the University.*

*“Public institution of higher education” means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

## **ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.**

### **SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.**

*Subchapter 3 of the Act, provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act, that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act, and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors polices attached hereto as Exhibits M through R, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the University agree that the*

*Commonwealth has expressly granted to the University by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the University attached hereto as Exhibits M through R and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit M), (2) the leasing of property, including capital leases (Exhibit N), (3) information technology (Exhibit O), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit P), (5) human resources (Exhibit Q), and (6) its system of financial management (Exhibit R), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits M through R, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits M through R. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits M through R, to a person or persons within the University.*

*SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such*

*health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D (2) (c) of § [23-38.88](#) of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia) and has discussed those potential impacts with the Executive Director and staff of that Plan and with parties in the Administration who participated in the development of this Management Agreement. The Executive Director of the Plan has provided to the University and the Commonwealth the Plan's assumptions underlying the contract pricing of the program.*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act, and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act, requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement*

*policies and rules that differ from those required by the VPPA will enhance procurement “best practices” as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act, requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act, and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia’s public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to (§ [23-30.24](#) et seq.) of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth’s various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth’s higher education institutions, programs, or activities.*

*As a teaching hospital that is a part of the University as of the Effective Date, the Medical Center shall continue to be characterized as a state government-owned or operated and state-owned teaching hospital for purposes of payments under the State Plan for Medicaid Services adopted pursuant to (§ [32.1-325](#) et seq.). The University has committed to serve indigent and medically indigent patients through its adoption of the Guidelines for the Eligibility of Indigent and Medically Indigent Persons for Health Care Services at the State University Teaching Hospitals. Pursuant to subsection B of § [23-38.93](#) of the Act,*

*the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the Appropriation Act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and continue to treat the Medical Center as a Type One Hospital for purposes of such reimbursement.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as Exhibits M through R.*

*SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits M through R, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R.*

*The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the University shall assume full responsibility for management of the University, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the University as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

*SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Code of Virginia, prior to August 1, 2005, the Board of Visitors of the University adopted the resolution*

*setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the University commits to furthering these State goals by:*

- 1. In addition to its six-year target of achieving \$337 million in external research by 2011-12, the University commits to match from institutional funds, other than general funds or tuition, on a dollar for dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2005-06.*
- 2. In a concerted effort to provide educational opportunities to Virginia students attending institutions in the Virginia Community College System (VCCS) and Richard Bland College, the University commits to work with Virginia Polytechnic Institute and State University (Virginia Tech) and the College of William and Mary in Virginia to establish a program under which these three institutions will increase significantly the number of such students transferring to their institutions. Specifically, pursuant to this program, the University, Virginia Tech and the College of William and Mary in Virginia collectively commit to enroll as transfer students from VCCS institutions and Richard Bland College (i) by the 2007-08 fiscal year, not less than approximately 300 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 900 such transfer students each year, and (ii) by the end of the decade, not less than approximately 650 new such transfer students each year over the number enrolled in 2004-05, for a total of approximately 1,250 such transfer students each year. The three institutions have agreed that they will mutually determine how to divide the responsibility for these additional transfer students equitably among themselves.*
- 3. As an institutional priority and obligation, the University commits to the Governor and General Assembly to work meaningfully and visibly with an economically distressed region or local area of the Commonwealth, not smaller in size than a city or county, which lags behind the Commonwealth in education, income, employment, and other factors. The University commits to establish a formal partnership with that area to develop jointly a specific action plan that builds on the University's programmatic strengths and uses the University's faculty, staff and, where appropriate, student expertise to stimulate economic development in the area to make the area more economically viable, and to improve student achievement and teacher and administrator skill sets in a school division in that area. The University shall submit the action plan to the Governor and General Assembly by no later than December 31, 2006, and shall report to the Governor and General Assembly by September 1 of each year on its progress in implementing the action plan during the prior fiscal year.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2005, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2006-07 through 2011-12. Subsection A of § [23-9.2:3.02](#) requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed below and in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. The University's commitment in this regard is clear.*

*The Academic Division will continue to offer enrollment to in-state undergraduate students without regard to ability to pay and shall continue implementation of AccessUVA, a financial aid program designed to keep higher education affordable for all undergraduate students, including Virginians and non-Virginians, who qualify for admission, regardless of economic circumstance. In the fall 2005 AccessUVA was modified to provide expanded benefits for qualifying Virginia Community College System transfer students. The program shall be substantially as described in the remainder of this Section 2.2.2, as may be amended from time to time by the Board of Visitors of the University and reported to the Secretaries of Finance and Education and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations.*

*The Academic Division currently offers financial aid packages to **meet 100% of demonstrated need to all qualified undergraduate students**. This goal was met in 2004-05.*

*The Academic Division will eliminate all need-based loans, replacing them with grants, in the financial-aid packages of low-income undergraduate students, beginning with the fall 2004 entering class. At this time low-income is defined as families with an income equivalent to 200% of the federal poverty line or less. This phase will be fully implemented by fall 2007. The University's goals for this component of the program include:*

1. Increase enrollment by low-income students.
2. Improve the socio-economic diversity at the University.
3. Enable low-income financial aid recipients to have an enhanced student experience.
4. Improve satisfaction in post graduate choices of low-income financial aid recipients.

Success in attaining these goals will be measured by five metrics, 1) applications from low-income students, 2) low-income applicants offered admissions, 3) low-income applicants who accepted offers, 4) yield of low-income students, and 5) percentage of low-income students in the student body. In 2005-06 applications from low-income students rose 13.1% from the previous year for a total of 875. The University offered admission to 357 applicants, 10% more than in the prior year. Almost 40% more of those low-income students to whom the University offered admission for the 2005-06 academic year accepted the offer, 233 compared to 133 last year, increasing the yield from 50% to over 64%. The trend in the percentage of low-income students in the student body has also improved over the last two years increasing from 4.29% in 2004-05 to 6.45% in 2005-06. The University expects to increase the numbers of low-income students enrolled from the current 830 to 1,033 by 2011-12 as outlined in the Six-Year Plan.

The Academic Division will cap the amount of need-based loans to any undergraduate student who qualifies for some form of financial aid to a maximum of 25% of the total in-state cost of attendance over four years and will meet the remaining need with grants, beginning with the fall 2005 first-year or VCCS transfer students. All students, regardless of state residency, will receive the in-state cap level. This phase will be fully implemented by fall 2008. This particular component of the program is targeted at middle-income students whose families earn between \$75,000 and \$149,999. The University's goals for this component of the program include:

1. Improve the socio-economic diversity at the University.
2. Enable financial aid recipients to have an enhanced student experience.
3. Improve satisfaction in post graduate choices.

Success will be measured in this area by three metrics, 1) applications from middle-income students, 2) participation of financial aid recipients in study abroad, internships, volunteer work, student activities, etc., and 3) post graduate choices and starting salaries. Seven percent or 219 more middle-income students applied to the University in 2005-06 than in 2004-05 and qualified for AccessUVa benefits.

The Academic Division will provide comprehensive counseling to prospective and current students and their families, assisting them in the financial aid application process and presenting them with financing options outside of need-based financial aid. This last component of the program has three main goals:

- 1. Improve the perception of the University as affordable.*
- 2. Increase the socio-economic diversity of the University.*
- 3. Improve student understanding of financial planning and debt management.*

*The University's financial aid educational programs are currently being designed. We expect to measure trends in the following ways in order to gage success: 1) usage figures of educational programs provided on financial planning and debt management, 2) percent of financial aid applicants participating in financial management programs, and 3) evaluation of effectiveness of the educational programs.*

*The Commonwealth and the University agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Authority Granted to The University of Virginia's College at Wise. The College shall receive the benefits of the additional financial and operational authority granted by this Management Agreement as it and the policies adopted by the Board of Visitors attached as Exhibits M through R are implemented by the University on behalf of the College, but the College shall not receive any additional independent financial or operational authority as a result of this Management Agreement or the attached Board of Visitors policies beyond the independent financial and operational authority that it had prior to the effective date of this Management Agreement or that it may be granted by law in the future.*

*SECTION 2.4. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the University shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.*

*SECTION 2.4.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2004-06 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits M through R, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.4.2. The University's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's Enabling Legislation, the Enabling Legislation shall control, except as provided in subdivision A.1.b of § [23-38.112](#) of the Act, regarding § [23-77.1](#).*

*SECTION 2.4.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act*

*and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the University as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.4.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the University shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the University shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:1 (§ [23-38.53:1](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.7 (§ [23-38.70](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.), unless and until provided otherwise by law other than the Act.*

*SECTION 2.4.5. Public Access to Information. As provided in § [23-38.95](#) of the Act, the University shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, but shall be entitled to conduct business pursuant to § [2.2-3709](#) and, in all cases, may conduct business as a “state public body” for purposes of subsection B of § [2.2-3708](#).*

*SECTION 2.4.6. Conflicts of Interests. As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.*

*SECTION 2.4.7. Other Provisions of the Code of Virginia. Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits M through R.*

*ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.*

*SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits M through R shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

*SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.*

*SECTION 3.2.1. Governor. Pursuant to subdivision D 4 of § [23-38.88](#), and § [23-38.98](#), of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement. Upon the Governor voiding this Management Agreement, the University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a*

*subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

*SECTION 3.2.2. General Assembly. As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the University fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this Management Agreement.*

*ARTICLE 4. GENERAL PROVISIONS.*

*SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort Claims Act, (§ [8.01-195.1](#) et seq.) of the Code of Virginia, and its limitations on recoveries shall remain applicable with respect to the University.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2010.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15th day of November, 2005, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT M*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

*Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) delegated limited but significant autonomy to the University of Virginia to establish its own post-appropriation system for undertaking the implementation of non-general fund capital projects for the University of Virginia Medical Center. Similarly, § 4-5.08 of the 1996 Appropriation Act, delegated nearly identical limited autonomy to the University as a whole for non-general fund capital projects. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects (the Existing Policy Statement).*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.*

*This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Visitors of the University of Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the Medical Center.*

*“Existing Policy Statement” means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in 1996.*

*“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. CAPITAL PROGRAM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests. It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, for all other capital projects. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure strict adherence to this requirement. Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described*

*above. Minor changes shall be permissible if they are determined by the President, acting through the Executive Vice President and Chief Operating Officer, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

**VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

*The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University. The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

#### *VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Executive Vice President and Chief Operating Officer, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility*

*requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee. When serving as the University Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit supported by resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired or contracted with to perform these functions shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the University on the same capital project.*

**IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.*

**X. BUILDING DEMOLITIONS.**

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the*

*acquisition of such real property. The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

*A. Environmental and Land Use Considerations.*

*It is the policy of the University to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Executive Vice President and Chief Operating Officer, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Executive Vice President and Chief Operating Officer, on the status of such projects during construction.*

*XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed two million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT N*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*LEASES OF REAL PROPERTY*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*In 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Autonomy in Leases of Property for certain leases entered into by the University, which was amended in 2003 as the Policy Statement Governing Exercise of Autonomy in Operating and Capital Leases of Property. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University of Virginia may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

*II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” means the Rector and Visitors of the University of Virginia.*

*“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*“College” means that part of the University operated as the University of Virginia's College at Wise, also known as (State Agency 246).*

*“Covered Institution” means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*“Expense Lease” means an Operating Lease of real property under the control of another entity to the University.*

*“Income Lease” means an Operating Lease of real property under the control of the University to another entity.*

*“Lease” or “Leases” means any type of lease involving real property.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Operating Lease” means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all University Leases.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *V. REQUIREMENTS FOR LEASES.*

#### *A. Factors to Be Considered When Entering into Leases.*

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to ensure that*

*the plan for the space to be leased is consistent with the purpose for which the space is intended.*

*B. Competition to Be Sought to Maximum Practicable Degree.*

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Executive Vice President and Chief Operating Officer, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Executive Vice President and Chief Operating Officer, it is impractical to procure Leases through competition.*

*C. Approval of Form of Lease Required.*

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

*D. Execution of Leases.*

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Executive Vice-President and Chief Operating Officer, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

EXHIBIT O

MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE UNIVERSITY OF VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
OPERATIONS ACT OF 2005

POLICY GOVERNING

INFORMATION TECHNOLOGY

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth “may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies” that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of the University of Virginia is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

## *II. DEFINITIONS.*

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Information Technology” or “IT” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Major information technology project” or “major IT project” shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Policy” means this Information Technology Policy adopted by the Board of Visitors.*

*“State Chief Information Officer” or “State CIO” means the Chief Information Officer of the Commonwealth of Virginia.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

## *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to the University of Virginia pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University’s enabling legislation as that term is defined in § [23-38.89](#) of the Act. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

*This Policy shall govern the University’s information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and*

*the University, as authorized by subsection D of § [23-38.88](#) and § [23-38.111](#), therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### **IV. GENERAL PROVISIONS.**

##### **A. Board of Visitors Accountability and Delegation of Authority.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

##### **B. Strategic Planning.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the University's plan is to be incorporated.*

*C. Expenditure Reporting and Budgeting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.*

*The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended; §§ [2.2-2022](#) through [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development*

*of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Executive Vice President and Chief Operating Officer, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the executive Vice President and Chief Operating Officer, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally-recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security, shall also be the responsibility of the University's Internal Audit Department and the Auditor of Public Accounts.*

*EXHIBIT P*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE UNIVERSITY OF VIRGINIA*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*THE PROCUREMENT OF GOODS, SERVICES,*

*INSURANCE, AND CONSTRUCTION AND*

*THE DISPOSITION OF SURPLUS MATERIALS*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA*

*POLICY GOVERNING THE PROCUREMENT OF  
GOODS, SERVICES, INSURANCE AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) provided the University of Virginia with autonomy to conduct the procurement of goods and services, including professional services, and construction, on behalf of the University of Virginia Medical Center. Pursuant thereto, in 1996 the Board of Visitors adopted a Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that the University of Virginia, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Agreement” means “Management Agreement.”*

*“Board of Visitors” means the Rector and Visitors of the University of Virginia.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Effective Date” means the effective date of the Management Agreement.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the Medical Center.*

*“Existing Medical Center Policy Statement” means the Policy Statement Governing Exercise of Procurement Autonomy by the University on behalf of the Medical Center adopted in 1996 by the Board of Visitors for the Medical Center.*

*“Goods” means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia and the University of Virginia.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“Rules” means the “Rules Governing Procurement of Goods, Services, Insurance, and Construction” attached to this Policy as Attachment 1.*

*“Services” as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*“Surplus materials” means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University’s usual delegation policies and procedures.*

### *IV. GENERAL PROVISIONS.*

#### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors’ Procurement Policies.*

*The Academic Division and the College, through its administrative relationship with the University, have had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. Effective July 1, 1996, the University was granted autonomy to establish a procurement system for the Medical Center, and the Board of Visitors approved the Existing Medical Center Policy Statement. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system for the Academic Division and the College, as well as a surplus materials disposition system for the University as a whole, and to continue the existing procurement system and policies of the Medical Center. Any University electronic procurement system, other than the Medical Center’s electronic procurement system, shall integrate or interface with the Commonwealth’s electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University’s initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer or his designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University,*

*including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Executive Vice President and Chief Operating Officer.*

*B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

*C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

*i) May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to [§ 2.2-2011](#) of the Code of Virginia, unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*

- ii) Shall use directly or by integration or interface the Commonwealth's electronic procurement system and comply with the business plan for the Commonwealth's electronic procurement system, as modified by an agreement between the Commonwealth and the University, which agreement shall not be substantially different than the agreement attached to this Policy as Attachment 2; and*
- iii) Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to § [23-38.88\(D\)\(4\)](#) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2, and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (VIB) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).*

*V. UNIVERSITY PROCUREMENT POLICIES.*

*A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, and construction, the University is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

*B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to § [2.2-3705.1](#) (7), [2.2-3705.1](#) (12), or [2.2-3705.4](#) (4), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business*

*requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Executive Vice President and Chief Operating Officer, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Executive Vice President and Chief Operating Officer, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally-appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*The President, acting through the Executive Vice President and Chief Operating Officer or his designee, shall adopt one or more comprehensive sets of specific procurement*

*policies and procedures for the Academic Division and the College, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*Any implementing policies and procedures adopted pursuant to Part VII A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### **VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

##### **A. Protests, Appeals and Debarment.**

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and*

*procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

*B. Prompt Payment of Contractors and Subcontractors.*

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

*C. Types of Procurements.*

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

ATTACHMENT 1

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the  
Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution, excluding the University of Virginia Medical Center:*

*§ 1. Purpose. -*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of good, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority. -*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to § [23-38.88](#)(D)(4) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority. -*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner*

*with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions. -*

*As used in these Rules:*

*"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10% of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.*

*"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*"Competitive negotiation" is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*

2. *Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*

3. a. *Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution, for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly*

*identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

*1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to*

*be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*

*2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*3. Public opening and announcement of all bids received.*

*4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

*5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.*

*"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the*

*price, quality, quantity or delivery schedule for the goods, services or construction being procured.*

*“Multiphase professional services contract” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*“Nonprofessional services” means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3a of the definition of “competitive negotiation” in this section shall still apply to professional services for such small construction projects.*

*“Potential bidder or offeror” for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*“Professional services” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*“Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*“Public contract” means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*“Responsible bidder” or “offeror” means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.*

*“Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*“Restructuring Act” or “Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Rules” means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*“Reverse auctioning” means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders’ prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*“Sheltered workshop” means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement. -*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement. -*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

1. *The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
2. *The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized. -*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract. -*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business. -*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. - The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. -*

*The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names. -*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications. -*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction. -*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

- 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- 2. The contractor does not have appropriate experience to perform the construction project in question;*
- 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*

4. *The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*

5. *The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.), (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;*

6. *The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and*

7. *The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

§ 15. *Negotiation with lowest responsible bidder. -*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

§ 16. *Cancellation, rejection of bids; waiver of informalities. -*

A. *An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

B. *The Institution may waive informalities in bids.*

*§ 17. Exclusion of insurance bids prohibited. -*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debaring a prospective insurer pursuant to § 18.*

*§ 18. Debarment. -*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

*§ 19. Purchase programs for recycled goods; Institution responsibilities. -*

*A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.*

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms. -*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution. -*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so*

*long as its bid price is not more than 4% greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution. -*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10% greater than the price of the low responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error. -*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either*

*instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5%.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

*§ 24. Contract Pricing Arrangements. -*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and subcontractors. -*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work,*

*workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts. -*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95% of the earned sum when payment is due, with no more than 5% being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void. -*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a*

*percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds. -*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5% of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds. -*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in*

*furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security. -*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts. -*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond. -*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue. -*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records. -*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the*

*bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions. -*

*A. The provisions of these Rules shall not apply to:*

*1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

*2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

*3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The University of Virginia Medical Center.*

*5. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory*

*requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations. -*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions. -*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:*
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*

- d. *Other public educational institutions.*
2. *Speakers and performing artists;*
3. *Memberships and Association dues;*
4. *Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
5. *Group travel in foreign countries;*
6. *Conference facilities and services;*
7. *Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
8. *Royalties; or*
9. *The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

§ 38. *Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations. -*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

§ 39. *Definitions. -*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions. -*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid. -*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution. -*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received. -*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made. -*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts. -*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.
4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1% per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions. -

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § [58.1-1812](#) of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

*D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.*

*E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ [2.2-4800](#) et seq. of the Code of Virginia), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility. -*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid. -*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility. -*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

3. *Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award. -*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder*

*or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract. -*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest. -*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes. -*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions. -*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was*

*arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure. -*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution. -*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting. -*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

ATTACHMENT 2

Memorandum of Agreement

*The Commonwealth of Virginia and the University of Virginia*

*ERP/SciQuest Implementation with eVA*

*The Commonwealth of Virginia (CoVA) and the University of Virginia (University) agree to the following:*

*I. The University will use ERP/SciQuest integration as best fits its needs with its ERP system (Oracle).*

*II. Initially, all nonexempt orders produced by the ERP/SciQuest integration will be transmitted to eVA through an ERP-to-eVA interface that conforms to the existing eVA interface standard format. Longer term a more real-time option may be mutually agreed by the Department of General Services/Division of Purchasing and Supply (DGS/DPS) and the University and implemented between the ERP and eVA systems.*

*III. The University may request that eVA contract vendors provide a version of their contract catalog for loading into ERP/SciQuest. Should the vendor indicate a preference to only provide its catalog through eVA, then the University will access these catalogs as described in item B8 of the Metrics section of this document. In any event, the University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA.*

*IV. eVA will load all nonexempt University orders into the eVA Data Warehouse. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA.*

*V. In lieu of processing individual orders for requirements through eVA, a more efficient administrative approach is to establish a blanket or standing order. The University is authorized to use such an approach where it makes good business sense. The University will ensure vendors understand that eVA transaction fees will be invoiced at the time blanket or standing orders are issued, that the transaction fee will be based on the total order amount, and the vendor is required to pay the total transaction fee within 30 days of the invoice date regardless of the performance/delivery schedule specified in the order.*

*VI. eVA will deliver University nonexempt orders to vendors that are identified as accepting electronic orders (Fax, Email, EDI, cXML). The University or SciQuest will print/mail/deliver all other orders to vendors. Whereas the University maintains a University specific electronic vendor record that identifies vendors that do not agree to the eVA terms and conditions, including payment of the eVA order transaction fee, the University*

*may deviate from the policy/procedure set forth in Section 3 of the eVA Business Plan as follows:*

*A. For vendors that refuse to accept the eVA terms and conditions, the University will transmit the appropriate R02, S02, E02, or P02 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor refuses eVA terms and conditions." The University agrees that it will pay the eVA transaction fees for these orders.*

*For vendors that agree to accept the eVA terms and conditions, the University will transmit the appropriate R01, S01, E01, or P01 Purchase Order Category and a Purchase Order Comment that includes the statement "Vendor accepts eVA terms and conditions - University eVA Vendor Manager, e-mail address and phone number." The University agrees that, for these orders, it will resolve any vendor dispute related to payment of eVA transaction fees by working directly with the vendor whether such vendor contacts the university directly or the dispute is referred to the university by DGS/DPS or CGI-AMS. The University further agrees that:*

- 1. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the University and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*
- 2. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*
- 3. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*VII. The University will not require separate vendor registrations as a prerequisite for responding to University solicitations. The University will participate in an enterprise workgroup to determine the best means to capture W-9 information on behalf of the whole enterprise. The process for collecting W-9 information will be supported in eVA in such a way as to provide CoVA verified vendor information to entities. The University will have the option to receive a subset of vendor related data. Until an enterprise W-9 process is established, the University will be responsible for collection of W-9 information.*

*VIII. For major system changes, DGS/DPS will collaborate in advance (advance notice defined as at least six (6) months prior to change or as soon as any new plan is*

*proposed) with the University regarding any proposed replacement to the CoVA's electronic procurement system and on changes that may affect the technical changes described herein.*

*IX. Integration of the University's electronic procurement solution with the University's ERP is the responsibility of the University. The solution must provide for orders, change orders and cancellations.*

#### *Guidelines*

*1. The establishment of this agreement is intended to formulate the basis for a long-term solution for electronic procurement between the University and the CoVA.*

*2. Orders may be batched and transmitted to eVA as often as needed except between the hours of 8 p.m. and 4 a.m. eVA will transmit registered vendor orders it receives within 15 minutes or less.*

*3. Nonexempt orders to unregistered vendors are to be transmitted to eVA for loading to the Data Warehouse. The University shall be responsible for payment of all eVA transaction fees for nonexempt orders to unregistered vendors and exempt orders the University chooses to issue to unregistered and registered vendors through eVA. See eVA Business Plan Section 3 for specific processing requirements for unregistered vendor orders.*

*4. Change Orders are to be transmitted to eVA as replacement orders complying with the eVA standard format.*

*5. Cancellations are to be transmitted to eVA complying with the eVA standard format.*

*6. eVA Interface standard does not currently support PCard orders; however these orders may be processed via the interface as (a) confirming orders or (b) orders for PCards on file with the vendor.*

#### *Schedule*

*The University shall implement this agreement no later than December 2006.*

#### *Metrics*

*A. The University shall comply with the following Governor's eVA Management:*

##### *Objective*

*Ninety-five percent of all nonexempt orders to be processed by eVA. Includes nonexempt orders issued by end users (PCard & LPO) and the central purchasing office.*

*Nonexempt orders to unregistered vendors received into the eVA Data Warehouse are considered compliant orders. For clarity, it is understood that exempt orders are purchase transactions specifically exempted, in writing by DPS, from mandatory processing through eVA. All nonexempt orders not processed by eVA shall be reported on the eVA Dashboard and the corresponding non-use fee paid by the University.*

*B. The University shall meet the following management objectives for electronic procurement:*

- 1. Provide end users, including purchase-card users, access to an electronic system for buying;*
- 2. Conduct business with eVA registered vendors whenever possible;*
- 3. Place nonexempt orders, including change orders and cancellations, to eVA suppliers electronically using eVA;*
- 4. To the greatest extent possible, transmit real-time electronic purchase orders, regardless of dollar value, that include commodity codes, complete item descriptions, quantities, and unit prices;*

*5. To the greatest extent feasible, the University will transmit confirming orders to eVA within five (5) business days after placing the order. Commodity codes, complete item descriptions, quantities, and unit prices will be provided for all confirming orders.*

*DGS/DPS will provide periodic reports on the number and timeliness of confirming orders enabling the University and DGS/DPS to work together to monitor the usage of confirming orders with the objective of reducing their numbers to the extent possible. The University agrees that, for confirming orders, it will resolve any vendor dispute, including disputes related to payment of eVA transaction fees, by working directly with the vendor whether such vendor contacts the University directly or the dispute is referred to the University by DGS/DPS or CGI-AMS.*

*The University further agrees that:*

*a. It will provide the DGS/DPS eVA Business Manager (or designee) email notification of the resolution agreed to by the university and the vendor within 10 business days, unless otherwise agreed on a case-by-case basis by the DGS/DPS eVA Business Manager (or designee);*

*b. It will pay the eVA transaction fee unless it notifies the eVA Business Manager (or designee) within the specified time that the dispute has been resolved and the vendor agreed to pay the fee; and*

*c. In the event the University does not provide resolution notification to the eVA Business Manager (or designee) within the specified timeframe, DGS/DPS will automatically execute a manual adjustment reversing disputed transaction fees from the vendor to the University and the University will pay the fee.*

*6. Timely process electronic change orders and cancellations;*

*7. Post all solicitations and business opportunities greater than \$50,000 on the eVA website except as specifically exempted by DPS;*

8. To the extent technically feasible, make eVA catalogs, especially contract catalogs, available to end users using the ERP/SciQuest Integration system. The University will be responsible for the accuracy of contract catalog pricing loaded into the ERP/SciQuest;

9. Use eVA electronic vendor notification for procurement opportunities (per plans to post solicitations specified in item 7 above and the use of Quick Quote/Reverse Auctions specified in item 10 below);

10. Use eVA on-line bidding functions of Quick Quote and Reverse Auction for appropriate commodities, when such are identified;

11. Complete and certify the monthly eVA Dashboard Report; and

12. Timely remit any eVA transaction and non-use fees incurred by the institution.

C. The University shall be subject to eVA fees assessed per the eVA Business Plan. The University shall assure that payments to CGI-AMS are current.

#### EXHIBIT Q

#### MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE UNIVERSITY OF VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

POLICY GOVERNING

HUMAN RESOURCES FOR

PARTICIPATING COVERED EMPLOYEES

AND OTHER UNIVERSITY EMPLOYEE

THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA

*POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*Chapters 995 and 933 of the 1996 Acts of Assembly (House Bill No. 884 and Senate Bill No. 389, respectively) grant the University of Virginia authority regarding the adoption of an alternative human resources system and alternative retirement, health care and other insurance plans for University of Virginia Medical Center employees. Further, the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, the University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act "are state employees of" the University. Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure for employees subject to the Virginia Personnel Act, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of*

*Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the University of Virginia Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Academic Division Human Resources System” means the human resources system for Academic Division employees as provided for herein.*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.*

*“Classified Employees” means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise (State Agency 246).*

*“College Human Resources System” means the human resources system for College employees as provided for herein.*

*“Covered Employee” means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.*

*“Covered Institution” means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Employee” means Covered Employee unless the context clearly indicates otherwise.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.*

*“Effective Date” means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*“Existing Medical Center Policy Statement” means the Policy Statement Governing the Exercise of Medical Center Personnel Autonomy adopted by the Board of Visitors in 1996.*

*“Governing Law” means the Act and the University’s Enabling Legislation.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center (State Agency 209), and related health care and health maintenance facilities.*

*“Medical Center Human Resources System” means the human resources system for Medical Center employees as provided for herein.*

*“Participating Covered Employee” means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University’s initial Management Agreement with the Commonwealth, and who elect pursuant to § [23-38.115](#) of the Act to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by [the Participating Institution], (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the initial Management Agreement between the University and the Commonwealth, (iii) all nonsalaried nonfaculty University employees without regard to when they were hired, (iv) all faculty University employees without regard to when they were hired, and (v) all employees of the University of Virginia Medical Center without regard to when they were hired.*

*“Systems” mean collectively the Academic Division Human Resources System, the College Human Resources System, and the Medical Center Human Resources System that are in effect from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

*“University employee” means a Covered Employee.*

### **III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.**

*The University has had human resources system autonomy through decentralization and codified autonomy for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The Academic Division and the College have had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices; the administration of separate health insurance and retirement plans. Effective July 1, 1996, all*

*Medical Center employees were exempted from the Virginia Personnel Act and the policies and procedures of the Virginia Department of Human Resource Management (formerly the Department of Personnel and Training). The Board of Visitors approved the Existing Medical Center Policy Statement in 1996. A separate human resources system is in place for all Medical Center employees, which the Board of Visitors hereby continues, recognizing that the human resources needs of the Medical Center differ in certain respects from those of the Academic Division and the College.*

*The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place by or after the Effective Date of its initial Management Agreement with the Commonwealth, a human resources system or systems for all University employees in the Academic Division and the College, and to continue the existing human resources system for Medical Center employees. On that Effective Date, and until changed by the University or unless otherwise specified in this Policy, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *V. UNIVERSITY OF VIRGINIA HUMAN RESOURCES SYSTEMS.*

*A. Adoption and Implementation of Academic Division and College Human Resources Systems for the Academic Division and the College; Continuation of Medical Center Human Resources System for the Medical Center.*

*The President, acting through the Executive Vice President and Chief Operating Officer, in consultation with the Vice President and Provost, is hereby authorized to adopt and implement human resources systems for employees of the Academic Division and for employees of the College that implement and are consistent with the Governing Law, other applicable provisions of law, these University human resources policies for Academic Division and College employees, and any other human resources policies*

*adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless Academic Division employees or College employees are exempted from those other human resources policies by law or policy. The University Academic Division and College Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the Academic Division and College Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University and the College commit to regularly engage employees in appropriate discussions and to receive employee input as the new Academic Division and College Human Resources Systems are developed. The University and the College will regularly communicate the details of new proposals to all employees who are eligible to participate in the new Academic Division Human Resources System or the College Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*Effective on the Effective Date of its initial Management Agreement with the Commonwealth, and until amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current human resources system for "Academic Division General Faculty" as posted on the Vice President and Provost's web, <http://www.virginia.edu/provost/index.html>, and periodically amended;*
- 2. The current human resources system for "College General Faculty" as included in the University of Virginia's College at Wise Faculty Handbook 2004-05, as periodically amended;*
- 3. The current human resources system for Classified Employees in the Academic Division and the College as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's website at <http://www.hrs.virginia.edu/policies.html>, as periodically amended;*
- 4. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the University Human Resources website, [www.hrs.virginia.edu](http://www.hrs.virginia.edu), and periodically amended; and*
- 5. The current human resources system for Medical Center employees, which shall continue, including the policies and procedures set forth in the University of Virginia Medical Center Human Resources Policies and Procedures Manual, as such Manual may be*

*amended from time to time. The Medical Center Human Resources System is and shall continue to be consistent with Governing Law, other provisions of applicable law, and any other human resources policies adopted by the Board of Visitors for Medical Center employees. All current delegations of authority to University and Medical Center officials who oversee the Medical Center Human Resources System are hereby ratified and continue.*

*All the systems described above, except the system described in paragraph 3, may be amended by the President, acting through the Executive Vice President and Chief Operating Officer, consistent with these human resources policies. The system described in paragraph 3 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall take all necessary and reasonable steps to assure (i) that the University officials who develop, implement and administer the Academic Division and College Human Resources Systems and the Medical Center Human Resources System authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

#### *VI. HUMAN RESOURCES POLICIES.*

*The Academic Division and College Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, as well as the Medical Center Human Resources System, shall embody the following human resources policies and principles:*

*A. Election by Academic Division and College Salaried Nonfaculty Employees.*

*Upon the adoption by the University of an Academic Division Human Resources System, or a College Human Resources System, or both, all salaried nonfaculty University employees who were in the employment of the Academic Division or the College, as appropriate, as of the day prior to the Effective Date of its initial Management Agreement with the Commonwealth, except employees of the Medical Center, shall be given written notice of their right to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the Academic Division Human Resources System or the*

*College Human Resources System, as appropriate. A salaried nonfaculty University employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty University employee who elects in writing to participate in and be governed by the Academic Division Human Resources System or the College Human Resources System, as appropriate, also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that Academic Division Human Resources System or College Human Resources System, as appropriate.*

*Each such salaried nonfaculty University employee shall be given at least 90 days to make the election required by the prior paragraph. Such 90-day period shall begin to run on the date on which the Academic Division Human Resources System or the College Human Resources System, as appropriate, becomes effective for that University employee's classification of employees. If such a salaried nonfaculty University employee does not make an election by the end of that specified election period, that University employee shall be deemed not to have elected to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate. If such a salaried nonfaculty University employee elects to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty University employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 22.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the Academic Division Human Resources System or the College Human Resources System, as appropriate; provided that, each time prior to offering such opportunity to such salaried nonfaculty University employees, and at least once every two years after the effective date of the Academic Division Human Resources System or the College Human Resources System, or both, as appropriate, the University shall make available to each of its salaried nonfaculty University employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for its faculty, Medical Center employees, and other Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees.*

*The plans applicable to Participating Covered Employees and Medical Center employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the University, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the Academic Division and College shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On that Effective Date, and until changed by the University, the compensation plan or plans for all Participating Covered Employees shall be the compensation plan or plans in effect immediately prior to that Effective Date. The University may adopt one or more compensation plans for Participating Covered Employees that are non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. On that Effective Date, and until changed by the University, the compensation plan for Medical Center employees in effect immediately prior to that Effective Date shall continue as the compensation plan for Medical Center employees. Any major change in compensation plans for Participating Covered Employees or Medical Center employees shall be reviewed and approved by the Board*

*of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

*Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate.*

#### *C. Benefits.*

*The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, and life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to*

*present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.*

*Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. If, however, the University has been or is permitted by law other than the Act to establish an alternative health insurance plan or an alternative faculty or Medical Center retirement plan or plans, such alternative health insurance or faculty or Medical Center retirement plan or plans shall apply to and govern the University employees included in such plan or plans. The University shall be responsible for managing its non-Medicare eligible retiree health insurance. Subject to the Act, the University may offer an alternative health insurance plan for Medicare-eligible retirees.*

*The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, and until changed by the appropriate governing authority, the benefits plans provided by the University to Classified Employees and Participating Covered Employees shall be the benefits plans provided to that group or classification as of the date immediately prior to that Effective Date. On or after that Effective Date, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the State programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefits plans, other than Classified Employee benefits plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees.*

*Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

*1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*

*2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*

*3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*

*4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.*

*5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.*

*6. Unemployment Compensation. The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.*

*7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees' Workers Compensation Program administered by the Department of Human Resource Management.*

*8. Performance Planning and Evaluation. The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University*

*employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's initial Management Agreement with the Commonwealth, the existing merit-based performance management system for faculty and Medical Center employees shall continue, until amended by the University. On or after that Effective Date, Academic Division and College nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.*

*9. Standards of Conduct and Performance. In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's initial Management Agreement with the Commonwealth. On that Effective Date, and until changed by the University, the*

*faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services, with the appropriate University office, or with the appropriate federal agencies. All Participating Covered Employees and applicants for employment after the Effective Date of the University's initial Management Agreement with the Commonwealth shall file a complaint with the appropriate University office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (i) were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act, (iii) were covered by the Virginia Personnel Act prior to that Effective Date, and (iv) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's initial Management Agreement with the Commonwealth and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees from other State agencies and executive branch institutions*

*who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

*13. Severance Benefits. In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's initial Management Agreement with the Commonwealth shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee becoming, on such Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies apply.*

*14. Use of Alcohol and Other Drugs. The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the University of Virginia Alcohol and Other Drugs Policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License or the provision of patient care.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/*

*professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Executive Vice President and Chief Operating Officer, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its initial Management Agreement with the Commonwealth, and until a new program is adopted by the appropriate authority, the University shall continue to provide leave and release time to Participating Covered Employees in accordance with the leave and release time policies and procedures applicable to each classification of employees prior to that Effective Date. On or after that Effective Date, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its initial Management Agreement with the Commonwealth, the*

*University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law.*

*In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the University's initial Management Agreement with the Commonwealth, all employees hired from other state agencies shall be Participating Covered Employees. University Academic Division and College Classified Employees who change jobs within the Academic Division or the College through a competitive employment process - i.e., promotion or transfer - shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

#### *G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 3, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

*On and after the Effective Date of its initial Management Agreement with the Commonwealth, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management.*

*In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

### ATTACHMENT 3

#### *Memorandum of Understanding*

*Between the University of Virginia and the*

*Department of Human Resources Management Regarding*

*The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between the University of Virginia and the Department of Human Resource Management (DHRM).*

*This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dic-*

tionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.

DHRM will accept the federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.

The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service). For the self-administered health plans provided by the University of Virginia Academic Division (State Agency 207) and Medical Center (State Agency 209), this section is not relevant.

Other reports to be provided by the University include the following:

Monthly Employee Position Report.

Annual report on salaried, wage, and contract employees.

The undersigned hereby agree to the provisions contained in the MOU.

APPROVALS:

The University of Virginia:

By: .....Date.....  
Executive Vice President and Chief Operating Officer

Department of Human Resources Management:

By: .....Date.....  
Director, Department of Human Resources Management

EXHIBIT R

MANAGEMENT AGREEMENT

BETWEEN

*THE COMMONWEALTH OF VIRGINIA  
AND  
THE UNIVERSITY OF VIRGINIA  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005*

*POLICY GOVERNING  
FINANCIAL OPERATIONS AND MANAGEMENT*

*THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA  
POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding the University of Virginia's financial operations and management.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy. In particular, other powers and authorities granted to the Medical Center by law, to the extent they exceed those granted to the University pursuant to Subchapter 3 of the Act, are not affected by this Policy Statement.*

*II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*“Academic Division” means that part of the University known as (State Agency 207).*

*“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*“Board of Visitors” or “Board” means the Rector and Board of Visitors of the University of Virginia.*

*“College” means that part of the University operated as the University of Virginia’s College at Wise, also known as (State Agency 246).*

*“Covered Institution” means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*“Enabling Legislation” means those chapters, other than Chapter 4.10, of title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), [51.1-126.3](#), and [51.1-1100](#) in the case of the University of Virginia Medical Center.*

*“Effective Date” means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*“Management Agreement” means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*“Medical Center” means that part of the University consisting of the University of Virginia Medical Center, known as (State Agency 209), and related health care and health maintenance facilities.*

*“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*“University” means the University of Virginia, consisting of the Academic Division, the College, and the Medical Center.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the University’s responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform*

*system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.*

*The University of Virginia's College at Wise shall receive the benefits of this Policy as it is implemented by the University on behalf of the College at Wise, but the College at Wise shall not receive any additional independent financial operations and management authority as a result of this Management Agreement beyond the independent financial operations and management authority that it had prior to the Effective Date of the University's initial Management Agreement with the Commonwealth or that it may be granted by law in the future.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive*

*Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Executive Vice President and Chief Operating Officer, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) summary monthly reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, acting through the Executive Vice President and Chief Operating Officer, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business*

*and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under § [23-38.104](#)(A)(i) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 11 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education.*

*Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues subject to the following requirements:*

*i) The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.*

*ii) Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.*

*iii) The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*

*iv) If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*v) Beginning on the effective date of its initial Management Agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a Management Agreement with the Commonwealth.*

*vi) On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all*

*cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*vii) The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Internal Audit Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit and Compliance Committee of the Board of Visitors. Additional oversight shall continue to*

*be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

#### *VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.*

*The President, through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

#### *IX. DISBURSEMENT MANAGEMENT.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy*

*shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The draw down of funds may be initiated in accordance with the following schedule:*

- i) The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50% of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50% to be drawn on or after February 1 of each year in order to meet student obligations;*
- ii) The University may draw down the sum of all tuition and E&G fees and all other non-general revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- iii) The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a timeframe agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Executive Vice President and Chief Operating Officer, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery*

*aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act.*

*The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### *X. DEBT MANAGEMENT.*

*The President, acting through the Executive Vice President and Chief Operating Officer, shall continue to be authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to § [23-38.108\(B\)](#) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with debt capacity and management policies and guidelines established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University.*

*The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Executive Vice President and Chief Operating Officer, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Executive Vice*

*President and Chief Operating Officer, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

*The University currently has established guidelines relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt capacity and debt management guidelines. Any change in the current guidelines shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq. of the Code of Virginia). Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#), and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

#### *XII. INSURANCE AND RISK MANAGEMENT.*

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University*

*proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

4. That the provisions of the first, second, and third enactments of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, that was entered into prior to January 1, 2006. Any such management agreement entered into prior to January 1, 2006, shall be deemed incorporated into this Act.

5. That the provisions of the first, second, and third enactments of this Act shall expire at midnight on June 30, 2010. The expiration of such enactments shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Polytechnic Institute and State University, The College of William and Mary in Virginia, and The University of Virginia, respectively, which was entered into prior to January 1, 2006, and incorporated into this Act.

## **Chapter 884 Elizabeth River; Governor to sell and convey subaqueous lands in City of Norfolk.**

An Act to authorize the Governor to convey any interest in subaqueous lands in the Elizabeth River in Norfolk to Moon of Norfolk, L.L.C., Harbor Point Investors, L.L.C., and to Front Street Investors, L.L.C..

[\[H 1533\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is hereby authorized to sell and convey to Moon of Norfolk, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance, and the payment of fair market value considerations as are deemed proper by the Marine Resources Commission and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being*

*more particularly described as follows:*

*Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2nd Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 145.00 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 118.55 feet to the "point of beginning"; thence from said "point of beginning" the following courses and distances: South 76 degrees 36 minutes 34 seconds East a distance of 9.07 feet to a point; thence South 70 degrees 28 minutes 48 seconds East a distance of 160.19 feet to a point; thence South 70 degrees 22 minutes 56 seconds East a distance of 67.23 feet to a point; thence South 86 degrees 13 minutes 40 seconds East a distance of 56.91 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 557.68 feet to a point; thence North 58 degrees 24 minutes 34 seconds West a distance of 293.68 feet to a point; thence North 22 degrees 29 minutes 28 seconds East a distance of 479.85 feet to the said "point of beginning," containing approximately 148,046 square feet or 3.40 acres.*

*§ 2. That the Governor is hereby authorized to sell and convey to Harbor Point Investors, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance, and the payment of fair market value considerations as are deemed proper by the Marine Resources Commission and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being more particularly described as follows:*

*Commencing at the intersection of the center line of Second Street with the southern right-of-way line of Front Street; thence from said point of commencement North 65 degrees 34 minutes 59 seconds West a distance of 211.73 feet to a point on the southern right-of-way line of Front Street; thence South 24 degrees 12 minutes 30 seconds West a distance of 100.00 feet to the said "point of beginning;" thence South 24 degrees 12 minutes 30 seconds West a distance of 136.06 feet to a point; thence North 64 degrees 26 minutes 00 seconds West a distance of 9.52 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 311.05 feet to a point; thence North 57 degrees 09 minutes 34 seconds West a distance of 775.59 feet to a point; thence North 32 degrees 35 minutes 21 seconds East a distance of 21.00 feet to a point; thence South 57 degrees 18 minutes 00 seconds East a distance of 119.54 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 31.50 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 290.00 feet to a*

*point; thence South 65 degrees 36 minutes 00 seconds East a distance of 70.00 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 290.00 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 105.00 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 270.00 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 60.00 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 105.00 feet to a point; thence South 88 degrees 19 minutes 36 seconds East a distance of 328.55 feet to a point; thence North 70 degrees 52 minutes 08 seconds East a distance of 68.96 feet to a point; thence South 49 degrees 50 minutes 46 seconds East a distance of 36.40 feet to the said "point of beginning," containing approximately 178,923.34 square feet or 4.11 acres.*

*§ 3. That the Governor is hereby authorized to sell and convey to Front Street Investors, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance, and the payment of fair market value considerations as are deemed proper by the Marine Resources Commission and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being more particularly described as follows:*

*Commencing at the intersection of the center line of Second Street with the southern right-of-way line of Front Street; thence from said point of commencement South 65 degrees 34 minutes 59 seconds East a distance of 145.00 feet to a point on the southern right-of-way line of Front Street; thence South 23 degrees 48 minutes 00 seconds West a distance of 118.00 feet to the said "point of beginning;" thence South 23 degrees 48 minutes 00 seconds West a distance of 461.92 feet to a point; thence North 57 degrees 09 minutes 00 seconds West a distance of 374.81 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 289.08 feet to a point; thence South 64 degrees 26 minutes 00 seconds East a distance of 9.52 feet to a point; thence North 24 degrees 12 minutes 30 seconds East a distance of 136.06 feet to a point; thence South 53 degrees 09 minutes 46 seconds East a distance of 83.68 feet to a point; thence South 52 degrees 54 minutes 32 seconds East a distance of 100.37 feet to a point; thence South 72 degrees 37 minutes 44 seconds East a distance of 179.35 feet to the said "point of beginning," containing approximately 156,749.45 square feet or 3.60 acres.*

## **Chapter 904 No Child Left Behind Act; Board of Education develop plan to identify initiatives funded thereby.**

An Act to direct the Virginia Board of Education to develop a plan in relation to No Child Left Behind.

[\[S 410\]](#)

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No Child Left Behind; identification plan.*

*A. That the Virginia Board of Education shall develop a plan to identify initiatives or conditions that are currently being funded by the federal act known as No Child Left Behind, that are not an integral or necessary component of the Commonwealth's own Standards of Quality, Standards of Accreditation, or Standards of Learning as authorized by the Virginia General Assembly and the Board of Education. Included in this plan will be information on the consequences (including any potential loss of Federal funding) if the Commonwealth elected to not comply with the identified components.*

*B. Upon the development of the plan required by subsection A, the Office of the Attorney General of Virginia shall provide the Board and the General Assembly an estimate of the costs for providing legal services in the event that the elimination of any initiatives or conditions results in withholding of Title I funds.*

*C. The Board of Education shall report its plan to the Senate Committee on Education and Health, the House Committee on Education, the Senate Committee on Finance, and the House Committee on Appropriations by October 1, 2006.*

## **Chapter 934 Interstate Route 81 Corridor; diversion of truck traffic.**

An Act to determine conditions necessary to divert truck freight from Interstate Route 81.

[\[H 1581\]](#)

Approved May 18, 2006

Whereas, the General Assembly has determined that the transportation of freight and passengers by rail frequently provides a less expensive, safer, and more environmentally friendly and fuel efficient alternative to the construction of additional highway capacity; and

Whereas, the General Assembly has established the Interstate Route 81 Corridor Multistate Transportation Planning Initiative, potentially involving 13 states; and

Whereas, the Commonwealth of Virginia's previously commissioned studies to evaluate the feasibility of diverting freight in the Interstate Route 81 Corridor to rail have been restricted to improvements inside the borders of Virginia only; and

Whereas, Interstate Route 81 has been found to be overutilized by commercial truck traffic, more than half of which consists of long-haul through-trucks beginning and ending their trips outside of Virginia; and

Whereas, a higher-speed dual-track railway would enable the diversion of a significant portion of the through-truck traffic from interstate highways to rail; and

Whereas, the 600-mile Interstate Route 81 Corridor between Knoxville, Tennessee, and Harrisburg, Pennsylvania, may be a suitable market in which to deploy a modern, higher-speed intermodal concept using "roll on/roll off" technology in the United States; and

Whereas, if deemed feasible, such a rail operation has the potential to divert a higher percentage of truck-borne freight from Interstate Route 81 in Virginia than conventional intermodal rail concepts considered in earlier studies, and with the potential for adding other services such as passenger rail in the future; and

Whereas, there is a pressing public need to provide a mechanism for making improvements to the Commonwealth's rail infrastructure that are clearly in the public interest; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth of Virginia, through the Secretary of Transportation and the Rail Advisory Board, shall cause to have completed a comprehensive feasibility plan to define the conditions that would be necessary to divert the maximum amount feasible of the long-haul, through-truck freight traffic to intermodal rail in the Interstate Route 81 Corridor.*

*Such a plan shall be completed as quickly as reasonably possible and the finished plan provided to the Governor, members of the General Assembly, and the public. The plan may be developed as part of a statewide multimodal freight study or other study*

*conducted by the Rail Advisory Board, the Intermodal Office or the Virginia Department of Transportation. It shall include, but not be limited to, evaluation of the following with the objective of maximizing diversion potential to rail and minimizing future Interstate Route 81 highway capacity construction needs:*

*A. Operating Characteristics.*

- 1. Utilize existing VDOT or Norfolk Southern Shenandoah line right-of-way wherever possible;*
- 2. Extend at least 500 miles, creating or expanding logical termini in Tennessee and Pennsylvania or New York with at least one intermediate terminal in Virginia;*
- 3. Utilize suitable "roll on/roll off" and other efficient rail technologies and service concepts;*
- 4. Achieve truck-competitive transit times and reliability between terminals;*
- 5. Consider alternative ownership, management, and service operational options and requirements; and*
- 6. Consider the option of a new rail right-of-way from Front Royal to Culpeper to expedite more efficient use of the Norfolk Southern Piedmont line.*

*B. Financial Evaluation.*

- 1. Capital cost of upgrading and construction for rail line as determined in subsection A as well as cost of terminals, rolling stock, and other equipment or infrastructure;*
- 2. Operating cost for the level of rail service needed to achieve truck-competitive speed and reliability;*
- 3. Include comparative return on investment analyses between the rail option(s) found to be most effective in meeting the performance criterion of 60% diversion rate for through-state freight to rail;*
- 4. Evaluate project financing alternatives, including funds available through SAFETEA-LU, the Federal Railroad Administration's \$35 billion "Railroad Rehabilitation and Improvement Financing" loan program, public and private sector bond financing, and public-private partnership capital investment;*
- 5. Include truck direct and indirect cost savings from using rail compared to over-the-road driving;*
- 6. Include analysis of a full range of future fuel price scenarios, in determining potential diversion rates to rail, and the capability to meet debt service and operate profitably; and*
- 7. Estimate the construction schedule for completing track upgrades and grade crossing separation, including but not limited to, the rail corridor from Front Royal to Manassas.*

# Uncodified Acts of Assembly - 2007

## **Chapter 2 Nursing facility or extended care services; extends sunset provision therefor.**

An Act to amend and reenact Chapter 912 of the Acts of Assembly of 2000, as amended by Chapters 85 and 91 of the Acts of Assembly of 2004, relating to amendment of certain certificate of public need.

[\[H 1630\]](#)

Approved February 6, 2007

Be it enacted by the General Assembly of Virginia:

1. That Chapter 912 of the Acts of Assembly of 2000, as amended by Chapters 85 and 91 of the Acts of Assembly of 2004, is amended and reenacted as follows:

§ 1. Amendment of certain certificate of need authorized.

Notwithstanding the provisions of subdivision 6 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 for an increase in beds in which nursing facility or extended care services are provided to allow such continuing care provider to continue, until July 1, ~~2008~~ 2013, to admit patients, other than contract holders, with whom the facility has an agreement with the individual responsible for the patient for private payment of the costs upon the following conditions being met: (i) the continuing care community is established for the care of retired military personnel and their spouses, widows or widowers and (ii) the facility's contract holder occupancy rate is less than 85 percent.

## **Chapter 3 Old Dominion University; certain undergraduate classes offered at Va. Beach Higher Ed. Center.**

An Act to authorize the board of visitors of Old Dominion University to offer graduate, and lower and upper level undergraduate courses of study at the Virginia Beach Higher Education Center.

[\[H 3018\]](#)

Approved February 16, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the rector and the board of visitors of Old Dominion University, in their sole discretion, are hereby authorized to also offer at the Virginia Beach Higher Education Center such graduate and lower and upper level undergraduate courses of study leading to advanced and baccalaureate degrees as are offered at its Norfolk campus. The discretion afforded by the foregoing shall be guided by demand for such courses of study in the Virginia Beach area and resulting relief of pressure on the Norfolk campus classroom supply.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall expire on July 1, 2007.

## **Chapter 6 Health care data reporting; repeals sunset provisions.**

An Act to repeal the fifth enactment of Chapter 902 of the Acts of Assembly of 1996, as amended by the first enactment of Chapter 691 and the second enactment of Chapter 764 of the Acts of Assembly of 1999, and the first enactment of Chapter 331 of the Acts of Assembly of 2002, relating to health care data reporting.

[\[S 1112\]](#)

Approved February 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 902 of the Acts of Assembly of 1996, as amended by the first enactment of Chapter 691 and the second enactment of Chapter 764 of the Acts of Assembly of 1999, and the first enactment of Chapter 331 of the Acts of Assembly of 2002, is repealed.

## **Chapter 21 Health care data reporting; repeals sunset provisions.**

An Act to repeal the fifth enactment of Chapter 902 of the Acts of Assembly of 1996, as amended by the first enactment of Chapter 691 and the second enactment of Chapter 764 of the Acts of Assembly of 1999, and the first enactment of Chapter 331 of the Acts of Assembly of 2002, relating to health care data reporting.

[\[H 2367\]](#)

Approved February 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 902 of the Acts of Assembly of 1996, as amended by the first enactment of Chapter 691 and the second enactment of Chapter 764 of the Acts of Assembly of 1999, and the first enactment of Chapter 331 of the Acts of Assembly of 2002, is repealed.

## **Chapter 50 Natural gas pipeline; Marine Resources Commission to grant easements and rights-of-way.**

An Act to authorize the Marine Resources Commission to grant easements and rights-of-way across and in the beds of the Hampton Roads Harbor (Lower James River) and Elizabeth River Reach, including a portion of the Baylor Survey, to Virginia Natural Gas, Inc. for a natural gas pipeline.

[\[H 3005\]](#)

Approved February 19, 2007

Whereas, notwithstanding a General Assembly grant of authority to the Marine Resources Commission (MRC) to convey the easements in the Commonwealth's bottomlands, Virginia Natural Gas, Inc. will be required to file a joint permit application with MRC, and MRC will determine through this application process whether, and under what conditions, to approve the encroachment on the Commonwealth's bottomlands so as to protect natural resources; and

Whereas, Virginia Natural Gas, Inc. currently serves approximately 260,000 customers in the Hampton Roads region through a gas distribution system that is divided into two

noncontiguous pipeline systems, one serving the communities north of Hampton Roads, including the Cities of Hampton, Newport News, Poquoson, and Williamsburg and the Counties of Charles City, Hanover, James City, New Kent, and York (the Northern Pipeline); and one serving communities south of Hampton Roads, including the Cities of Chesapeake, Norfolk, Suffolk, and Virginia Beach (the Southern Pipeline), and there is no connection between these two systems; and

Whereas, the Southern Pipeline has access to only one interstate pipeline and a large majority of the Southern area is supplied through only one gate station; and

Whereas, Virginia Natural Gas, Inc. has been offered the opportunity to receive a substantial quantity of additional natural gas into the Northern Pipeline; and

Whereas, population and customer demand for natural gas has grown significantly over the last 30 years and will continue to grow in the areas served in Hampton Roads; and

Whereas, the availability of additional supply to both the Northern and Southern distribution areas will support future growth at a more favorable price for all Hampton Roads customers; and

Whereas, to improve reliability, ensure sufficient gas supplies for the future, and allow Virginia Natural Gas, Inc. to function as an integrated utility, it is necessary to construct a pipeline that will connect the Northern Pipeline to the Southern Pipeline; and

Whereas, the Virginia State Corporation Commission found the construction of such a pipeline to be in the public interest, and ordered Virginia Natural Gas, Inc. to construct a pipeline, the Hampton Roads Crossing, from its Northern system that will cross the James River/Hampton Roads Channel and tie into the Southern distribution system in Norfolk; and

Whereas, although it is an ordinary or normal service extension in the usual course of business, it will be necessary to place the Hampton Roads Crossing natural gas pipeline in the bed of Hampton Roads Harbor and the Elizabeth River because it is not possible to construct an overhead natural gas line crossing at these important locations due to the danger such an overhead line poses to Hampton Roads Harbor and Elizabeth River Channel ship traffic and to U.S. Norfolk Naval Air Station air traffic; and

Whereas, a submarine crossing at this location will cross within the Baylor Survey Ground Numbers 1 and 3, therefore necessitating an act of the General Assembly; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission (MRC) is hereby authorized to grant and*

*convey to Virginia Natural Gas, Inc., its successors, and assigns, upon such terms and conditions as the MRC, with the approval of the Governor and the Attorney General, shall deem proper, two permanent easements and rights-of-way and a temporary right-of-way of a reasonable width as needed for the purpose of installing, constructing, maintaining, repairing, and operating a submarine natural gas transmission line system in and across the bed of the James River/Hampton Roads Harbor and the Elizabeth River Reach, including a portion of the Baylor Survey, the boundaries of such easements being described as follows:*

*Virginia Natural Gas Baylor Easement "A":*

*Beginning at a point in Hampton Roads Harbor generally located near the northwestern corner of Craney Island Disposal Area, City of Portsmouth, on the southern line of the Baylor Ground designated "Public Ground No. 1" as shown on a map compiled by the Marine Resources Commission as having a coordinate value of North 3,504,038.571 East 12,100,845.956 (coordinate values are based on Virginia State Plane Coordination System, South Zone, NAD 1983/1994 HARN, and expressed in U.S. Survey feet); thence from said point of beginning running N04°37'18"W a distance of 577.81 feet to a point in the northern boundary of said "Public Ground No. 1," thence turning and running along the aforementioned northern boundary line N76°00'38"E a distance of 101.35 feet to a point; thence turning and running, leaving the northern boundary line of "Public Ground No. 1," S04°37'18"E a distance of 602.39 feet to a point in the southern boundary line of "Public Ground No. 1"; thence turning and running along the southern boundary line of "Public Ground No. 1" S89°59'58"W a distance of 100.33 feet to a point, the point of beginning of Easement "A," such easement being 100 feet wide through a portion of the Baylor Ground designated "Public Ground No. 1."*

*Virginia Natural Gas Baylor Easement "B":*

*Beginning at a point in the Elizabeth River generally located near the eastern side of Craney Island Fuel Supply Depot, City of Portsmouth, on the western line of the Baylor Ground designated "Public Ground No. 3" as shown on a map compiled by the Marine Resources Commission as having a coordinate value of North 3,490,484.800 East 12,115,840.924 (coordinate values are based on Virginia State Plane Coordination System, South Zone, NAD 1983/1994 HARN, and expressed in U.S. Survey feet); thence from said point of beginning running S46°55'43"E a distance of 3,902.74 feet to a point in the eastern boundary of "Public Ground No. 3," generally located near Lamberts Point Terminals, City of Norfolk; thence turning and running along the eastern boundary line of "Public Ground No. 3" S20°08'18"W a distance of 108.57 feet to a point; thence turning*

*and running, leaving the aforementioned eastern boundary line of "Public Ground No. 3," N46°55'43"W a distance of 3,827.89 feet to a point in the western boundary line of the Baylor Ground designated "Public Ground No. 3"; thence turning and running along the western boundary line N06°26'47"W a distance of 154.02 feet to a point, the point of beginning of Easement "B," such easement being 100 feet wide through a portion of the Baylor Ground designated "Public Ground No. 3."*

*Virginia Natural Gas Baylor Easement "C":*

*Beginning at a point in the Elizabeth River generally located near the eastern side of Craney Island Fuel Supply Depot, City of Portsmouth on the western line of the Baylor Ground designated "Public Ground No. 3." as shown on map compiled by Marine Resources Commission having a coordinate value of North 3,491,259.652, East 12,115,753.359 (coordinate values are based on Virginia State Plane Coordinate System, South Zone, NAD 1983/1994 HARN, and expressed in U.S. Survey feet); thence from said point of beginning running S69°05'52"E a distance of 3,943.73 feet to a point in the eastern boundary of "Public Ground No. 3," generally located near the southern portion of Old Dominion University, City of Norfolk; thence turning and running along the eastern boundary line of "Public Ground No. 3" S20°08'21"W a distance of 100.01 feet to a point; thence turning and running, leaving the aforementioned eastern boundary line of "Public Ground No. 3," N69°05'52"W, 3,893.34 feet to a point in the western boundary line of the Baylor Ground designated "Public Ground No. 3"; thence turning and running along the western boundary line N06°26'52"W a distance of 112.59 feet to a point, the point of beginning of Easement "C". The above described easement being 100 feet wide through a portion of Baylor Ground designated "Public Ground No. 3."*

*§ 2. None of the property described in § 1 that lies within the Baylor Survey shall be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth.*

*§ 3. The instrument granting and conveying the easements and rights-of-way from the Commonwealth to Virginia Natural Gas, Inc. shall be in a form approved by the Attorney General.*

*§ 4. The Hampton Roads Crossing Pipeline is an ordinary or normal service extension in the usual course of business.*

*2. That an emergency exists and this act is in force from its passage.*

## **Chapter 66 War Memorial; State Treasurer to advance loan for construction of wing.**

An Act to authorize the State Treasurer to advance a no-interest, short-term treasury loan for an educational wing for the Virginia War Memorial.

[\[H 2240\]](#)

Approved February 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That upon certification by the Secretary of Administration that \$2 million in private funds have been raised, are available, and will be used to support construction of an educational wing for the Virginia War Memorial, the State Treasurer shall advance a loan of \$3.5 million to the Department of General Services for the state share of the construction in the form of a short-term treasury loan, with no interest.*

## **Chapter 96 State Firefighter's Association; created.**

An Act to establish the Virginia State Firefighter's Association as a body corporate and politic, to amend and reenact [§ 9.1-202](#) of the Code of Virginia, and to repeal Chapter 343 of the Acts of Assembly of 1896, relating to the Virginia State Firefighter's Association.

[\[S 1090\]](#)

Approved March 8, 2007

Whereas, in Chapter 343 of the Acts of Assembly of 1896, the Virginia State Firemen's Association was created as a body corporate and politic;

Whereas, the Virginia State Firemen's Association has continued in operation since time but has changed its name to the Virginia State Firefighter's Association; and

Whereas, the Virginia State Firefighter's Association shall continue to operate as a body corporate and politic; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia State Firefighter's Association; purposes.*

*The Virginia State Firefighter's Association, created originally under the name and style of the Virginia State Firemen's Association as a body corporate and politic, is hereby affirmed under the name and style of the Virginia State Firefighter's Association. The Association shall continue its status as a body corporate and politic and as such shall have, and is hereby vested with, all of the politic and corporate powers as set forth in this chapter. The Association is established for the purposes of promoting the best interests of firefighters of Virginia, engaging in legislative advocacy to benefit both volunteer and career firefighters and emergency medical service providers and provide for their welfare and safety, supporting volunteer and career fire companies and rescue squads to carry out their mission to protect life and property, disseminating information for the promotion of awareness and education regarding fire safety, assisting fire companies in regard to fire-fighting apparatus and equipment, coordinating with localities in assistance to volunteer and career fire companies and rescue squads in their provision of fire protection services, and providing leadership for the benefit of all fire and rescue companies throughout the Commonwealth of Virginia.*

*§ 2. Membership; governance; officers and committees.*

*The Association shall be governed by a constitution and bylaws that shall provide that any fire and rescue company may become a member in the Association. The Association may provide for the division of its members into districts or other geographic areas in order to provide an efficient means for the organization of the members for its purposes. The constitution and bylaws shall describe the holding of meetings by the members and the voting rights of the members of the Association, including the election and respective terms of a president, vice-presidents, a secretary and a treasurer, together with any other such officers as may be described from time to time by the constitution and bylaws of the Association. Any additional officers may be elected or appointed by the Association, as may be desired by such members from time to time or otherwise described in the constitution and bylaws. The officers elected or otherwise appointed by the members of the Association collectively shall comprise the Board of Directors of the Association. The constitution and bylaws shall provide for an Executive Committee to be comprised of the Board of Directors and a representative from each of the districts or other geographic area divisions represented by the members of the Association, and prescribe the duties and authorities thereof. In addition, the constitution and bylaws may describe, among other things, the establishment or appointment of any other committees of the Association as may be desired by the members from time to time, and prescribe the duties and authorities thereof, in order to carry out the purposes of the Association and to conduct its affairs in furtherance of such purposes.*

*§ 3. Powers generally.*

*The Association is hereby granted all powers necessary or appropriate to carry out its corporate purposes described herein, including, without limitation, the following:*

- 1. To adopt and from time to time amend and repeal the constitution and bylaws, not inconsistent with this chapter, to provide for the governance of the Association and to carry out the powers and purposes as described in this chapter;*
- 2. To have an official seal and to alter the same at pleasure;*
- 3. To maintain offices within the Commonwealth;*
- 4. To borrow money and to accept, hold, and administer contributions, grants and other moneys or property transferred, given, or bequeathed to the Association, absolutely or in trust, for the purposes of the Association, and to determine how to expend or donate such moneys or otherwise distribute such moneys or property, and to authorize the use as determined on terms established by the Board, provided all such acts shall be in furtherance of the purposes of the Association;*
- 5. To engage in any activities to protect life and property and to promote fire safety and education in the Commonwealth;*
- 6. To make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;*
- 7. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter of the parties;*
- 8. To enter into contracts;*
- 9. To acquire property, whether by purchase, lease or otherwise, and to lease, sell or otherwise transfer property;*
- 10. To appoint and prescribe the duties of the officers, agents, employees, advisors, and consultants of the Association as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the Association may determine;*
- 11. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to conditions, acceptable to the Association, upon which aid, grants, contributions and cooperation may be made;*
- 12. To select representatives to serve on the Virginia Fire Services Board established under [§ 9.1-202](#) (or any successor), and any other fire protection and fire safety board, commission, panel, committee, or other entity whose purposes are consistent with or in furtherance of the purposes of the Association; and*
- 13. To do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied and to exercise all powers described herein to achieve the goals and purposes of the Association.*

*§ 4. Public purpose; exemption from taxation.*

*It is to be understood that the exercise of the powers of the Association granted by this chapter shall be in all respects for the benefits of the citizens of the Commonwealth in the promotion of fire safety and fire protection services for their safety, health, welfare, knowledge, convenience and prosperity. The exercise of powers by the Association as described in this chapter is hereby deemed an essential governmental function. Accordingly, the property of the Association and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Association under the provisions and guidelines of this chapter.*

*§ 5. Liberal construction.*

*It is the intent hereby for the provisions of this chapter to be liberally construed in order for the Association to carry out its mission in furtherance of the goals and purposes herein described.*

2. That § [9.1-202](#) of the Code of Virginia is amended and reenacted as follows:

§ [9.1-202](#). Virginia Fire Services Board; membership; terms; compensation.

A. The Virginia Fire Services Board (the Board) is established as a policy board within the meaning of § [2.2-2100](#) in the executive branch of state government. The Board shall consist of 15 members to be appointed by the Governor as follows: a representative of the insurance industry; two members of the general public with no connection to the fire services, one of whom shall be a representative of those industries affected by SARA Title III and OSHA training requirements; and one member each from the Virginia Fire Chief's Association, the Virginia Firemen's *State Firefighter's* Association, the Virginia Association of Professional Firefighters, the Virginia Fire Service Council, the Virginia Fire Prevention Association, the State Chapter of the International Association of Arson Investigators, the Virginia Municipal League, and the Virginia Association of Counties, and a member of the Virginia Chapter of the International Society of Fire Service Instructors who is a faculty member who teaches fire science at a public institution of higher education. Of these appointees, at least one shall be a volunteer firefighter. The State Fire Marshal, the State Forester and a member of the Board of Housing and Community Development, appointed by the chairman of that Board shall also serve as members of the Board.

Each of the organizations represented shall submit names for the Governor's consideration in making these appointments.

B. Members of the Board appointed by the Governor shall serve for terms of four years. An appointment to fill a vacancy shall be for the unexpired term. No appointee shall serve more than two successive four-year terms but neither shall any person serve

beyond the time he holds the office or organizational membership by reason of which he was initially eligible for appointment.

C. The Board annually shall elect its chairman and vice-chairman from among its membership and shall adopt rules of procedure.

D. Members of the Board shall receive such compensation for the performance of their duties as provided in § [2.2-2813](#). All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § [2.2-2825](#). Funding for the compensation and costs of expenses of the members shall be provided from the Fire Programs Fund established pursuant to § [38.2-401](#).

3. That Chapter 343 of the Acts of Assembly of 1896 is repealed.

## **Chapter 202 Subdivision plats; local planning commission, etc to forward to appropriate state agency for review.**

An Act to amend and reenact §§ [15.2-2259](#), [15.2-2260](#), and [15.2-2269](#) of the Code of Virginia, relating to authority to review subdivision plats.

[\[H 2544\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-2259](#), [15.2-2260](#), and [15.2-2269](#) of the Code of Virginia are amended and reenacted as follows:

§ [15.2-2259](#). Local planning commission to act on proposed plat.

A. The local planning commission or other agent shall act on any proposed plat within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat and shall make a good faith effort to identify all deficiencies, if any, with the initial submission. *However, if approval of a feature or features of the plat by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat to the appropriate state agency or agencies for review within 10 business days of receipt of such plat. The state agency shall respond in accord with the requirements set forth in § [15.2-2222.1](#), which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B.* Specific reasons for disapproval shall be contained either in a

separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat. The local planning commission or other agent shall act on any proposed plat that it has previously disapproved within 45 days after the plat has been modified, corrected and resubmitted for approval.

*B. Any state agency or public authority authorized by state law making a review of a plat forwarded to it under this article, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51 (§ [15.2-5100](#) et seq.), shall complete its review within 45 days of receipt of the plat upon first submission and within 45 days for any proposed plat that has previously been disapproved, provided, however, that the time periods set forth in § [15.2-2222.1](#) shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ [15.2-5100](#) et seq.) shall allow use of public rights-of-way dedicated for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plat approval. If a state agency or public authority authorized by state law does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A, with the exception of the time period therein specified. Upon receipt of the approvals from all state agencies and other agencies, the local agent shall act upon a plat within 35 days.*

*C. If the commission or other agent fails to approve or disapprove the plat within 60 days after it has been officially submitted for approval, or within 45 days after it has been officially resubmitted after a previous disapproval or within 35 days of receipt of any agency response pursuant to subsection B, the subdivider, after 10-days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located, to decide whether the plat should or should not be approved. The court shall give the petition priority on the civil docket, hear the matter expeditiously in accordance with the procedures prescribed in Article 2 (§ [8.01-644](#) et seq.) of Chapter 25 of Title 8.01 and make and enter an order with respect thereto as it deems proper, which may include directing approval of the plat.*

*⊖D. If a commission or other agent disapproves a plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the written disapproval by the commission or other agent.*

§ [15.2-2260](#). Localities may provide for submission of preliminary subdivision plats; how long valid.

A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning commission, or an agent designated by the commission or by the governing body to review preliminary subdivision plats shall complete action on the preliminary plats within ~~sixty~~ 60 days of submission. However, if approval of a feature or features of the preliminary plat by a state agency *or public authority authorized by state law* is necessary, the commission or agent shall forward the preliminary plat to the appropriate state agency or agencies for review within 10 business days of receipt of such preliminary plat.

B. Any state agency *or public authority authorized by state law* making a review of a *preliminary* plat forwarded to it under this section, including, without limitation, the Virginia Department of Transportation *and authorities authorized by Chapter 51* (§ [15.2-5100](#) *et seq.*), shall complete its review within ~~forty-five~~ 45 days of receipt of the preliminary plat *upon first submission and within 45 days for any proposed plat that has previously been disapproved, provided, however, that the time period set forth in § [15.2-2222.1](#) shall apply to plats triggering the applicability of said section.* The Virginia Department of Transportation *and authorities authorized by Chapter 51* (§ [15.2-5100](#) *et seq.*) shall allow use of ~~its~~ public rights-of-way *for public street purposes* for placement of utilities by permit when practical and shall not unreasonably deny plat approval. If a state agency *or public authority authorized by state law* does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in § [15.2-2259](#) A with the exception of the time period therein specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary plat within ~~thirty-five~~ 35 days.

C. If a commission has the responsibility of review of preliminary plats and conducts a public hearing, it shall act on the plat within forty-five days after receiving approval from all state agencies. If the local agent or commission does not approve the preliminary plat, the local agent or commission shall set forth in writing the reasons for such denial and shall state what corrections or modifications will permit approval by such agent or commission. However, no commission or agent shall be required to approve a preliminary subdivision plat in less than sixty days from the date of its original submission to the commission or agent, and all actions on preliminary subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within a total of ninety days of submission to the local agent or commission.

D. If the commission or other agent fails to approve or disapprove the preliminary plat within ninety days after it has been officially submitted for approval, the subdivider after ten days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located to enter an order with respect thereto as it deems proper, which may include directing approval of the plat.

E. If a commission or other agent disapproves a preliminary plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within sixty days of the written disapproval by the commission or other agent.

F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years, provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within one year of such approval or such longer period as may be prescribed by local ordinance, and (ii) thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modifications thereto. However, no sooner than three years following such preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the subdivider, the commission or other agent may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat.

§ [15.2-2269](#). Plans and specifications for utility fixtures and systems to be submitted for approval.

A. If the owners of any such subdivision desire to construct in, on, ~~or~~ under, *or adjacent to* any streets or alleys located in such subdivision any gas, water, sewer or electric light or power works, pipes, wires, fixtures or systems, they shall present plans or specifications therefor to the governing body of the locality in which the subdivision is located or its authorized agent, for approval. If the subdivision is located beyond the corporate limits of a municipality but within the limits set forth in § [15.2-2248](#), such plans and specifications shall be presented for approval to the governing body of such municipality, or its authorized agent, if the county has not adopted a subdivision ordinance. The governing body, or agent, shall have ~~thirty~~ 45 days in which to approve or disapprove the same. In event of the failure of any governing body, or its agent, to act within such period, such plans and specifications may be submitted, after ten days' notice to the locality, to the circuit court for such locality for its approval or disapproval, and its

approval thereof shall, for all purposes of this article be treated and considered as approval by the locality or its authorized agent.

*B. Any state agency or public authority authorized by state law making a review of any plat forwarded to it under this article, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51 (§ [15.2-5100](#) et seq.), shall complete its review within 45 days of receipt of the plans, provided, however, that the time periods set forth in § [15.2-2222.1](#) shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ [15.2-5100](#) et seq.) shall allow use of public rights-of-way dedicated for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plan approval. If a state agency or public authority by state law does not approve the plan, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A of § [15.2-2259](#), with respect to the exception of the time period therein specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary plat within 35 days.*

## **Chapter 378 Washington Metropolitan Area Transit Commission; change in membership.**

An Act to amend and reenact § 2.1 of Chapter 890 of the Acts of Assembly of 1988, relating to the composition of the Washington Metropolitan Area Transit Commission.

[\[S 1099\]](#)

Approved March 15, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 2.1 of Chapter 890 of the Acts of Assembly of 1988 is amended and reenacted as follows:

§ 2.1. Washington Metropolitan Area Transit Regulation Compact.-Whereas, the Commonwealth of Virginia (Chapter 627, 1958 Acts of Assembly), the State of Maryland (Chapter 613, Acts of General Assembly, 1959), and the Commissioners of the District of Columbia (resolution of the Board of Commissioners, December 22, 1960) entered into and executed the Washington Metropolitan Area Transit Regulation Compact on December 22, 1960; and

Whereas, the Congress of the United States has, by joint resolution approved October 9, 1962 (Public Law 87-767,. 76 Stat. 764), given its consent to the State of Maryland, and the Commonwealth of Virginia to effectuate certain clarifying amendments to the Compact, and has authorized and directed the Commissioners of the District of Columbia to effectuate the amendments on behalf of the United States for the District of Columbia; and

Whereas, the Commonwealth of Virginia (Chapter 67, 1.962 Acts of Assembly), the State of Maryland (Chapter 114, Acts of General Assembly, 1962), and the Commissioners of the District of Columbia (resolution of the Board of Commissioners adopted on March 19, 1.963) have adopted those clarifying amendments to the Compact;

Now, therefore, the State of Maryland, the Commonwealth of Virginia and the District of Columbia, hereafter referred to as the signatories, covenant and agree as follows:

#### TITLE I.

#### GENERAL COMPACT PROVISIONS.

##### Article I.

There is created the Washington Metropolitan Area Transit District, referred to as the Metropolitan District, which shall include: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports.

##### Article II.

1. The signatories hereby create the "Washington Metropolitan Area Transit Commission," hereafter called the "Commission," which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland, and shall have the powers and duties set forth in the Compact and those additional powers and additional powers and duties conferred upon it by subsequent action of the signatories.
2. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation of passenger transportation within the Metropolitan District on a coordin-

ated basis, without regard to political boundaries within the Metropolitan District, as set forth in this Compact.

Article III.

1. (A) The Commission shall be composed of three members, one member appointed by the Governor of Virginia from the ~~State Corporation Commission~~ *Department of Motor Vehicles* of the Commonwealth of Virginia, one member appointed by the Governor of Maryland from the Maryland Public Service Commission, and one member appointed by the Mayor of the District of Columbia from the Public Service Commission of the District of Columbia.

(B) A member appointed shall serve for a term coincident with the term of that member on the agency of the signatory, and a member may be removed or suspended from office as the law of the appointing signatory provides.

(C) Vacancies shall be filled for an unexpired term in the same manner as an original appointment.

2. A person in the employment of or holding an official relation to a person or company subject to the jurisdiction of the Commission or having an interest of any nature in a person or company or affiliate or associate thereof, may not hold the office of commissioner or serve as an employee of the Commission or have any power or duty or receive any compensation in relation to the Commission.

3. (A) The Commission shall select a chairman from among its members.

(B) The chairman shall be responsible for the Commission's work and shall have all powers to discharge that duty.

4. A signatory may pay the Commissioner from its jurisdiction the salary or expenses, if any, that it considers appropriate.

5. (A) The Commission may employ engineering, technical, legal, clerical, and other personnel on a regular, part-time, or consulting basis to assist in the discharge of its functions.

(B) The Commission is not bound by any statute or regulation of a signatory in the employment or discharge of an officer or employee of the Commission, except that contained in this Compact.

6. The Commission shall establish its office at a location to be determined by the Commission within the Metropolitan District and shall publish rules and regulations governing the conduct of its operations.

Article IV.

1. (A) The signatories shall bear the expenses of the Commission in the manner set forth here.

(B) The Commission shall submit to the Governor of Virginia, the Governor of Maryland, and the Mayor of the District of Columbia, when requested, a budget of its requirements for the period required by the laws of the signatories for presentation to the legislature.

(C) The Commission shall allocate its expenses among the signatories in the proportion that the population of each signatory within the Metropolitan District bears to the total population of the Metropolitan District.

(D) (I) The Commission shall base its allocation on the latest available population statistics of the Bureau of the Census; or

(II) If current population data are not available, the Commission may, upon the request of a signatory, employ estimates of population prepared in a manner approved by the Commission and by the signatory making the request.

(E) The Governors of the two states and the Mayor of the District of Columbia shall approve the allocation made by the Commission.

2. (A) The signatories shall appropriate their proportion of the budget for the expenses of the Commission and shall pay that appropriation to the Commission.

(B) The budget of the Commission and the appropriations of the signatories may not include a sum for the payment of salaries or expenses of the Commissioners.

(C) The provisions of § 2.1-30 of the Code of Virginia do not apply to any official or employee of the Commonwealth of Virginia acting or performing services under this Act.

3. (A) If the Commission requests and a signatory makes available personnel, services, or material which the Commission would otherwise have to employ or purchase, the Commission shall:

(I) determine an amount; and

(II) reduce the expenses allocable to a signatory.

(B) If any services in kind are rendered, the Commission shall return to the signatory an amount equivalent to the savings to the Commission represented by the contribution in kind.

4. (A) The Commission shall have the power to establish fees under regulations, including but not limited to filing fees and annual fees.

(B) The Commission shall return to the signatories fees established by it in proportion to the share of the Commission's expenses borne by each signatory in the fiscal year during which the fees were collected.

5. (A) The Commission shall keep accurate books of account, showing in full its receipts and disbursements.

(B) The books of account shall be open for inspection by representatives of the respective signatories at any reasonable time.)

Article V.

1. An action by the Commission may not be effective unless a majority of the members concur.
2. An order entered by the Commission under the provisions of Title II of this Act which affect operations or matters solely intrastate or solely within the District of Columbia may not be effective unless the Commissioner from the affected signatory concurs.
3. Two members of the Commission are a quorum.
4. The Commission may delegate by regulation the tasks that it considers appropriate.

Article VI.

This Compact does not amend, alter, or affect the power of the signatories and their political subdivisions to levy and collect taxes on the property or income of any person or company subject to this Act or upon any material, equipment, or supplies purchased by that person or company or to levy, assess, and collect franchise or other similar taxes, or fees for the licensing of vehicles and their operation.

Article VII.

This amended Compact shall become effective ninety days after the signatories adopt it.

Article VIII.

1. (A) This Compact may be amended from time to time without the prior consent or approval of the Congress of the United States and any amendment shall be effective unless, within one year, the Congress disapproves that amendment.  
(B) An amendment may not be effective unless adopted by each of the signatories.
2. (A) A signatory may withdraw from the Compact upon written notice to the other signatories.  
(B) In the event of a withdrawal, the Compact shall be terminated at the end of the Commission's next full fiscal year following the notice.
3. Upon the termination of this Compact, the jurisdiction over the matters and persons covered by this Act shall revert to the signatories and the federal government, as their interests may appear, and the applicable laws of the signatories and the federal government shall be reactivated without further legislation.

Article IX.

Each of the signatories pledges to each of the other signatories faithful cooperation in the regulation of passenger transportation within the Metropolitan District and agrees to

enact any necessary legislation to achieve the objectives of the Compact for the mutual benefit of the citizens living in the Metropolitan District.

Article X.

1. If a provision of this Act or its application to any person or circumstance is held invalid in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

2. In accordance with the ordinary rules for construction of interstate compacts, this Act shall be liberally construed to effectuate its purposes.

TITLE II.

COMPACT REGULATORY PROVISIONS.

Article XI.

1. This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District, including but not limited to:

(A) As to interstate and foreign commerce, transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District if:

(I) The majority of passengers transported over that regular route are transported between points within the Metropolitan District; and

(II) That regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission; and

(B) The rates, charges, regulations, and minimum insurance requirements for taxicabs and other vehicles that perform a bona fide taxicab service, where the taxicab or other vehicle:

(I) has a seating capacity of nine persons or less, including the driver; and

(II) provides transportation from one signatory to another within the Metropolitan District.

2. Solely for the purposes of this section and Section 18 of this Article:

(A) The Metropolitan District shall include that portion of Anne Arundel County, Maryland, occupied by the Baltimore-Washington International Airport; and

(B) Jurisdiction of the Commission shall apply to taxicab rates, charges, regulations, and minimum insurance requirements for interstate transportation between the Baltimore-Washington International Airport and other points in the Metropolitan District, unless conducted by a taxicab licensed by the state of Maryland or a political subdivision of the state of Maryland, or operated under a contract with the state of Maryland.

3. Excluded from the application of this Act are:

- (A) Transportation by water, air, or rail;
- (B) Transportation performed by the federal government, the signatories to this Compact, or any political subdivision of the signatories;
- (C) Transportation performed by the Washington Metropolitan Area Transit Authority;
- (D) Transportation by a motor vehicle employed solely in transporting teachers and school children through grade 12 to or from public or private schools;
- (E) Transportation performed over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between those points on the regular route that are within the Metropolitan District, if:
  - (I) the majority of passengers transported over the regular route are not transported between points in the Metropolitan District; and
  - (II) the regular route is authorized by a certificate of public convenience and necessity issued by the Interstate Commerce Commission;
- (F) Matters other than rates, charges, regulations, and minimum insurance requirements relating to vehicles and operations described in sections 1(B) and 2 of this article;
- (G) Transportation solely within the Commonwealth of Virginia and the activities of persons performing that transportation; and
- (H) The exercise of any power or the discharge of any duty conferred or imposed upon the State Corporation Commission of the Commonwealth of Virginia by the Virginia Constitution.

Definitions.

4. In this Act the following words have the meanings indicated.

- (A) "Carrier" means a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire.
- (B) "Motor vehicle" means an automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.
- (C) "Person" means an individual, firm, copartnership, corporation, company, association or joint stock association, and includes a trustee, receiver, assignee, or personal representative of them.
- (D) "Taxicab" means a motor vehicle for hire (other than a vehicle operated under a certificate of Authority issued by the Commission) having a seating capacity of nine persons or less, including the driver, used to accept or solicit passengers along the public streets for transportation.

General Duties of Carriers.

5. Each authorized carrier shall:

- (A) Provide safe and adequate transportation service, equipment, and facilities; and
- (B) Observe and enforce Commission regulations established under this Act.

Certificates of Authority.

6. (A) A person may not engage in transportation subject to this Act unless there is in force a "certificate of Authority" issued by the Commission authorizing the person to engage in that transportation.

(B) On the effective date of this Act a person engaged in transportation subject to this Act under an existing "certificate of Public Convenience and Necessity" or order issued by the Commission shall be issued a new "certificate of Authority" within 120 days after the effective date of this amendment.

(C) (I) Pending issuance of the new certificate of Authority, the continuance of operations shall be permitted under an existing certificate or order issued by the Commission which will continue in effect on the effective date of this Act.

(II) The operations described in paragraph (I) of this subsection shall be performed according to the rates, regulations, and practices of the certificate holder on file with the Commission on the effective date of this Act.

7. (A) When an application is made under this section for a certificate of Authority, the Commission shall issue a certificate to any qualified applicant, authorizing all or any part of the transportation covered by the application, if it finds that:

(I) The applicant is fit, willing, and able to perform that transportation properly, conform to the provisions of this Act, and conform to the rules, regulations and requirements of the Commission; and

(II) That the transportation is consistent with the public interest.

(B) If the Commission finds that the requirements of subsection (A) of this section have not been met, the application shall be denied by the Commission.

(C) The Commission shall act upon applications under this Act as soon as possible.

(D) The Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest.

(E) A term, condition, or limitation imposed by the Commission may not restrict the right of a carrier to add to equipment and facilities over the routes or within the territory specified in the certificate, as business development and public demand may require.

(F) A person applying for or holding a certificate of Authority shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay any final judgment against a carrier for bodily injury or death of a person,

or for loss or damage to property of another, resulting from the operation, maintenance, or use of a motor vehicle or other equipment in performing transportation subject to this Act.

(G) A certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.

8. Application to the Commission for a certificate under this Act shall be:

(A) Made in writing;

(B) Verified; and

(C) In the form and with the information that the Commission regulations require.

9. (A) A certificate of Authority issued by the Commission shall specify the route over which a regularly scheduled commuter service or other regular-route service will operate.

(B) A certificate issued by the Commission authorizing irregular-route service shall be coextensive with the Metropolitan District.

(C) A carrier subject to this Act may not provide any passenger transportation for hire on an individual fare paying basis in competition with an existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the federal government, a signatory to the Compact, a political subdivision of a signatory, or the Washington Metropolitan Area Transit Authority, notwithstanding any "Certificate of Authority."

(D) A certificate for the transportation of passengers may include authority to transport newspapers, passenger baggage, express, or mail in the same vehicle, or to transport passenger baggage in a separate vehicle.

10. (A) Certificates shall be effective from the date specified on them and shall remain in effect until amended, suspended, or terminated.

(B) Upon application by the holder of a certificate, the Commission may suspend, amend, or terminate the Certificate of Authority.

(C) Upon complaint or the Commission's own initiative, the Commission, after notice and hearing, may suspend or revoke all or part of any Certificate of Authority for willful failure to comply with:

(I) A provision of this Act;

(II) An order, rule, or regulation of the Commission; or

(III) A term, condition, or limitation of the certificate.

(D) The Commission may direct that a carrier cease an operation conducted under a certificate if the Commission finds the operation, after notice and hearing, to be inconsistent with the public interest.

11. (A) A person may not transfer a Certificate of Authority unless the Commission approves the transfer as consistent with the public interest.

(B) A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

12. (A) A carrier may not abandon any scheduled commuter service operated under a Certificate of Authority issued to the carrier under this Act, unless the Commission authorizes the carrier to do so by a Commission order.

(B) Upon application by a carrier, the Commission shall issue an order, after notice and hearing, if it finds that abandonment of the route is consistent with the public interest.

(C) The Commission, by regulation or otherwise, may authorize the temporary suspension of a route if it is consistent with the public interest.

(D) As long as the carrier has an opportunity to earn a reasonable return in all its operations, the fact that a carrier is operating a service at a loss will not, of itself, determine the question of whether abandonment of service is consistent with the public interest.

13. (A) When the Commission finds that there is an immediate need for service that is not available, the Commission may grant temporary authority for that service without a hearing or other proceeding up to a maximum of 180 consecutive days, unless suspended or revoked for good cause.

(B) A grant of temporary authority does not create any presumption that permanent authority will be granted at a later date.

#### Rates and Tariffs.

14. (A) Each carrier shall file with the Commission, publish, and keep available for public inspection tariffs showing:

(I) Fixed-rates and fixed-fares for transportation subject to this Act; and

(II) Practices and regulations, including those affecting rates and fares, required by the Commission.

(B) Each effective tariff shall:

(I) Remain in effect for at least 60 days from its effective date, unless the Commission orders otherwise; and

(II) Be published and kept available for public inspection in the form and manner prescribed by the Commission.

(C) A carrier may not charge a rate or fare for transportation subject to this Act other than the applicable rate or fare specified in a tariff filed by the carrier under this Act and in effect at the time.

15. (A) A carrier proposing to change a rate, fare, regulation, or practice specified in an effective tariff shall file a tariff showing the change in the form and manner, and with the information, justification, notice, and supporting material prescribed by the Commission.

(B) Each tariff filed under subsection (A) of this section shall state a date on which the tariff shall take effect, which shall be at least seven calendar days after the date on which the tariff is filed, unless the Commission orders an earlier effective date or rejects the tariff.

(C) (I) A tariff filed for approval with the Commission may be refused acceptance for filing if it is not consistent with this Act and Commission regulations; and

(II) A tariff refused for filing shall be void.

16. (A) The Commission may hold a hearing upon complaint or upon the Commission's own initiative after reasonable notice to determine whether a rate, fare, regulation, or practice relating to a tariff is unjust, unreasonable, unduly discriminatory, or unduly preferential between classes of riders or between locations within the Metropolitan District.

(B) Within 120 days of the hearing, the Commission shall pass an order prescribing the lawful rate, fare, regulation, or practice, or affirming the tariff.

Through Routes, Joint Fares.

17. With the approval of the Commission, any carrier subject to this Act may establish through routes and joint fares with any other lawfully authorized carrier.

Taxicab Fares.

18. (A) the Commission shall prescribe reasonable rates for transportation by taxicab, only when:

(I) The trip is between a point in the jurisdiction of one signatory and a point in the jurisdiction of another signatory; and

(II) Both points are within the Metropolitan District.

(B) The fare or charge for taxicab transportation may be calculated on a mileage basis, a zone basis, or on any other basis approved by the Commission.

(C) The Commission may not require the installation of a taximeter in any taxicab when a taximeter is not permitted or required by the jurisdiction licensing and otherwise regulating the operation and service of the taxicab.

(D) A person licensed by a signatory to own or operate a taxicab shall comply with Commission regulations regarding maintenance of a surety bond, insurance policy, self-insurance qualification, or other security or agreement in an amount that the Commission may require to pay a final judgment for bodily injury or death of a person, or for loss or damage to property of another, resulting from the operation, maintenance, or use of a taxicab in performing transportation subject to this Act.

Article XII.

Accounts, Records, and Reports.

1. (A) The Commission may prescribe that any carrier subject to this Act:

(I) Submit special reports and annual or other periodic reports;

(II) Make reports in a form and manner required by the Commission;

(III) Provide a detailed answer to any question about which the Commission requires information;

(IV) Submit reports and answers under oath; and

(V) Keep accounts, records, and memoranda of its activity, including movement of traffic and receipt and expenditure of money in a form and for a period required by the Commission.

(B) The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.

(C) This section shall apply to any person controlling, controlled by, or under common control with a carrier subject to this Act, whether or not that person otherwise is subject to this Act.

(D) A carrier that has its principal office outside of the Metropolitan District J operates both inside and outside of the Metropolitan District may keep all accounts, records, and memoranda at its principal office, but the carrier shall produce those materials before the Commission when directed by the Commission.

(E) This section does not relieve a carrier from recordkeeping or reporting obligations imposed by a state or federal agency or regulatory commission for transportation service rendered outside the Metropolitan District.

Issuance of Securities.

2. This Act does not impair any authority of the federal government and the signatories to regulate the issuance of securities by a carrier.

Consolidations, Mergers, and Acquisition of Control.

3. (A) A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to:

(I) Consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;

(II) Purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or

(III) Acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

(B) Application for Commission approval of a transaction under this section shall be made in the form and with the information that the regulations of the Commission require.

(C) If the Commission finds, after notice and hearing, that the proposed transaction is consistent with the public interest, the Commission shall pass an order authorizing the transaction.

(D) Pending determination of an application filed under this section, the Commission may grant "temporary approval" without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest.

#### Article XIII.

#### Investigations by the Commission and Complaints.

1. (A) A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of this Act, or in violation of a requirement established under it.

(B) (I) If the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter.

(II) If the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing.

(III) The Commission shall notify a respondent that a complaint has been filed at least ten days before a hearing is set on the complaint.

(C) The Commission may investigate on its own motion a fact, condition, practice, or matter to;

(I) Determine whether a person has violated or will violate a provision of this Act or a rule, regulation, or order;

(II) Enforce the provisions of this Act or prescribe or enforce rules or regulations under it; or

(III) Obtain information to recommend further legislation.

(D) If, after hearing, the Commission finds that a respondent has violated a provision of this Act or any requirement established under it, the Commission shall;

(I) Issue an order to compel the respondent to comply with this Act; and

(II) Effect other just and reasonable relief.

(E) For the purpose of an investigation or other proceeding under this Act, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence,

memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.

Hearings; Rules of Procedure.

2. (A) Hearings under this Act shall be held before the Commission, and records shall be kept.

(B) Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under this Act, but the Commission may apply the technical rules of evidence when appropriate.

Administrative powers of Commission; Rules, Regulations, and Orders.

3. (A) The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of this Act.

(B) The rules and regulations of the Commission shall prescribe the form of any statement, declaration, application, or report filed with the Commission, the information it shall contain, and the time of filing.

(C) The rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe, unless a different date is specified.

(D) Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe.

(E) For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for them.

(F) Commission rules and regulations shall be available for public inspection during reasonable business hours.

Reconsideration of Orders.

4. (A) A party to a proceeding affected by a final order or decision of the Commission may file within thirty days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.

(B) The Commission shall grant or deny the application within thirty days after it has been filed.

(C) If the Commission does not grant or deny the application by order within thirty days, the application shall be deemed denied.

(D) If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.

(E) Filing an application for reconsideration may not act as a stay upon the execution of a Commission order or decision, or any part of it unless the Commission orders otherwise.

(F) An appeal may not be taken from an order or decision of the Commission until an application for reconsideration has been filed and determined.

(G) Only an error specified as a ground for reconsideration may be used as a ground for judicial review.

Judicial Review.

5. (A) Any party to a proceeding under this Act may obtain a review of the Commission's order in the United States Court of Appeals for the Fourth Circuit, or in the United States Court of Appeals for the District of Columbia Circuit, by filing within sixty days after Commission determination of an application for reconsideration, a written petition praying that the order of the Commission be modified or set aside.

(B) A copy of the petition shall be delivered to the office of the Commission and the Commission shall certify and file with the court a transcript of the record upon which the Commission order was entered.

(C) The court shall have exclusive jurisdiction to affirm, modify, remand for reconsideration, or set aside the Commission's order.

(D) The court's judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in Title 28 U.S.C. §§ 1254 and 2350.

(E) The commencement of proceedings under subsection (A) of this section may not operate as a stay of the Commission's order unless specifically ordered by the court.

(F) The Commission and its members, officers, agents, employees, or representatives are not liable to suit or action or for any judgment or decree for damages, loss, or injury resulting from action taken under the Act, nor required in any case arising or any appeal taken under this Act to make a deposit, pay costs, or pay for service to the clerks of a court or to the marshal of the United States or give a supersedeas bond or security for damages.

Enforcement of Act; Penalty for Violations.

6. (A) Whenever the Commission determines that a person is engaged or will engage in an act or practice which violates a provision of this Act or a rule, regulation, or order under it, the Commission may bring an action in the United States District Court in the district in which the person resides or conducts business or in which the violation occurred to enjoin the act or practice and to enforce compliance with this Act or a rule, regulation, or order under it.

(B) If the court makes a determination under subsection (A) of this section, that a person has violated or will violate this Act or a rule, regulation, or order under the Act, the court shall grant a permanent or temporary injunction or decree or restraining order without bond.

(C) Upon application of the Commission, the United States District Court for the district in which the person resides or conducts business, or in which the violation occurred, shall have jurisdiction to issue an order directing that person to comply with the provisions of this Act or a rule, regulation, or order of the Commission under it, and to effect other just and reasonable relief.

(D) The Commission may employ attorneys necessary for:

(I) The conduct of its work;

(II) Representation of the public interest in Commission investigations, cases or proceedings on the Commission's own initiative or upon complaint; or

(III) Representation of the Commission in any court case.

(E) The expenses of employing an attorney shall be paid out of the funds of the Commission, unless otherwise directed by the court.

(F) (I) A person who knowingly and willfully violates a provision of this Act, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.

(II) Each day of the violation shall constitute a separate violation.

(III) Civil forfeitures shall be paid to the Commission with interest as assessed by the court.

(IV) The Commission shall pay to each signatory a share of the civil forfeitures and interest equal to the proportional share of the Commission's expenses borne by each signatory in the fiscal year during which the civil forfeiture is collected by the Commission.

Article XIV.

Expenses of Investigations and Other Proceedings.

1. (A) A carrier shall bear all expenses of an investigation or other proceeding conducted by the Commission concerning the carrier, and all litigation expenses, including appeals, arising from an investigation or other proceeding.

(B) When the Commission initiates an investigation or other proceeding, the Commission may require the carrier to pay to the Commission a sum estimated to cover the expenses that will be incurred under this section.

(C) Money paid by the carrier shall be deposited in the name and to the credit of the Commission, in any bank or other depository located in the Metropolitan District designated

by the Commission, and the Commission may disburse that money to defray expenses of the investigation, proceeding, or litigation in question.

(D) The Commission shall return to the carrier any unexpended balance remaining after payment of expenses.

Applicability of Other Laws.

2. (A) The applicability of each law, rule, regulation, or order of a signatory relating to transportation subject to this Act shall be suspended on the effective date of this Act.

(B) The provisions of subsection (A) of this section do not apply to a law of a signatory relating to inspection of equipment and facilities.

(C) During the existence of the Compact, the jurisdiction of the Interstate Commerce Commission is suspended to the extent it is in conflict with the provisions of this Act.

Existing Rules, Regulations, Orders, and Decisions.

3. All Commission rules, regulations, orders, or decisions that are in force on the effective date of this Act shall remain in effect and be enforceable under this Act, unless otherwise provided by the Commission.

Pending Actions or Proceedings.

4. A suit, action, or other judicial proceeding commenced prior to the effective date of this Act by or against the Commission is not affected by the enactment of this Act and shall be prosecuted and determined under the law applicable at the time the proceeding was commenced.

Annual Report of the Commission.

5. The Commission shall make an annual report for each fiscal year ending June 30, to the Governor of Virginia and the Governor of Maryland, and to the Mayor of the District of Columbia as soon as practicable after June 30, but no later than the first day of January of each year, which may contain, in addition to a report of the work performed under this Act, other information and recommendations concerning passenger transportation within the Metropolitan District as the Commission considers advisable.

## **Chapter 433 Higher Educational Institutions Bond Act of 2007; created.**

An Act to authorize the issuance of bonds, in an amount up to \$103,550,000 plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale

of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 1711\]](#)

Approved March 19, 2007

Whereas, Article X, Section 9(c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9(c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9(c) of the Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2007."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ...." in an aggregate principal amount not exceeding \$103,550,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by*

*the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>Christopher Newport University</i>	<i>Construct Residence Hall V</i>	<i>17359</i>	<i>7,667,000</i>
<i>George Mason University</i>	<i>Renovate Commonwealth and Dominion housing facilities</i>	<i>16690</i>	<i>1,770,000</i>
<i>George Mason University</i>	<i>Renovate student housing, President's Park I</i>	<i>17050</i>	<i>7,200,000</i>
<i>George Mason University</i>	<i>Construct student housing VII</i>	<i>17056</i>	<i>4,000,000</i>

Uncodified Acts of Assembly - 2007

<i>James Madison</i>	<i>Renovate Bluestone Resi-</i>		
<i>University</i>	<i>dence Hall, Phase 3</i>	<i>16687</i>	<i>2,360,000</i>
<i>James Madison</i>	<i>Construct Dining Hall</i>		
<i>University</i>		<i>17439</i>	<i>3,0-</i>
<i>00,000</i>			
<i>Old Dominion</i>	<i>Construct Residence Hall,</i>		
<i>University</i>			
	<i>Phase II</i>	<i>17342</i>	<i>3,535,000</i>
<i>Virginia Commonwealth</i>	<i>Monroe Park Housing</i>		
<i>University</i>			
		<i>17109</i>	<i>15,273,000</i>
<i>Virginia Polytechnic</i>	<i>Construct New Residence</i>		
<i>Institute and State</i>	<i>Hall</i>		
<i>University</i>			
		<i>17478</i>	<i>27,000,000</i>
<i>Virginia State</i>	<i>Construct Residence Halls</i>		

University		17307	2,068,000
Virginia State	Construct Dining Hall		
University		17309	3,424,000
Virginia State	Construct Two Residence		
University	Halls	17479	26,253,000
Total			
			\$103,550,000

*§ 3. Application of Proceeds. The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and*

*premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9(a)(3), 9(b), and 9(c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series . . .".*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized*

*rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a*

*principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act that can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 531 Virginia Coal Heritage Trail; designating as certain highway segments in Southwest Virginia.**

An Act to designate certain highway segments as the "Virginia Coal Heritage Trail" and to designate those highway segments as Virginia byways.

[\[H 3094\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The following highway segments are hereby designated the "Virginia Coal Heritage Trail":*

*1. Virginia Route 102 in Tazewell County and Mercer County, West Virginia, 10.83 miles, from Pocahontas to Bluefield;*

*2. U.S. Routes 19 and 460 in Tazewell County, 17.43 miles, from Bluefield to Tazewell;*

*3. U.S. Routes 19 and 460 in Tazewell County, 13.66 miles, from Tazewell to Claypool Hill;*

*4. U.S. Route 460 in Tazewell County, 2.31 miles, from Claypool Hill to Cedar Bluff;*

*5. U.S. Route 460 in Tazewell County, 1.97 miles, from Cedar Bluff to Virginia Route 67 at Richlands;*

6. Virginia Route 67 in Tazewell County, 7.10 miles, from Richlands to Jewell Ridge;
7. Virginia Route 67 in Tazewell County, 0.32 mile, from Jewell Ridge to Virginia Route 616 in Buchanan County;
8. Virginia Route 616 in Buchanan County, 0.92 mile, from Virginia Route 67 to Virginia Route 621;
9. Virginia Route 621 in Buchanan County, 1.00 mile, from Virginia Route 616 to Virginia Route 635;
10. Virginia Route 635 in Buchanan County, 7.66 miles, from Virginia Route 621 to Virginia Route 638 at Whitewood;
11. Virginia Route 638 in Buchanan County, 2.56 miles, from Virginia Route 635 to Virginia Route 628;
12. Virginia Route 628 in Buchanan County, 3.72 miles, from Virginia Route 638 to Virginia Route 639;
13. Virginia Route 639 in Buchanan County, 4.00 miles, from Virginia Route 628 to Virginia Route 83;
14. Virginia Route 83 in Buchanan County, 1.63 miles, from Virginia Route 639 to Virginia Route 640 at Slate;
15. Virginia Route 640 in Buchanan County, 0.21 mile, from Virginia Route 83 to Virginia Route 641;
16. Virginia Route 641 in Buchanan County, 4.88 miles, from Virginia Route 640 to Virginia Route 638;
17. Virginia Route 638 in Buchanan County, 3.87 miles, from Virginia Route 641 to Virginia Route 666;
18. Virginia Route 638 in Buchanan County, 1.13 miles, from Virginia Route 666 to U.S. Route 460;
19. U.S. Route 460 in Buchanan County, 3.77 miles, from Virginia Route 638 to Virginia Route 83 at Vasant;
20. Virginia Route 83 and U.S. Route 460 in Buchanan County, 4.29 miles, from Vasant to Grundy;
21. Virginia Route 83 in Buchanan County, 4.44 miles, from Grundy to Virginia Route 642;
22. Virginia Route 642 in Buchanan County, 4.54 miles, from Virginia Route 83 to Virginia Route 651;
23. Virginia Route 651 in Buchanan County, 0.74 mile, from Virginia Route 642 to Virginia Route 650 at Roseanne;

24. *Virginia Route 650 in Buchanan County, 5.97 miles, from Virginia Route 651 at Roseanne to Virginia Route 659;*
25. *Virginia Route 650 in Buchanan County, 2.27 miles, from Virginia Route 659 to Virginia Route 700 at Thomas;*
26. *Virginia Route 700 in Buchanan County, 1.09 miles, from Virginia Route 650 at Thomas to Virginia Route 645 at Big Rock;*
27. *Virginia Route 645 in Buchanan County, 0.06 mile, from Virginia Route 700 at Big Rock to U.S. Route 460;*
28. *U.S. Route 460 in Buchanan County, 2.09 miles, from Virginia Route 645 at Big Rock to Virginia Route 700 at Weller;*
29. *U.S. Route 460 in Buchanan County, 1.21 miles, from Virginia Route 700 at Weller to Virginia Route 655;*
30. *U.S. Route 460 in Buchanan County, 1.13 miles, from Virginia Route 655 to Virginia Route 609 at Harman Junction;*
31. *Virginia Route 609 in Buchanan County, 0.92 mile, from U.S. Route 460 at Harmon Junction to Virginia Route 601 at Maxie;*
32. *Virginia Route 609 in Buchanan County, 1.74 miles, from Virginia Route 601 at Maxie to Virginia Route 614 at Harman;*
33. *Virginia Route 609 in Buchanan County, 0.92 mile, from Virginia Route 614 at Harman to Virginia Route 664;*
34. *Virginia Route 609 in Buchanan County, 4.70 miles, from Virginia Route 664 to the Buchanan-Dickenson County line;*
35. *Virginia Route 609 in Dickenson County, 0.87 mile, from the Buchanan-Dickenson County line to Virginia Route 768 at The Breaks;*
36. *Virginia Route 768 in Dickenson County, 0.12 mile, from Virginia Route 609 at The Breaks to Virginia Route 80;*
37. *Virginia Route 80 in Dickenson County, 2.36 miles, from Virginia Route 768 at The Breaks to the Virginia-Kentucky State line;*
38. *Virginia Route 80 in Dickenson County, 0.65 mile, from Virginia Route 768 at The Breaks to Virginia Route 702 at Breaks Interstate Park;*
39. *Virginia Route 80 in Dickenson County, 4.94 miles, from Virginia Route 702 at Breaks Interstate Park to Virginia Route 611;*
40. *Virginia Route 80 in Dickenson County, 2.00 miles, from Virginia Route 611 to Virginia Routes 80 and 83 at Haysi;*
41. *Virginia Routes 80 and 83 in Dickenson County, 1.03 miles, from Virginia Route 80 to Virginia Route 63 at Haysi;*

42. *Virginia Routes 80 and 83 in Dickenson County, 0.41 mile, from Virginia Route 63 to Virginia Route 83 at Haysi;*
43. *Virginia Route 83 in Dickenson County, 0.20 mile, from Haysi to Virginia Route 652;*
44. *Virginia Route 83 in Dickenson County, 3.57 miles, from Virginia Route 652 to Virginia Route 607 at Steinman;*
45. *Virginia Route 83 in Dickenson County, 2.53 miles, from Virginia Route 607 at Steinman to Virginia Route 63;*
46. *Virginia Routes 83 and 63 in Dickenson County, 0.49 mile, from Virginia Route 63 to Clinchco;*
47. *Virginia Routes 83 and 63 in Dickenson County, 4.49 miles, from Clinchco to Virginia Route 63 at Fremont;*
48. *Virginia Route 63 in Dickenson County, 3.20 miles, from Fremont to Virginia Route 643 at McClure;*
49. *Virginia Route 63 in Dickenson County, 2.41 miles, from Virginia Route 643 at McClure to Virginia Route 652 at Nora;*
50. *Virginia Route 63 in Dickenson County, 5.32 miles, from Virginia Route 652 at Nora to Virginia Route 626 at Trammel;*
51. *Virginia Route 63 in Dickenson County, 3.64 miles, from Virginia Route 626 at Trammel to the Dickenson-Russell County line;*
52. *Virginia Route 63 in Russell County, 2.48 miles, from the Dickenson-Russell County line to Virginia Route 627 at Dante;*
53. *Virginia Route 627 at Dante, 0.47 mile, from Virginia Route 63 to Virginia Route 608 at Dante;*
54. *Virginia Route 608 at Dante, 0.63 mile, from Virginia Route 627 at Dante to Virginia Route 63;*
55. *Virginia Route 63 in Russell County, 5.59 miles, from Virginia Route 608 at Dante to the Russell-Wise County line;*
56. *Virginia Route 63 in Wise County, 1.13 miles, from the Russell-Wise County line to Virginia Route 270 at St. Paul;*
57. *Virginia Route 270 in Wise County, 0.27 mile, from Virginia Route 63 to U.S. Route 58A at St. Paul;*
58. *U.S. Route 58A in Wise County, 11.21 miles, from St. Paul to Coeburn;*
59. *U.S. Route 58A in Wise County, 9.50 miles, from Coeburn to U.S. Route 23 Business in the City of Norton;*
60. *U.S. Route 23 Business in Wise County, 11.56 miles, from U.S. Route 58A to Virginia Route 160 in Appalachia;*

61. *Virginia Route 160 in Wise County, 0.32 mile, from U.S. Route 23 Business in Appalachia to Virginia Route 68;*
62. *Virginia Route 160 in Wise County, 7.72 miles, from Virginia Route 68 to the Virginia-Kentucky State line;*
63. *Virginia Route 68 in Wise County, 5.69 miles, from Virginia Route 160 in Appalachia to Virginia Route 606 at the Wise-Lee County line;*
64. *Virginia Route 606 in Lee County, 2.74 miles, from Virginia Route 68 at the Wise-Lee County line to Virginia Route 1001 at Keokee;*
65. *Virginia Route 606 in Lee County, 0.12 mile, from Virginia Route 1001 at Keokee to Virginia Route 1004 at Keokee;*
66. *Virginia Route 606 in Lee County, 0.10 mile, from Virginia Route 1004 at Keokee to Virginia Route 1003 at Keokee;*
67. *Virginia Route 606 in Lee County, 0.06 mile, from Virginia Route 1003 at Keokee to Virginia Route 1002 at Keokee;*
68. *Virginia Route 606 in Lee County, 0.08 mile, from Virginia Route 1002 at Keokee to Virginia Route 624 at Keokee;*
69. *Virginia Route 606 in Lee County, 0.12 mile, from Virginia Route 624 at Keokee to Virginia Route 1001 at Keokee;*
70. *Virginia Route 606 in Lee County, 0.29 mile, from Virginia Route 1001 at Keokee to Virginia Route 751 at Keokee;*
71. *Virginia Route 606 in Lee County, 2.95 miles, from Virginia Route 751 to Virginia Route 625 at Shepherd Hill;*
72. *Virginia Route 606 in Lee County, 0.40 mile, from Virginia Route 625 at Shepherd Hill to Virginia Route 756 at Calvin;*
73. *Virginia Route 606 in Lee County, 3.08 miles, from Virginia Route 756 at Calvin to Virginia Route 766 at Robbins Chapel;*
74. *Virginia Route 606 in Lee County, 2.67 miles, from Virginia Route 766 at Robbins Chapel to Virginia Route 628 at Purcell;*
75. *Virginia Route 606 in Lee County, 4.29 miles, from Virginia Route 628 at Purcell to U.S. Route 421 at Pockett;*
76. *U.S. Route 421 in Lee County, 0.24 mile, from Virginia Route 606 to Virginia Route 352 at Stone Creek;*
77. *Virginia Route 352 in Lee County, 2.36 miles, from U.S. Route 421 to St. Charles;*
78. *U.S. Route 421 in Lee County, 4.62 miles, from Virginia Route 352 to the Virginia-Kentucky State line;*

79. U.S. Route 421 in Lee County, 2.72 miles, from Virginia Route 606 to U.S. Route 58A at Pennington Gap;

80. U.S. Route 58A in Lee County, 14.24 miles, from U.S. Route 421 at Pennington Gap to the Lee-Wise County line;

81. U.S. Route 58A in Lee County, 3.66 miles, from the Lee-Wise County line to U.S. Routes 23 Business and 58A at Big Stone Gap;

82. U.S. Route 23 Business in Wise County, 2.80 miles, from U.S. Route 160 at Appalachia to U.S. Routes 23 and 58A at Big Stone Gap;

83. U.S. Routes 23 Business and 58A in Wise County, 1.39 miles, from U.S. Routes 23 Business and 58A to U.S. Routes 23 and 58A;

84. U.S. Route 23 in Wise County, 4.16 miles, from U.S. Routes 23 and 58A at Big Stone Gap to the Wise-Lee County line;

85. U.S. Route 23 in Lee County, 4.24 miles, from the Wise-Lee County line to the Lee-Scott County line;

86. U.S. Route 23 in Scott County, 4.09 miles, from the Lee-Scott County line to U.S. Routes 58 and 421 at Duffield;

87. U.S. Routes 23, 58, and 421 in Scott County, 3.39 miles, from U.S. Routes 58 and 421 at Duffield to Virginia Route 871 at Natural Tunnel;

88. Virginia Route 871 in Scott County, 1.94 miles, from U.S. Routes 23, 58, and 421 to Natural Tunnel State Park;

89. U.S. Routes 23, 58, and 421 in Scott County, 1.26 miles, from Virginia Route 871 at Natural Tunnel to Virginia Route 65 at Clinchport;

90. Virginia Route 65 in Scott County, 14.8 miles, from U.S. Routes 23, 58, and 421 to Virginia Route 72 at Fort Blackmore;

91. Virginia Routes 65 and 72 in Scott County, 8.35 miles, from Fort Blackmore to Dungannon;

92. Virginia Route 65 in Scott County, 5.08 miles, from Dungannon to the Scott-Russell County line;

93. Virginia Route 65 in Russell County, 5.79 miles, from the Scott-Russell County line to U.S. Route 58A at Castlewood;

94. U.S. Route 58A in Russell County, 2.55 miles, from Virginia Route 65 at Castlewood to the Wise-Russell County line at St. Paul; and

95. U.S. Route 58A in Wise County, 0.16 mile, from the Wise-Russell County line at St. Paul to Virginia Route 270 at St. Paul.

§ 2. All the highway segments identified in § 1 of this act are hereby designated Virginia byways.

*§ 3. The provision of this act shall not affect any other designation heretofore or hereafter applied to designated roads or any portion thereof.*

*§ 4. The provisions of this act shall not affect any activity (i) related to any natural gas pipeline or any connections to any such pipeline for which the State Corporation Commission has issued a certificate of public convenience and necessity or (ii) for which the Department of Mines, Minerals, and Energy may issue a permit under Title 45.1 of the Code of Virginia.*

## **Chapter 542 Higher Educational Institutions Bond Act of 2007; created.**

An Act to authorize the issuance of bonds, in an amount up to \$103,550,000 plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 770\]](#)

Approved March 19, 2007

Whereas, Article X, Section 9(c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9(c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same

become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9(c) of the Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2007."*

*§ 2. Authorization of bonds and BANs. The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ...." in an aggregate principal amount not exceeding \$103,550,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

*Institution*

	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>Christopher Newport</i>	<i>Construct Residence</i>		
<i>University</i>	<i>Hall V</i>		<i>17359 7,-</i>
<i>667,000</i>			
<i>George Mason</i>	<i>Renovate Commonwealth</i>		
<i>University</i>	<i>and Dominion housing</i>		

Uncodified Acts of Assembly - 2007

<i>facilities</i>		16690	1,770,000
<i>George Mason University</i>	<i>Renovate student housing, President's Park I</i>		
17050	7,200,000		
<i>George Mason University</i>	<i>Construct student housing VII</i>		
		17056	4,000,000
<i>James Madison University</i>	<i>Renovate Bluestone Residence Hall, Phase 3</i>		
16687	2,360,000		
<i>James Madison University</i>	<i>Construct Dining Hall</i>		
			17439 3,-
000,000			
<i>Old Dominion University</i>	<i>Construct Residence Hall, Phase II</i>		
		17342	3,535,000
<i>Virginia Commonwealth University</i>	<i>Monroe Park Housing</i>		
		17109	15,273,000

Uncodified Acts of Assembly - 2007

*Virginia Polytechnic Construct New Residence*

*Institute and State Hall*

*University*

*17478 27,000,000*

*Virginia State Construct Residence Halls*

*University*

*17307 2,068,000*

*Virginia State Construct Dining Hall*

*University*

*17309 3,424,000*

*Virginia State Construct Two Residence*

*University*

*Halls*

*17479 26,253,000*

*Total*

*\$103,550,000*

**§ 3. Application of Proceeds.** *The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects,*

*including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs. Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9(a)(3), 9(b), and 9(c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series . . . ".*

*§ 5. Execution of bonds and BANs. Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a*

*facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses. All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues. Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the*

*interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B of this section.*

*§ 9. Security for bonds and BANs. The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax. The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such*

*effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs. The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance. Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability. The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act that can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 707 Fort Monroe; Governor to convey property to Fort Monroe Federal Development Authority.**

An Act to permit the conveyance of Fort Monroe to the Fort Monroe Federal Area Development Authority, to amend and reenact § [15.2-6304](#) of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered [15.2-6304.1](#), relating to Fort Monroe and appointment of Fort Monroe Federal Area Development Authority board of commissioners.

[\[H 3180\]](#)

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Notwithstanding the provisions of § [1-406](#) of the Code of Virginia or any other provision of law to the contrary, the Governor, on behalf of the Commonwealth and at such time as the Governor deems appropriate, may convey all right, title, and interest of the Commonwealth in and to certain real property located within the City of Hampton commonly referred to as "Fort Monroe," including any right of the Commonwealth to receive such property in the event of a reversion or the triggering of a possibility of a reverter, to the Fort Monroe Federal Area Development Authority created pursuant to § [15.2-6302](#) of the Code of Virginia.*

2. That § [15.2-6304](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered [15.2-6304.1](#) as follows:

§ [15.2-6304](#). Board of commissioners; appointment of director, agents and employees.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter referred to as board or board of commissioners.

B. In the case of authorities created by proclamation of the Governor pursuant to § [15.2-6302](#), the board shall consist of seven members to be appointed by the Governor, of whom at least five shall be residents of the locality or localities in which the authority is located. The members shall serve for terms of six years each, the initial appointment to be two members for terms of six years, two members for terms of five years, two members for terms of four years and one member for a term of three years, and subsequent appointments to be made for terms of six years, except appointments to fill vacancies which shall be made for the unexpired term.

C. In the case of authorities created by the City of Hampton pursuant to § [15.2-6302](#), other than the Fort Monroe Federal Area Development Authority pursuant to § [15.2-6304.1](#), the board shall consist of up to seven members appointed by the locality in which the authority is located, all of whom shall be residents of such locality. The members shall serve for terms of not more than four years each. If a member resigns, dies, or is otherwise removed from his position on the board, the locality may appoint a new member to fill the vacancy for the remainder of the unexpired term.

D. Members shall receive from the authority their necessary travel and business expenses while on business of the board. Each commissioner shall before entering on his duties take and subscribe the oath prescribed by § [49-1](#).

E. The board shall appoint the chief executive officer of the authority, who shall not be a member thereof, to be known as the director of that authority, hereinafter referred to as director, and whose compensation shall be paid by the authority in the amount determined by the board. The board shall employ or retain such other agents or employees subordinate to the director as may be necessary, including persons with special qualifications, and shall determine which such agents or employees shall be bonded and the amount of such bonds. The director and other agents and employees so appointed shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. ~~Four~~ Except as provided in § [15.2-6304.1](#), four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.

§ [15.2-6304.1](#). *Board of commissioners; Fort Monroe Federal Area Development Authority.*

A. *In the case of the Fort Monroe Federal Area Development Authority (the Authority) created by the City of Hampton pursuant to § [15.2-6302](#), the board shall consist of 18 members as follows: seven nonlegislative members appointed by the locality in which the Authority is located, all of whom shall be residents of such locality; two members of the House of Delegates appointed by the Speaker of the House of Delegates, one of whom shall be the member in whose district Fort Monroe is located; two members of the Senate of Virginia appointed by the Senate Committee on Rules, one of whom shall be the member in whose district Fort Monroe is located; two nonlegislative members appointed by the Governor, one of whom shall have recent and significant professional experience in the field of historic preservation, and one of whom shall have recent and significant professional experience in the field of heritage tourism; and the Secretary of Administration, the Secretary of Commerce and Trade, the Assistant to the Governor for Commonwealth Preparedness, the Secretary of Finance, and the Secretary of Natural Resources, all of whom shall serve ex officio with full voting privileges. Members of the board appointed by the locality or the Governor shall serve for terms of not more than four years each. Legislative members and the ex officio members shall serve terms coincident with their terms of office. Vacancies on the board shall be filled in the same manner as the original appointments.*

*B. The Authority shall adopt and make public bylaws that shall include governance provisions describing the processes by which the Authority shall be operated and the powers and duties of the board. The governance provisions shall include provisions regarding the disposition of funds and property owned by the Authority in the event of the dissolution of the Authority, and these provisions shall control such distribution in lieu of the provisions of § [15.2-6319](#). For matters pertaining to Fort Monroe, the bylaws shall provide that 12 members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes pertaining to Fort Monroe. The affirmative vote of 75 percent of all members of the board shall be required to adopt any final reuse plan or amendment thereto pertaining to Fort Monroe, and for other matters as provided in the bylaws. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.*

*C. In formulating a reuse plan for Fort Monroe, the Authority shall give due regard to (i) the site's 400 years of public ownership, (ii) its status as a National Historic Landmark, and (iii) its unique natural resources and outdoor recreational opportunities located at the confluence of Hampton Roads and the Chesapeake Bay. The Authority shall request the U.S. Congressional Representative in whose district Fort Monroe is located to seek a reconnaissance survey from the U.S. Department of Interior to help the Authority evaluate whether Fort Monroe should become affiliated with the National Park System to help manage and preserve the historic and natural resources at Old Point Comfort.*

*D. As to real property or interests therein owned or held in whole or in part by the Authority, whether acquired by reverter of title, purchase, gift, condemnation, or otherwise, no such real property or ownership interests in the former federal area known as Fort Monroe shall be subject to any land use, zoning, or subdivision ordinance of any city so long as such real property or interests therein are owned or held by the Authority. However, the conveyance of any interest in the real property from the Authority to a private party shall be consistent with Fort Monroe's reuse plan and contingent upon the private party's obtaining all necessary approvals under applicable land use law or ordinance.*

*E. The provisions of § [15.2-6304](#) shall apply mutatis mutandis to the Authority.*

3. That it is the intent of the General Assembly of Virginia that any Fort Monroe Federal Area Development Authority created by the City of Hampton pursuant to this act shall not be deemed an agency of the Commonwealth.

4. That an emergency exists and this act is in force from its passage.

## Chapter 740 Fort Monroe; Governor to convey property to Fort Monroe Federal Development Authority.

An Act to permit the conveyance of Fort Monroe to the Fort Monroe Federal Area Development Authority, to amend and reenact § [15.2-6304](#) of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered [15.2-6304.1](#), relating to Fort Monroe and appointment of Fort Monroe Federal Area Development Authority board of commissioners.

[\[S 1392\]](#)

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [1-406](#) of the Code of Virginia or any other provision of law to the contrary, the Governor, on behalf of the Commonwealth and at such time as the Governor deems appropriate, may convey all right, title, and interest of the Commonwealth in and to certain real property located within the City of Hampton commonly referred to as "Fort Monroe," including any right of the Commonwealth to receive such property in the event of a reversion or the triggering of a possibility of a reverter, to the Fort Monroe Federal Area Development Authority created pursuant to § [15.2-6302](#) of the Code of Virginia.*

2. That § [15.2-6304](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered [15.2-6304.1](#) as follows:

§ [15.2-6304](#). Board of commissioners; appointment of director, agents and employees.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter referred to as board or board of commissioners.

B. In the case of authorities created by proclamation of the Governor pursuant to § [15.2-6302](#), the board shall consist of seven members to be appointed by the Governor, of whom at least five shall be residents of the locality or localities in which the authority is located. The members shall serve for terms of six years each, the initial appointment to be two members for terms of six years, two members for terms of five years, two members for terms of four years and one member for a term of three years, and subsequent

appointments to be made for terms of six years, except appointments to fill vacancies which shall be made for the unexpired term.

C. In the case of authorities created by the City of Hampton pursuant to § [15.2-6302](#), *other than the Fort Monroe Federal Area Development Authority pursuant to § [15.2-6304.1](#)*, the board shall consist of up to seven members appointed by the locality in which the authority is located, all of whom shall be residents of such locality. The members shall serve for terms of not more than four years each. If a member resigns, dies, or is otherwise removed from his position on the board, the locality may appoint a new member to fill the vacancy for the remainder of the unexpired term.

D. Members shall receive from the authority their necessary travel and business expenses while on business of the board. Each commissioner shall before entering on his duties take and subscribe the oath prescribed by § [49-1](#).

E. The board shall appoint the chief executive officer of the authority, who shall not be a member thereof, to be known as the director of that authority, hereinafter referred to as director, and whose compensation shall be paid by the authority in the amount determined by the board. The board shall employ or retain such other agents or employees subordinate to the director as may be necessary, including persons with special qualifications, and shall determine which such agents or employees shall be bonded and the amount of such bonds. The director and other agents and employees so appointed shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. ~~Four~~ *Except as provided in § [15.2-6304.1](#)*, four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.

§ [15.2-6304.1](#). *Board of commissioners; Fort Monroe Federal Area Development Authority.*

A. *In the case of the Fort Monroe Federal Area Development Authority (the Authority) created by the City of Hampton pursuant to § [15.2-6302](#), the board shall consist of 18 members as follows: seven nonlegislative members appointed by the locality in which the Authority is located, all of whom shall be residents of such locality; two members of the House of Delegates appointed by the Speaker of the House of Delegates, one of whom shall be the member in whose district Fort Monroe is located; two members of the*

*Senate of Virginia appointed by the Senate Committee on Rules, one of whom shall be the member in whose district Fort Monroe is located; two nonlegislative members appointed by the Governor, one of whom shall have recent and significant professional experience in the field of historic preservation, and one of whom shall have recent and significant professional experience in the field of heritage tourism; and the Secretary of Administration, the Secretary of Commerce and Trade, the Assistant to the Governor for Commonwealth Preparedness, the Secretary of Finance, and the Secretary of Natural Resources, all of whom shall serve ex officio with full voting privileges. Members of the board appointed by the locality or the Governor shall serve for terms of not more than four years each. Legislative members and the ex officio members shall serve terms coincident with their terms of office. Vacancies on the board shall be filled in the same manner as the original appointments.*

*B. The Authority shall adopt and make public bylaws that shall include governance provisions describing the processes by which the Authority shall be operated and the powers and duties of the board. The governance provisions shall include provisions regarding the disposition of funds and property owned by the Authority in the event of the dissolution of the Authority, and these provisions shall control such distribution in lieu of the provisions of § [15.2-6319](#). For matters pertaining to Fort Monroe, the bylaws shall provide that 12 members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes pertaining to Fort Monroe. The affirmative vote of 75 percent of all members of the board shall be required to adopt any final reuse plan or amendment thereto pertaining to Fort Monroe, and for other matters as provided in the bylaws. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.*

*C. In formulating a reuse plan for Fort Monroe, the Authority shall give due regard to (i) the site's 400 years of public ownership, (ii) its status as a National Historic Landmark, and (iii) its unique natural resources and outdoor recreational opportunities located at the confluence of Hampton Roads and the Chesapeake Bay. The Authority shall request the U.S. Congressional Representative in whose district Fort Monroe is located to seek a reconnaissance survey from the U.S. Department of Interior to help the Authority evaluate whether Fort Monroe should become affiliated with the National Park System to help manage and preserve the historic and natural resources at Old Point Comfort.*

*D. As to real property or interests therein owned or held in whole or in part by the Authority, whether acquired by reverter of title, purchase, gift, condemnation, or otherwise, no*

*such real property or ownership interests in the former federal area known as Fort Monroe shall be subject to any land use, zoning, or subdivision ordinance of any city so long as such real property or interests therein are owned or held by the Authority. However, the conveyance of any interest in the real property from the Authority to a private party shall be consistent with Fort Monroe's reuse plan and contingent upon the private party's obtaining all necessary approvals under applicable land use law or ordinance.*

*E. The provisions of § [15.2-6304](#) shall apply mutatis mutandis to the Authority.*

3. That it is the intent of the General Assembly of Virginia that any Fort Monroe Federal Area Development Authority created by the City of Hampton pursuant to this act shall not be deemed an agency of the Commonwealth.

4. That an emergency exists and this act is in force from its passage.

## **Chapter 8 Nursing facility services; extends sunset provision for certain certific. of public need.**

An Act to amend and reenact Chapter 912 of the Acts of Assembly of 2000, as amended by Chapters 85 and 91 of the Acts of Assembly of 2004, relating to amendment of certain certificate of public need.

[\[S 740\]](#)

Approved February 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That Chapter 912 of the Acts of Assembly of 2000, as amended by Chapters 85 and 91 of the Acts of Assembly of 2004, is amended and reenacted as follows:

§ 1. Amendment of certain certificate of need authorized.

Notwithstanding the provisions of subdivision 6 of § [32.1-102.3:2](#) as in effect on June 30, 1996, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 for an increase in beds in which nursing facility or extended care services are provided to allow such continuing care provider to continue, until July 1, ~~2008~~ 2013, to admit patients, other than contract holders, with whom the facility has an agreement with the individual responsible for the patient for private payment of the costs upon the following conditions being met: (i) the continuing care community is established for the

care of retired military personnel and their spouses, widows or widowers and (ii) the facility's contract holder occupancy rate is less than 85 percent.

## **Chapter 123 No Child Left Behind Act; Board of Education requesting waiver from certain provisions.**

An Act to direct the Board of Education to request a waiver from the duplicative provisions of the No Child Left Behind Act and to make a recommendation to the General Assembly regarding Virginia's continued implementation of such Act.

[\[H 2542\]](#)

Approved March 8, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. Pursuant to § 9401 of the federal No Child Left Behind Act (NCLB), Public Law 107-110, the Board of Education shall continue to seek waivers from compliance with those provisions of NCLB that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children.*

*The Board shall report on the status of its waivers from compliance to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007. Such report shall contain a summary of the waivers requested from the United States Department of Education during the calendar year 2007, a summary of the responses from the United States Department of Education, and a timeline providing the submission date of every waiver request and the date that a response was provided.*

*B. In the event that any or all waiver requests are not approved by the United States Department of Education, the Board shall transmit a summary of all requests not approved to the Virginia Congressional delegation for its consideration in the reauthorization of the Elementary and Secondary Education Act. Such report or reports shall be submitted in a manner prescribed by the Board.*

*If the reauthorization of the Elementary and Secondary Education Act does not provide the necessary revisions in the federal law to grant states and localities the flexibilities requested in Virginia's waiver requests, the Board shall make a recommendation to the General Assembly on Virginia's continued implementation of NCLB.*

*C. The Board of Education and Office of the Attorney General of Virginia may bring suit against the United States Department of Education if, as a result of the Commonwealth's withdrawal from the voluntary NCLB, funds that are not directly related to NCLB and that help children from low-income families meet challenging academic content and achievement standards are withheld.*

## **Chapter 124 Veterans Day; Board of Education to provide information for commemoration thereof.**

An Act to make information available for school divisions regarding the commemoration of Veterans Day.

[\[H 2601\]](#)

Approved March 8, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Education shall make available to local school divisions information regarding the commemoration of Veterans Day in the public schools. Such information shall include, but need not be limited to (i) history of the holiday, (ii) discussion topics, (iii) activities, and (iv) appropriate instructional materials.*

## **Chapter 132 George Washington's birthday; Department of Education to provide schools information thereon.**

CHAPTER 132

An Act to make information available for school divisions regarding the commemoration of George Washington's birthday.

[\[H 2837\]](#)

Approved March 8, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Education shall make available to local school divisions*

*information regarding the commemoration of George Washington's birthday on or around February 22 in the public schools. Such information shall include, but need not be limited to, (i) discussion topics, (ii) activities, and (iii) appropriate instructional materials about George Washington.*

## **Chapter 789 Energy Policy Act of 2006; appropriations for certain funds.**

An Act to amend and reenact §§ [67-900](#), [67-901](#), [67-902](#), and [67-1000](#) through [67-1003](#) of the Code of Virginia and to amend and reenact the eighth and ninth enactments of Chapter 939 of the Acts of Assembly of 2006, relating to renewable energy production and solar and wind energy system acquisition grants.

[\[S 1152\]](#)

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ [67-900](#), [67-901](#), [67-902](#), and [67-1000](#) through [67-1003](#) of the Code of Virginia are amended and reenacted as follows:

§ [67-900](#). Definitions.

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

"Corporation" means an entity subject to the tax imposed by Article 10 (§ [58.1-400](#) et seq.) of Chapter 3 of Title 58.1.

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

"Fund" means the Renewable Electricity Production Grant Fund established pursuant to § [67-902](#).

"Qualified energy resources" means ~~the same as that term is defined by Internal Revenue Code § 45(c)(1), and includes~~ *solar*, wind, closed-loop biomass, organic, livestock, and poultry waste resources and lignin and other organic by-products of kraft pulping processes, bark, chip rejects, sawdust, fines and other wood waste, regardless of the point of origin.

"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity, *and that is originally placed in service on or after January 1, 2007.*

§ [67-901](#). Eligibility for grants for production of qualified energy resources.

Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a grant payable from the Fund for certain kilowatt hours of electricity produced after December 31, ~~2005~~ 2006. The grant amount shall be \$.0085 for each kilowatt hour of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold and transmitted into the electric grid, or used in production by a qualified Virginia facility, in a calendar year. Grant amounts shall be based on each such kilowatt hour of electricity sold or used in production by a qualified Virginia facility beginning with calendar year ~~2006~~ 2007.

§ [67-902](#). Renewable Electricity Production Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.

C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible corporations and (ii) certify to the Comptroller and each eligible corporation the amount of the grant allocated to such corporation. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification, subject to appropriation of sufficient moneys in the Fund.

E. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

F. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, ~~2006~~ 2007.

G. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § [2.2-4002](#).

CHAPTER 10.

#### SOLAR AND WIND ENERGY SYSTEM ACQUISITION GRANT PROGRAM.

§ [67-1000](#). Definitions.

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

"Corporation" means an entity subject to the tax imposed by Article 10 (§ [58.1-400](#) et seq.) of Chapter 3 of Title 58.1.

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

"Fund" means the ~~Photovoltaic, Solar, and Wind Energy Utilization~~ *System Acquisition Grant Fund* established pursuant to § [67-1002](#).

"Individual" means the same as that term is defined in § [58.1-302](#).

"Photovoltaic property" means property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Solar water heating property" means property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, ~~and~~ (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements, *and (v) meets applicable performance and quality standards as specified by the Department.*

§ [67-1001](#). Eligibility for grants for installation of photovoltaic property, solar water heating property, and wind-powered electrical generators.

A. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year ~~2006~~ 2007, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating property, or wind-powered electrical generators but shall not exceed an aggregate total of:

1. \$2,000 for each system of photovoltaic property;
2. \$1,000 for each system of solar water heating property; and
3. \$1,000 for each system of wind-powered electrical generators.

B. Persons or entities placing in service photovoltaic property, solar water heating property, or wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to receive a grant for such property.

§ [67-1002](#). Solar and Wind Energy System Acquisition Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the ~~Photovoltaic, Solar, and Wind Energy Utilization~~ *System Acquisition* Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund ~~in the following order of priority:~~ (i) ~~first to unpaid grant amounts carried forward from prior years because eligible individuals or corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and~~ (ii) ~~then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class~~ *to applicants in the order in which their applications are received, until all funds allocated for that fiscal year are expended.*

C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.

~~E. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such individual or corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.~~

~~F. In no case shall the Department certify grants from the Fund for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service prior to January 1, 2006 2007.~~

~~G. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § [2.2-4002](#).~~

§ [67-1003](#). Requirements for grants generally.

A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter, *as follows*:

*1. Eligible individuals and corporations may submit an application before the equipment is installed. In this case, the Department, within 14 days of receiving the application, shall notify the applicant as to whether sufficient moneys remain in the Fund to satisfy a potential grant award to the applicant. The Department shall reserve such funds for the applicant for the calendar year in which the applicant applies.*

*2. The application shall be filed with the director of the Department no later than March 31 each of the year following the calendar year in which such property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.*

~~B. The application~~*In order to receive payment of grant funds, the applicant shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service by such individual or corporation in the prior calendar year.*

C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection upon request all relevant and applicable

documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.

D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property, solar water heating property, or wind-powered electrical generators may not use such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.

2. That the eighth enactment of Chapter 939 of the Acts of Assembly of 2006 is amended and reenacted as follows:

**8. That if the Fund established under § [67-902](#) of the Code of Virginia does not receive a deposit of general funds, nongeneral funds, grant funds, or other funds before July 1, 2009, then the provisions of Chapter 9 (§ [67-900 et seq.](#)) of Title 67 (§ [67-900 et seq.](#)) shall expire on July 1, 2009 *not become effective until appropriations are made to the Renewable Electricity Production Grant Fund.***

3. That the ninth enactment of Chapter 939 of the Acts of Assembly of 2006 is amended and reenacted as follows:

**9. That if the Fund established under § [67-1002](#) of the Code of Virginia does not receive a deposit of general funds, nongeneral funds, grant funds, or other funds before July 1, 2009, then the provisions of Chapter 10 (§ [67-1000 et seq.](#)) of Title 67 (§ [67-1000 et seq.](#)) shall expire on July 1, 2009 *not become effective until appropriations are made to the Solar and Wind Energy System Acquisition Grant Fund.***

## **Chapter 54 George Washington's Grist Mill State Park; Department of Conservation and Recreation to convey.**

An Act to amend and reenact § 1 of Chapter 803 of the Acts of Assembly of 1996 and § 1 of Chapter 811 of the Acts of Assembly of 1996, both as amended and reenacted by Chapter 580 of the Acts of Assembly of 1997, relating to the authority to convey the George Washington's Grist Mill State Park in Fairfax County.

[\[S 963\]](#)

Approved February 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 803 of the Acts of Assembly of 1996, as amended and reenacted by Chapter 580 of the Acts of Assembly of 1997, is amended and reenacted as follows:

§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease and subsequently to convey *fee title* to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor ~~and the Attorney General~~, the parcel of real property *with all the improvements thereon* and appurtenances *thereunto belonging* known as the George Washington's Grist Mill State Park in Fairfax County, *comprised of the property conveyed to the State Commission on Conservation and Development of the State of Virginia by C.C. Carlin and Lillian B. Carlin, his wife, by deed dated January 6, 1932, and the property conveyed by special warranty and by quitclaim to the Commonwealth of Virginia, Department of Conservation and Recreation, by John M. Ballenger, Trustee, and Premier Title, Inc., Trustee, by deed dated December 28, 2001.* If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property *not be transferred or sold to any other person or entity without prior approval of the General Assembly and that it be maintained and open to public use and that if any such condition is not met, the Association's ownership of the property shall cease and title thereto shall immediately revert to the Commonwealth. The Attorney General shall approve the form of any such instruments.*

Subject to the fulfillment of the terms and conditions of a memorandum of understanding entered into pursuant to § 2 of this act, the initial term of this lease may be for five years or less, the lease may be renewed at the option of the lessee for periods of similar length, and the property may, upon the expiration of the initial lease term or during any renewal term, be conveyed to the Mount Vernon Ladies' Association of the Union. The memorandum of understanding shall set out the matters to be performed by each party to include, but not be limited to, capital investment, staffing, programming, and maintenance and operations support. All lease renewals ~~will shall~~ require ~~approvals approval~~ of the Governor *as to all terms* and the *approval of the Attorney General as to form* as stated for the initial term. The memorandum of understanding, the lease, *and all lease renewals and, but excluding any instrument conveying fee title to the property,* shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Appropriations Committee for review.

2. That § 1 of Chapter 811 of the Acts of Assembly of 1996, as amended and reenacted by Chapter 580 of the Acts of Assembly of 1997, is amended and reenacted as follows:

§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to lease and subsequently to convey *fee title* to the Mount Vernon Ladies' Association of the Union, upon terms as the Department deems proper, with the approval of the Governor ~~and the Attorney General~~, the parcel of real property *with all the improvements thereon* and appurtenances *thereunto belonging* known as the George Washington's Grist Mill State Park in Fairfax County, *comprised of the property conveyed to the State Commission on Conservation and Development of the State of Virginia by C.C. Carlin and Lillian B. Carlin, his wife, by deed dated January 6, 1932, and the property conveyed by special warranty and by quitclaim to the Commonwealth of Virginia, Department of Conservation and Recreation, by John M. Ballenger, Trustee, and Premier Title, Inc., Trustee, by deed dated December 28, 2001.* If such property is conveyed to the Mount Vernon Ladies' Association of the Union, the deed shall require that the property *not be transferred or sold to any other person or entity without prior approval of the General Assembly and that it be maintained and open to public use and that if any such condition is not met, the Association's ownership of the property shall cease and title thereto shall immediately revert to the Commonwealth. The Attorney General shall approve the form of any such instruments.*

Subject to the fulfillment of the terms and conditions of a memorandum of understanding entered into pursuant to § 2 of this act, the initial term of this lease may be for five years or less, the lease may be renewed at the option of the lessee for periods of similar length, and the property may, upon the expiration of the initial lease term or during any renewal term, be conveyed to the Mount Vernon Ladies' Association of the Union. The memorandum of understanding shall set out the matters to be performed by each party to include, but not be limited to, capital investment, staffing, programming, and maintenance and operations support. All lease renewals ~~will shall~~ require ~~approvals approval~~ of the Governor *as to all terms* and the *approval of the Attorney General as to form* as stated for the initial term. The memorandum of understanding, the lease, *and all lease renewals and, but excluding any instrument conveying fee title to the property,* shall be submitted to the chairmen of the Senate Finance Committee, the Senate Committee for Courts of Justice, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Appropriations Committee for review.

## Chapter 812 Region 2000 Airport Authority Act; created.

An Act to create an authority to be known as Virginia's Region 2000 Airport Authority.

[\[H 2800\]](#)

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1.

*Virginia's Region 2000 Airport Authority Act*

*§ 1. Short title.*

*This Act shall be known and may be cited as the Virginia's Region 2000 Airport Authority Act.*

*§ 2. Creation; public purpose.*

*If the governing body of the City of Lynchburg and the governing bodies of one or more of the Counties of Amherst, Appomattox, Bedford, and Campbell by resolution declare that there is a need for an airport authority to be created for the purpose of establishing or operating an airport for such participating political subdivisions, and that they should unite in its formation, an airport authority to be known as Virginia's Region 2000 Airport Authority (the Authority) shall thereupon exist for such participating city and counties and shall exercise its powers and functions as prescribed herein. The region for which such Authority shall exist shall be coterminous with the boundaries of the participating political subdivisions.*

*In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the Virginia's Region 2000 Airport Authority, such Authority shall be conclusively deemed to have been created as a body corporate and to have been established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution as aforesaid by the governing bodies of such counties and city declaring that there is a need for such Authority and that they should unite in its formation. A copy of such resolution duly certified by the clerks of the counties and city by which it is adopted shall be admissible as evidence in any suit, action, or proceedings. Any political subdivision of the Commonwealth, all or part of which is located within 60 miles of an Authority facility, is authorized to join such Authority pursuant to the terms and conditions of this Act.*

*It is hereby declared that the ownership and operation by the Authority of modern and efficient air transportation and related facilities and the exercise of powers conferred by this Act are proper and essential governmental functions and public purposes and matters of public necessity for which public moneys may be spent and private property acquired through the power of eminent domain as hereinafter provided. It is also declared that the promotion and stimulation of industry and trade to induce the location, retention, and expansion of manufacturing, industrial, governmental, and commercial enterprises and institutions in the Authority's participating political subdivisions, and to vest the Authority with all powers that may be necessary to enable it to accomplish these purposes, are essential governmental functions and public purposes and are for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce or through the promotion of their safety, health, welfare, convenience, or prosperity. It is further declared that contract obligations of a city or town to provide payments over a period of more than one year to the Authority shall be excluded from existing indebtedness of such city or town for purposes of calculating debt limit pursuant to Article VII, Section 10 (a) of the Constitution of Virginia. It is further declared that the Authority is a regional entity of government by or on behalf of which debt may be contracted by or on behalf of any county pursuant to Article VII, Section 10 (b) of the Constitution of Virginia.*

**§ 3. Definitions.**

*As used in this Act, the following words and terms have the following meanings unless a different meaning clearly appears from the context:*

*"Act" means this Virginia's Region 2000 Airport Authority Act.*

*"Authority" means Virginia's Region 2000 Airport Authority created by this Act.*

*"Board of Directors" means the governing body of the Authority.*

*"Bonds" means any bonds, notes, debentures, or other evidence of financial indebtedness issued by this Authority pursuant to this Act.*

*"Commonwealth" means the Commonwealth of Virginia.*

*"Cost" means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements, and other property rights and interests; the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery, and equipment; financing charges and interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction; cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to*

*determining the feasibility or practicability of constructing facilities; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, and improvements; and such other expenses as may be necessary or incident to the construction of the facilities, the financing of such construction and the placing of the facilities in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications, or other work or materials in connection with the construction of the facilities may be regarded as a part of the cost of the facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such facilities as hereinafter authorized.*

*“Facility” or “Facilities” means any and all airports, terminals, runways, hangars, loading facilities, repair shops, parking areas, facilities for the preparation of in-flight meals, restaurants and accommodations for temporary or overnight use by passengers, and other facilities functionally related to the needs or convenience of passengers, shipping companies and airlines, and any and all industrial and commercial facilities, purchased, constructed, or otherwise acquired or operated by the Authority pursuant to the provisions of this Act. Any facility may consist of or include any or all buildings or other structures, improvements, additions, extensions, replacements, machinery, or equipment, together with appurtenances, lands, rights in land, aviation rights, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways, or other facilities necessary or desirable in connection therewith or incidental thereto.*

*“Loans” means any loans made by the Authority in furtherance of the purposes of this Act from the proceeds of the issuance and sale of the Authority’s bonds and from any of its revenues or other moneys available to it as provided herein.*

*“Lynchburg Regional Airport” means the airport facilities located south of the intersection of U.S. Route 460 and U.S. Route 29 in Campbell County, and any other facilities necessary, incidental, or convenient to the operation of such airport facilities.*

*“Participating political subdivision” or “Participating political subdivisions” means the City of Lynchburg and any of the Counties of Amherst, Appomattox, Bedford and Campbell that have adopted a resolution consistent with § 2 of this Act, and any other political subdivision that may join or has joined the Authority pursuant to §§ 4 and 5 of this Act.*

*“Political subdivision” means a county, municipality, or other public body of the Commonwealth.*

#### *§ 4. Participating political subdivision.*

*Prior to becoming a participating political subdivision, each political subdivision shall enter into a contract with the Authority and other participating political subdivisions*

*setting forth the participation arrangements to be made by such political subdivision to the Authority.*

*No pecuniary liability of any kind shall be imposed upon any participating political subdivision because of any act, omission, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or on the part of the Authority or any member thereof, or its agents, servants, or employees, except as otherwise provided in this Act with respect to contracts and agreements between the Authority and any other political subdivision.*

*§ 5. Appointment and tenure of a Board of Directors.*

*The powers of the Authority shall be vested in the directors thereof in office from time to time. The governing body of each participating political subdivision shall appoint the number of directors, as agreed by the participating political subdivisions. The governing body of each political subdivision shall be empowered to remove at any time, without cause, any director appointed by it and appoint a successor director to fill the unexpired portion of the removed director's term. Each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties.*

*§ 6. Organization.*

*A majority of the directors in office shall constitute a quorum. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.*

*The Authority shall hold regular meetings at such times and places as may be established by its bylaws. Special meetings of the Authority may be called by any director or the executive director upon at least 48-hours' written notice to each director served personally or left at his usual place of business or residence.*

*The Board of Directors shall annually elect a chairman and a vice-chairman from among its membership, a secretary and a treasurer or a secretary-treasurer from its membership, or not as they deem appropriate, and such other officers as they may deem appropriate.*

*The Board of Directors may appoint an executive director, who shall not be a director, who shall exercise such powers and duties as may be delegated by the Board of Directors, including powers and duties involving the exercise of discretion.*

*The Board of Directors may make and from time to time amend and repeal bylaws, not inconsistent with this Act, governing the manner in which the Authority's business may be transacted and in which the power granted to it may be enjoyed. The Board of Directors may appoint such committees as the board may deem advisable and fix the duties and responsibilities of such committees.*

*§ 7. Powers.*

*The Authority is hereby granted all powers necessary or appropriate to carry out the purposes of this Act, including, for purposes of illustration, the following:*

- 1. To sue and be sued in its own name;*
- 2. To have perpetual succession;*
- 3. To adopt a corporate seal and alter the same at its pleasure;*
- 4. To maintain offices at such places as it may designate in the City of Lynchburg or the County of Campbell;*
- 5. To acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate any airport, air landing fields, structures, navigation facilities, and other property incidental thereto within the territorial limits of the participating political subdivisions subject to the limitation that such power shall be limited to such items as may be necessary for the operation of the Lynchburg Regional Airport;*
- 6. To construct, install, maintain, and operate facilities for the servicing and storage of aircraft and for the accommodation of cargo, freight, mail, express, etc., and for the accommodation and comfort of air travelers, and for lease or sale to industrial or commercial users, and to purchase and sell equipment and supplies incidental to the operation of its airport facilities;*
- 7. To grant to others the privilege to operate for profit concessions, leases, and franchises, including but not limited to the sale of airplanes, fuel, parts and equipment; maintenance of aircraft; the accommodation and comfort of persons using its facilities and the providing of ground transportation and parking facilities for such persons; and such concessions, leases, and franchises shall be exclusive or limited when deemed by the Authority necessary to further the public safety, improve the quality of air service, avoid duplication of service or conserve airport property and the airport operation;*
- 8. To determine fees, rates, and charges for the use of its facilities;*
- 9. To apply for and accept gifts, or grants of money or gifts, grants or loans of other property, or other financial assistance from the United States of America and agencies and instrumentalities thereof, the Commonwealth and political subdivisions, agencies, and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of the Authority's facilities or for the payment of principal of any indebtedness of the Authority, interest thereon or other cost incident thereto, or in order to make loans in furtherance of the purposes of this Act of such money, contributions, grants, and other financial assistance, and to this end the Authority shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient, or desirable or imposed as a condition to such financial aid;*

10. *To establish, operate, and maintain a business/industrial park;*
11. *To establish, operate, and maintain a foreign trade zone and otherwise to expedite and encourage foreign commerce;*
12. *To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;*
13. *To contract with a participating political subdivision for such subdivision to provide legal services, engineering services, depository and investment services contemplated by § 14, accounting services, including the annual independent audit required by § 12, procurement of goods and services, and to act as fiscal agent for the Authority. In the event of a contract for a participating political subdivision to act as fiscal agent, the Authority's employees shall be compensated, shall receive the same benefits, including pensions, and shall be subject to the personnel rules of said subdivision;*
14. *To establish personnel rules;*
15. *To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest, or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property;*
16. *Subject to the provisions of any deed or deeds from the City of Lynchburg or the County of Campbell to the Authority and any agreement or agreements among or between the Authority and any participating political subdivision, to sell, lease, grant options upon, exchange, transfer, assign, or otherwise dispose of any property, real or personal, or any interest therein, if such disposition is in the public interest and in furtherance of the purposes of this Act or if such property is not necessary for the purposes of the Authority;*
17. *To make, assume and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities, and to charge and collect rent and other fees and charges under any such lease, contract, and other arrangement with respect to such facilities;*
18. *a. To borrow money, including the issuance of bonds, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;*  
*b. The total indebtedness of the Authority at no time shall exceed the amount of \$5,000,000, in principal, whether by purchase of encumbered property, direct loan, bonded indebtedness, or debt in any other form except as agreed to by each participating*

*political subdivision by resolution of the governing body thereof, in which case the total amount of indebtedness shall be expressed in the resolution of each such governing body.*

*19. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and governing the conduct of persons and organizations using its facilities and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities, all as hereinafter provided;*

*20. To pay pensions and establish pension plans, pension trusts, and other compensation plans for any of its employees;*

*21. To purchase and maintain insurance or to provide indemnification on behalf of any person who is or was a director, officer, employee, or agent of the Authority against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such;*

*22. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this Act, including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the Authority that have not been pledged or assigned for the payment of any of the Authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. The Authority may forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants, and other financial assistance, as set out in subdivision 9; and*

*23. To do all things necessary or convenient to the purposes of this Act. However, the powers of the Authority expressed in this Act shall be limited to those powers necessary for the operation of the Lynchburg Regional Airport and a business/industrial park. To that end, property acquired, owned, or conveyed to the Authority, contracts entered into, financial assistance, indebtedness, rules and regulations adopted by the Authority, and any other actions thereof may only pertain to said airport or business/industrial park. The grant of regulatory authority by this Act, including regulations that displace, eliminate, or limit competition by or among persons or entities, is based on the policy of the Commonwealth to provide for the safe, adequate, economical, and efficient provision of air transportation and related facilities and services to the public.*

*§ 8. Name of airport.*

*The name of the airport operated by the Authority within the boundaries of Campbell County shall be Lynchburg Regional Airport. The name of the airport may be changed*

*upon approval of the majority of the governing bodies of the participating political subdivisions.*

*§ 9. Rules and regulations.*

*The Authority shall have the power to adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and governing the conduct of persons and organizations using its facilities.*

*Unless the Authority shall by unanimous vote of the Board of Directors determine that an emergency exists, the Authority shall, prior to the adoption of any rule, regulation, or alteration or amendment or modification thereof:*

- 1. Make such rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least 10 days; and*
- 2. Post in a public place a notice declaring the Board of Directors' intention to consider adopting such rule, regulation, alteration, amendment, or modification and informing the public that the Authority will at a public meeting consider the adoption of such rule or regulation or such alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least 10 days from the first day of the posting of the notice thereof. The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.*

*The Authority's rules and regulations relating to (i) traffic, including but not limited to motor vehicle moving violations and the location of and payment of public parking; (ii) access to Authority facilities, including but not limited to solicitation, handbilling, and picketing; and (iii) aircraft operation and maintenance shall have the force of law, as shall any other rule or regulation of the Authority which shall contain a determination by the Authority that it is necessary to accord the same force and effect of law in the interest of the public safety. All ordinances, rules, and regulations duly adopted for the regulation, administration, and operation of Lynchburg Regional Airport, in force at the effective date of this Act, shall remain in full force insofar as they or any part thereof are not inconsistent with the provisions of this Act until amended or repealed in accordance with this Act.*

*§ 10. Police powers.*

*Authority employees meeting the minimum requirements of the Department of Criminal Justice Services shall be given police power by the circuit court of the political subdivision where the employee will normally be exercising enforcement authority. The authority conferred upon such police officers shall be exercised only upon Authority facilities located within such participating political subdivision, and shall be in all terms con-*

*sistent with the requirements of Chapter 17 (§ [15.2-1700](#) et seq.) of Title 15.2 of the Code of Virginia.*

*Such police officers shall have all powers vested in police officers under Chapter 17 (§ [15.2-1700](#) et seq.) of Title 15.2 of the Code of Virginia and shall be responsible upon Authority facilities for enforcing Authority rules and regulations and all other applicable statutes, ordinances, rules, and regulations of the United States of America and agencies, and instrumentalities thereof and the Commonwealth and political subdivisions, agencies, and instrumentalities thereof.*

*Such police officers may issue summonses to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation of the Authority or other applicable statute, ordinance, rule, or regulation.*

*For the purpose of enforcing such statutes, ordinances, rules, and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the participating political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violation of any such statutes, ordinances, rules, or regulations.*

#### *§ 11. Eminent domain.*

*The Authority is hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements, privileges, or other property interests which are necessary for purposes related to the operations of Lynchburg Regional Airport, including, where necessary to provide unobstructed air space for the landing and taking off of aircraft utilizing its airport, avigation easements over lands or water outside the boundaries of its airport, even though such avigation easement may be either inconsistent with the continued use of such land for the same purposes for which it had been used prior to such acquisition, or inconsistent with the maintenance, preservation, and renewal of any structure or any tree or other vegetation standing or growing on said land at the time of such acquisition. Proceedings for the acquisition of such land, easements, and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with Title 25.1 of the Code of Virginia.*

*In the exercise of its eminent domain powers, the Authority shall have the right to inspect property as provided in § [25.1-203](#) of the Code of Virginia.*

#### *§ 12. Reports.*

*The Authority shall keep minutes of its proceedings, which minutes shall be open to public inspection during normal business hours. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually by an*

*independent certified public accountant. Copies of each such audit shall be furnished to each participating political subdivision and shall be open to public inspection.*

*§ 13. Procurement.*

*All contracts that the Authority may let for construction or materials shall be subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq. of the Code of Virginia). This section shall not apply to contracts relating to the construction of facilities by tenants on land leased from the Authority or to the construction of facilities not owned by the Authority but for which the Authority is providing financial assistance through the issuance of its bonds to finance all or a portion of such construction.*

*§ 14. Deposit and investment of funds.*

*Except as provided by contract with a participating political subdivision, all moneys received pursuant to the authority of this Act, whether as proceeds from the sale of bonds or as revenues or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this Act. All moneys of the Authority shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations having offices in the Commonwealth. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq. of the Code of Virginia).*

*Funds of the Authority not needed for immediate use or disbursement may, subject to the provisions of any contract between the Authority and the holders of its bonds, be invested in securities which are considered lawful investments for fiduciaries.*

*§ 15. Authority to issue bonds.*

*The Authority shall have power and is hereby authorized to issue bonds from time to time in its discretion for any of its purposes, including the payment of all or any part of the cost of any of its facilities and the refunding of any bonds previously issued by it.*

*The Authority shall not issue bonds unless and until the maximum amount of such issue and the general purposes thereof have been approved by the governing body of each participating political subdivision, with the exception of those allowed in subdivision 18 of § 7. Subject to the foregoing, bonds may be issued under this Act notwithstanding any debt or other limitation prescribed in any other statute and without obtaining the consent of any city, town, or county government or any authority, board, bureau, or agency of the Commonwealth or of any of the foregoing, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions, or things which are specifically required by this Act.*

*The Authority may issue such types of bonds as it may determine, specifically bonds payable as to principal and interest: (i) from its revenues generally; (ii) exclusively from the income and revenues of a particular project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Subject to the limitations set forth in § 7, any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, as such participating political subdivision or other entities may be authorized to make under general law or by pledge of any income or revenues of the Authority, or a mortgage of any facilities of the Authority.*

*Bonds of the Authority shall be authorized by resolution and may be issued in one or more series, may be dated, may mature at such time or times not exceeding 40 years from their date or dates, may be subject to redemption or repurchase at such price or prices and under such terms and conditions, and may contain such other provisions, all as determined by the Authority before their issuance or in such manner as the Authority may provide. The bonds may bear interest at such rate or rates as may be determined by the Authority or in such manner as the Authority may provide, including the determination by reference to indices or formulas or by agents designated by the Authority under guidelines established by it. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Act or any recitals in any bonds issued under the provisions of this Act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the conversion and reconversion into coupon bonds of any bonds registered as to both principal and interest and vice versa. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interests of the Authority.*

*Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery.*

*§ 16. Resolution or trust indenture to secure bonds.*

*In connection with the issuance of bonds and in order to secure the payment of such bonds, the Authority shall have power:*

- 1. To pledge by resolution, trust indenture, or other agreement, all or any part of its fees, rents, or revenues;*
- 2. To covenant to impose and maintain such schedule of fees, rents, and charges as will produce funds sufficient to pay operating costs and debt service;*
- 3. To covenant against pledging all or any part of its fees, rents, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;*
- 4. To provide for the release of fees, rents, and revenues from any pledge and to reserve rights and powers in the fees, rents, and revenues which are subject to a pledge;*
- 5. To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any facility or facilities of the Authority or any part thereof or with respect to limitations on its right to undertake additional projects;*
- 6. To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;*
- 7. To covenant as to what other, or additional, debt may be incurred by it;*
- 8. To provide for the terms, forms, registration, exchange, execution, and authentication of bonds;*
- 9. To provide for the replacement of lost, destroyed, or mutilated bonds;*
- 10. To covenant as to the use of any or all of its property, real or personal, subject to the continued use of such property for airport or business/industrial park purposes;*
- 11. To create or to authorize the creation of special funds in which there may be segregated: (i) the proceeds of any loan or grant; (ii) all of the fees, rents, and revenues of any facility or facilities or parts thereof; (iii) any moneys held for the payment of the costs of operation and maintenance of any such facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (iv) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as reserve for such payments; and (v) any moneys held for any other reserve or contingencies; and to covenant as to the use and disposal of the moneys held in such funds;*

*12. To redeem its bonds, and to covenant for their redemption and to provide the terms and conditions thereof;*

*13. To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner;*

*14. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;*

*15. To covenant as to the maintenance of its facilities, the insurance to be carried thereon, and the use and disposition of insurance moneys;*

*16. To vest in a bondholder the right, in the event of the failure of the Authority to observe or perform any covenant on its part to be kept or performed, to cure any such default, and, subject to the limitation on total indebtedness expressed in this Act, to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the Authority with such interest, security, and priority as may be provided in any trust indenture, lease, or contract of the Authority with reference thereto;*

*17. To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;*

*18. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;*

*19. To covenant to surrender possession of all or any part of any facility or facilities acquired or constructed from bond proceeds, the revenues from which have been pledged upon the happening of any event of default, as defined in the contract, and to vest in a bondholder the right without judicial proceeding to take possession and to use, operate, manage, and control such facility or any part thereof, and to collect and receive all fees, rents, and revenues arising therefrom in the same manner as the Authority itself might do and to dispose of the moneys collected in accordance with the agreement of the Authority with such obligee, subject to the continued use of such facilities for airport purposes;*

*20. To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the bondholders or any proportion of them may enforce any such covenant;*

21. *To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character;*

22. *To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as any purchaser of the bonds of the Authority may reasonably require;*

23. *To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the Authority which tend to make the bonds more marketable; notwithstanding that such covenant, acts, or things may not be enumerated herein, it being the intention hereof to give the Authority power to do all things in the issuance of bonds, and in the provisions for their security that are not inconsistent with the Constitution of the Commonwealth or this Act; and*

24. *In connection with, or incidental to, the issuance or carrying of notes or bonds or the acquisition or carrying of any investments, to enter into swap agreements or other contracts or arrangements that the Authority determines to be necessary or appropriate to place obligations or investments of the Authority, as represented by notes, bonds, or investments of the Authority, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the Authority or to hedge payment, currency, rate, spread, or other exposure. Such contracts or arrangements may be entered into by the Authority in connection with, or incidental to, entering into or maintaining (i) any agreement that secures notes or bonds of the Authority and is authorized or permitted by law or (ii) any investment, or contract providing for any investment, otherwise authorized or permitted by law.*

*Such contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Authority, after giving due consideration, to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.*

*In connection with or incidental to any of these contracts or arrangements, the Authority may enter into credit enhancement or liquidity agreements with such terms and conditions as it shall determine.*

*§ 17. Fees, rents, and charges.*

*The Authority is hereby authorized to and shall fix, revise, charge, and collect fees, rents, and other charges for the use and services of any facilities. Such fees, rents, and other charges shall be so fixed and adjusted as to provide a fund sufficient with other*

*revenues to pay the cost of maintaining, repairing, and operating the facilities and the principal and any interest on its bonds as the same shall become due and payable, including reserves therefor. Such fees, rents, and charges shall not be subject to supervision or regulation by any authority, board, bureau, or agency of the Commonwealth or any participating political subdivision.*

*The fees, rents, and other charges received by the Authority, except such part thereof as may be necessary to pay the cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in any resolution authorizing the issuance of such bonds or in any trust indenture or agreement securing the same, shall to the extent necessary, be set aside at such regular intervals as may be provided in any such resolution or trust indenture or agreement in a sinking fund or sinking funds pledged to, and charged with, the payment and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. So long as any of its bonds are outstanding, the fees, rents, and charges so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of any such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement.*

*§ 18. Credit of Commonwealth and political subdivisions not pledged.*

*The bonds of the Authority shall not be a debt of the Commonwealth or any political subdivision thereof, other than the Authority, and neither the Commonwealth nor any political subdivision thereof, other than the Authority, shall be liable thereon, nor shall such bonds be payable out of any funds or properties other than those of the Authority. All bonds of the Authority shall contain on the face thereof a statement to such effect. The bonds shall not constitute indebtedness within the meaning of any debt limitation or restriction.*

*§ 19. Directors and persons executing bonds not liable thereon.*

*Neither the Board of Directors nor any person executing the bonds shall be liable personally on the Authority's bonds by reasons of the issuance thereof.*

*§ 20. Remedies of bondholder.*

*Any holder of bonds issued under the provisions of this Act or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, may, either at law or in equity, by suit, action, injunction, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this Act or under such trust indenture agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this Act or by such trust indenture or agreement or resolution to be performed by the Authority or by any officer or agent thereof, including the fixing, charging, and collection of fees, rents, and other charges.*

*Any resolution authorizing the issuance of the Authority's bonds or trust indenture or agreement securing the same may limit or abrogate the individual right of action by the holders of such bonds or coupons appertaining thereto.*

**§ 21. Taxation.**

*The exercise of the powers granted by this Act shall in all respects be presumed to be for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their health, safety, welfare, convenience, and prosperity, and as the operation and maintenance of any project which the Authority is authorized to undertake will constitute the performance of an essential governmental function, the Authority shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this Act, and the bonds issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof. Persons, firms, partnerships, associations, corporations, and organizations leasing property of the Authority or doing business on property of the Authority shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted, including, but not limited to, any leasehold tax on real property and taxes on tangible personal property and machinery and tools, taxes for admission, taxes on hotel and motel rooms, taxes on the sale of tobacco products, taxes on the sale of meals and beverages, privilege taxes and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation, or calling, and taxes upon consumers of gas, electricity, telephone, and other public utility services.*

**§ 22. Bonds as legal investments.**

*Bonds issued by the Authority under the provisions of this Act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political*

*subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.*

*§ 23. Appropriation by political subdivision.*

*Any participating political subdivision, or other political subdivision of the Commonwealth all or a part of which is located within 60 miles of an Authority facility, is authorized to provide services, to donate real or personal property, and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority's facilities. Any such political subdivision is hereby authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public Finance Act (§ [15.2-2600](#) et seq. of the Code of Virginia) or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority, and such political subdivision may enter into contracts obligating such bond proceeds to the Authority. The Authority may agree to assume, or reimburse a participating political subdivision for, any indebtedness incurred by such participating political subdivision with respect to facilities conveyed by it to the Authority. With the consent of the governing body of the participating political subdivision, any such agreement may be made subordinate to the Authority's indebtedness to others.*

*§ 24. Fiscal year; Authority budget.*

*A. The fiscal year of the Authority budget shall begin on July 1 and end on June 30.*

*B. The Authority shall annually prepare its budget as agreed to by the participating jurisdictions.*

*§ 25. Contracts with political subdivisions.*

*The Authority is authorized to enter into contracts with any one or more political subdivisions, which contracts may restrict the powers of the Authority otherwise granted by this Act. Any participating political subdivision, or other political subdivision of the Commonwealth all or part of which is located within 60 miles of an Authority facility, is authorized to enter into contracts with the Authority, pursuant to which the Authority undertakes to provide the facilities and render the services specified therein. Any such contract or agreement may provide that the political subdivision will make payments to the Authority based on the services rendered by the Authority to the residents of such political subdivision, determined in such reasonable manner as the Authority and the political*

*subdivision may mutually agree. Each political subdivision entering into such a service contract with the Authority is authorized to do everything necessary or proper to carry out and perform such contract and to provide for the payment or discharge of any obligation thereunder by the same means and in the same manner as any other of its obligations.*

*§ 26. Withdrawal of participating jurisdiction.*

*Whenever it shall appear beneficial to the Authority a participating jurisdiction may request to withdraw from the Authority subject to approval of the remaining political jurisdictions by resolution of the governing bodies. In the event a jurisdiction withdraws from the Authority, that jurisdiction shall be responsible for any outstanding obligations previously agreed to and shall not be entitled to any benefit of the assets of the Authority.*

*§ 27. Dissolution of Authority.*

*Whenever it shall appear to the Authority, or a majority of participating political subdivisions, that the need for the Authority no longer exists, the Authority, or in the proper case, any such subdivision, may petition the Circuit Court of Campbell County for the dissolution of the Authority and provide a plan for distribution of assets to the participating jurisdictions. If the court shall determine that the need for the Authority as set forth in this Act no longer exists and that all debts and pecuniary obligations of the Authority have been fully paid or provided for, it may enter an order dissolving the Authority.*

*Upon dissolution, the court shall order any real property contributed to the Authority by a participating political subdivision, together with any improvements thereon, returned to such participating political subdivision as set forth in the dissolution plan or as determined by the court if no plan exists. In the event no plan exists the remaining assets of the Authority shall be distributed to the participating political subdivisions in proportion to their respective contributions theretofore made to the Authority.*

*Each participating political subdivision and all holders of the Authority's bonds shall be made parties to any such proceeding and shall be given notice as provided by law. Any party defendant may reply to such petition at any time within six months after the filing of the petition. From the final judgment of the court, an appeal shall lie to the Supreme Court of Virginia.*

*§ 28. Agreement with Commonwealth and participating political subdivisions.*

*The Commonwealth and, by participating in the Authority, each participating political subdivision pledge to and agree with the holders of any bonds issued by the Authority that neither the Commonwealth nor any participating political subdivision will limit or alter the rights hereunder vested in the Authority to fulfill the terms of any agreements made with said holders or in any way impair the rights and remedies of said holders until such*

*bonds are fully met and discharged. The Authority is authorized to include this pledge and agreement in any contract with the holders of the Authority's bonds.*

*§ 29. Liberal construction.*

*Neither this Act nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the Authority might otherwise have under any laws of the Commonwealth, and this Act is cumulative to any such powers. This Act does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds under the provisions of this Act need not comply with the requirements of any other law applicable to the issuance of bonds, notes, or other obligations. No proceedings, notice, or approval shall be required for the issuance of any bonds or any instrument as security therefor, except as is expressly provided in this Act. The provisions of this Act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this Act.*

*§ 30. Application of local ordinances, service charges, and taxes upon leaseholds.*

*Nothing herein contained shall be construed to exempt the Authority's property from any applicable zoning, subdivision, erosion and sediment control, and fire prevention codes or from building regulations of a political subdivision in which such property is located. Nor shall anything herein contained exempt the property of the Authority from any service charge authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of Virginia, or exempt any lessee of any of the Authority's property from any tax imposed upon his leasehold interest in such property or upon the receipts derived therefrom.*

*§ 31. Existing contracts, leases, franchises, etc., not impaired.*

*No provisions of this Act shall relieve, impair or affect any right, duty, liability, or obligation arising out of any contract, concession, lease, or franchise now in existence except to the extent that such contract, concession, lease, or franchise may permit. Notwithstanding the foregoing provisions of this section, the Authority may renegotiate, renew, extend the term of, or otherwise modify at any time any contract, concession, lease, or franchise now in existence in such manner and on such terms and conditions as it may deem appropriate, provided that the operator of or under any said contract, concession, lease, or franchise consents to said renegotiation, renewal, extension, or modification.*

## **Chapter 862 Subaqueous lands; parties in City of Norfolk to pay amount commensurate with property interest.**

An Act to amend and reenact §§ 1, 2, and 3 of Chapter 884 of the Acts of Assembly of the 2006 Regular Session, and to amend Chapter 884 by adding sections numbered 4 and 5, relating to the conveyance of subaqueous land.

[\[H 2203\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 2, and 3 of Chapter 884 of the Acts of Assembly of the 2006 Regular Session are amended and reenacted and that Chapter 884 is amended by adding sections numbered 4 and 5 as follows:

§ 1. That the Governor is hereby authorized to sell and convey to Moon of Norfolk, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance, and the payment of ~~fair market value considerations as are deemed proper by the Marine Resources Commission~~ *an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5* and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being more particularly described as follows:

Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2nd Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 145.00 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 118.55 feet to the "point of beginning"; thence from said "point of beginning" the following courses and distances: South 76 degrees 36 minutes 34 seconds East a distance of 9.07 feet to a point; thence South 70 degrees 28 minutes 48 seconds East a distance of 160.19 feet to a point; thence South 70 degrees 22 minutes 56 seconds East a distance of 67.23 feet to a point; thence South 86 degrees 13 minutes 40 seconds East a distance of 56.91 feet to a point; thence South 22 degrees 29 minutes 28 seconds West a distance of 557.68 feet to a point; thence North 58 degrees 24 minutes 34 seconds West a distance of 293.68 feet to a point; thence North 22 degrees 29 minutes 28 seconds East a distance of

479.85 feet to the said "point of beginning," containing approximately 148,046 square feet or 3.40 acres.

§ 2. That the Governor is hereby authorized to sell and convey to Harbor Point Investors, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale and conveyance, and the payment of ~~fair market value considerations as are deemed proper by the Marine Resources Commission~~ *an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5* and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being more particularly described as follows:

Commencing at the intersection of the center line of Second Street with the southern right-of-way line of Front Street; thence from said point of commencement North 65 degrees 34 minutes 59 seconds West a distance of 211.73 feet to a point on the southern right-of-way line of Front Street; thence South 24 degrees 12 minutes 30 seconds West a distance of 100.00 feet to the said "point of beginning;" thence South 24 degrees 12 minutes 30 seconds West a distance of 136.06 feet to a point; thence North 64 degrees 26 minutes 00 seconds West a distance of 9.52 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 311.05 feet to a point; thence North 57 degrees 09 minutes 34 seconds West a distance of 775.59 feet to a point; thence North 32 degrees 35 minutes 21 seconds East a distance of 21.00 feet to a point; thence South 57 degrees 18 minutes 00 seconds East a distance of 119.54 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 31.50 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 290.00 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 70.00 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 290.00 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 105.00 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 270.00 feet to a point; thence South 65 degrees 36 minutes 00 seconds East a distance of 60.00 feet to a point; thence South 24 degrees 14 minutes 30 seconds West a distance of 105.00 feet to a point; thence South 88 degrees 19 minutes 36 seconds East a distance of 328.55 feet to a point; thence North 70 degrees 52 minutes 08 seconds East a distance of 68.96 feet to a point; thence South 49 degrees 50 minutes 46 seconds East a distance of 36.40 feet to the said "point of beginning," containing approximately 178,923.34 square feet or 4.11 acres.

§ 3. That the Governor is hereby authorized to sell and convey to Front Street Investors, L.L.C., and its successors and assigns, subject to such terms and conditions of the sale

and conveyance, and the payment of fair market value considerations as are deemed proper by the Marine Resources Commission *an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5* and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land, belonging, lying, situate and being in the City of Norfolk, being more particularly described as follows:

Commencing at the intersection of the center line of Second Street with the southern right-of-way line of Front Street; thence from said point of commencement South 65 degrees 34 minutes 59 seconds East a distance of 145.00 feet to a point on the southern right-of-way line of Front Street; thence South 23 degrees 48 minutes 00 seconds West a distance of 118.00 feet to the said "point of beginning;" thence South 23 degrees 48 minutes 00 seconds West a distance of 461.92 feet to a point; thence North 57 degrees 09 minutes 00 seconds West a distance of 374.81 feet to a point; thence North 24 degrees 14 minutes 30 seconds East a distance of 289.08 feet to a point; thence South 64 degrees 26 minutes 00 seconds East a distance of 9.52 feet to a point; thence North 24 degrees 12 minutes 30 seconds East a distance of 136.06 feet to a point; thence South 53 degrees 09 minutes 46 seconds East a distance of 83.68 feet to a point; thence South 52 degrees 54 minutes 32 seconds East a distance of 100.37 feet to a point; thence South 72 degrees 37 minutes 44 seconds East a distance of 179.35 feet to the said "point of beginning," containing approximately 156,749.45 square feet or 3.60 acres.

*§ 4. Except as provided in § 5, the grantee shall compensate the Commonwealth in an amount commensurate with the property interest being conveyed, which shall be considered equivalent to 25 percent of the assessed value of the specified parcel, exclusive of any buildings or other improvements. The assessed value shall be established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. If no such assessments are available for the specified parcel, then the assessed value shall be calculated as the percentage, by square footage or acreage, that the specified parcel represents of the larger parcel for which such assessments are available.*

*§ 5. If the Commission determines that unique circumstances exist, the Commission may allow the grantee to compensate the Commonwealth in an amount less than 25 percent of the assessed value of the specified parcel. Any such determination by the Commission shall be justified in writing and shall not be subject to judicial review.*

## **Chapter 896 Transportation funding; authority to certain localities to impose additional fees therefor, report.**

An Act to amend and reenact §§ [2.2-1514](#), [10.1-1188](#), [15.2-2317](#) through [15.2-2327](#), [15.2-2403](#), [15.2-4839](#), [15.2-4840](#), [33.1-3](#), [33.1-13](#), [33.1-19.1](#), [33.1-23.03](#), [33.1-23.03:8](#), [33.1-223.2:12](#), [33.1-268](#), [33.1-269](#), [33.1-277](#), [46.2-694](#), [46.2-694.1](#), [46.2-697](#), [46.2-1135](#), [58.1-605](#), [58.1-606](#), [58.1-811](#), [58.1-2217](#), [58.1-2249](#), [58.1-2289](#), [58.1-2403](#), [58.1-2425](#), [58.1-2701](#), and [58.1-2706](#) of the Code of Virginia; to amend the Code of Virginia by adding a section numbered [15.2-2223.1](#), by adding in Chapter 22 of Title 15.2 an article numbered 9, consisting of sections numbered [15.2-2328](#) and [15.2-2329](#), by adding in Article 1 of Chapter 24 of Title 15.2 a section numbered [15.2-2403.1](#), by adding a section numbered [15.2-4838.1](#), by adding in Title 30 a chapter numbered 42, consisting of sections numbered [30-278](#) through [30-282](#), by adding a section numbered [33.1-23.4:01](#), by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered [33.1-391.6](#) through [33.1-391.15](#), by adding sections numbered [46.2-206.1](#), [46.2-702.1](#), [46.2-755.1](#), [46.2-755.2](#), [46.2-1167.1](#), [58.1-625.1](#), [58.1-802.1](#), and [58.1-815.4](#), by adding in Chapter 17 of Title 58.1 an article numbered 4.1, consisting of sections numbered [58.1-1724.2](#) through [58.1-1724.7](#), by adding a section numbered [58.1-2402.1](#), by adding in Article 2 of Chapter 25 of Title 58.1 a section numbered [58.1-2531](#), and by adding sections numbered [58.1-3221.2](#) and [58.1-3825.1](#); and to repeal the tenth enactment clauses of Chapter 1019 and Chapter 1044 of the Acts of Assembly of 2000, and to authorize the Commonwealth Transportation Board to issue certain bonds, relating to transportation.

[\[H 3202\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1514](#), [10.1-1188](#), [15.2-2317](#) through [15.2-2327](#), [15.2-2403](#), [15.2-4839](#), [15.2-4840](#), [33.1-3](#), [33.1-13](#), [33.1-19.1](#), [33.1-23.03](#), [33.1-23.03:8](#), [33.1-223.2:12](#), [33.1-268](#), [33.1-269](#), [33.1-277](#), [46.2-694](#), [46.2-694.1](#), [46.2-697](#), [46.2-1135](#), [58.1-605](#), [58.1-606](#), [58.1-811](#), [58.1-2217](#), [58.1-2249](#), [58.1-2289](#), [58.1-2403](#), [58.1-2425](#), [58.1-2701](#), and [58.1-2706](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [15.2-2223.1](#), by adding in Chapter 22 of Title 15.2 an article numbered 9, consisting of sections numbered [15.2-2328](#) and [15.2-2329](#),

by adding in Article 1 of Chapter 24 of Title 15.2 a section numbered [15.2-2403.1](#), by adding a section numbered [15.2-4838.1](#), by adding in Title 30 a chapter numbered 42, consisting of sections numbered [30-278](#) through [30-282](#), by adding a section numbered [33.1-23.4:01](#), by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered [33.1-391.6](#) through [33.1-391.15](#), by adding sections numbered [46.2-206.1](#), [46.2-702.1](#), [46.2-755.1](#), [46.2-755.2](#), [46.2-1167.1](#), [58.1-625.1](#), [58.1-802.1](#), and [58.1-815.4](#), by adding in Chapter 17 of Title 58.1 an article numbered 4.1, consisting of sections numbered [58.1-1724.2](#) through [58.1-1724.7](#), by adding a section numbered [58.1-2402.1](#), by adding in Article 2 of Chapter 25 of Title 58.1 a section numbered [58.1-2531](#), and by adding sections numbered [58.1-3221.2](#) and [58.1-3825.1](#), as follows:

§ [2.2-1514](#). Designation of general fund for nonrecurring expenditures.

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § [2.2-1509](#), including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § [2.2-1503.2](#), the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act. *Such term shall not include any expenditures relating to transportation, including but not limited to transportation maintenance.*

B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to § [2.2-813](#) ~~an amount for nonrecurring expenditures, which shall equal the remaining amount of the general fund balance that is not otherwise reserved or designated.~~ *as follows: one-third of the remaining amount of the general fund balance that is not otherwise reserved or designated shall be designated by the Comptroller for non-recurring expenditures, and two-thirds shall be designated for deposit into the Transportation Trust Fund.* No such designation shall be made unless the full amounts required for other reserves or designations including, but not limited to, (i) the Revenue Stabilization Fund deposit pursuant to § [2.2-1829](#), (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § [10.1-2128](#), (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § [2.2-5005](#), (v) pro rata rebate payments to certain public institutions of higher education pursuant to § [2.2-5005](#), (vi) the unappropriated balance anticipated in the general appropriation act for the end of such

fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § [2.2-5005](#) are set aside. The Comptroller shall set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § [2.2-5005](#) and for all fiscal years thereafter.

C. The Governor shall include in "The Budget Bill" pursuant to § [2.2-1509](#) recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for non-recurring expenditures *and an amount for deposit into the Transportation Trust Fund* equal to the ~~amount~~ amounts designated by the Comptroller for such ~~purpose~~ purposes pursuant to the provisions of subsection B ~~of this section~~. *Such deposit to the Transportation Trust Fund shall not preclude the appropriation of additional amounts from the general fund for transportation purposes.*

§ [10.1-1188](#). State agencies to submit environmental impact reports on major projects.

A. All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project.

"Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning, which costs \$100,000 or more. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state government shall ~~not include~~ *apply to any county, city or town of the Commonwealth only in connection with highway construction, reconstruction, or improvement projects affecting highways or roads undertaken by the county, city, or town.*

Such environmental impact report shall include, but not be limited to, the following:

1. The environmental impact of the major state project, including the impact on wildlife habitat;
2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;
3. Measures proposed to minimize the impact of the major state project;
4. Any alternatives to the proposed construction; and

5. Any irreversible environmental changes which would be involved in the major state project.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

B. For purposes of this chapter, this subsection shall not *only* apply to the review of highway and road construction projects or any part thereof. The Secretaries of Transportation and Natural Resources shall jointly establish procedures for review and comment by state natural and historic resource agencies of highway and road construction projects. Such procedures shall provide for review and comment on appropriate projects and categories of projects to address the environmental impact of the project, any adverse environmental effects which cannot be avoided if the project is undertaken, the measures proposed to minimize the impact of the project, any alternatives to the proposed construction, and any irreversible environmental changes which would be involved in the project.

§ 15.2-2223.1. *Comprehensive plan to include urban development areas; new urbanism.*

A. *Every county, city, or town that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and population growth of at least 5% or (ii) has population growth of 15% or more, shall, and any county, city or town may, amend its comprehensive plan to incorporate one or more urban development areas. For purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. For purposes of this section, an urban development area is an area designated by a locality that is appropriate for higher density development due to proximity to transportation facilities, the availability of a public or community water and sewer system, or proximity to a city, town, or other developed area. The comprehensive plan shall provide for commercial and residential densities within urban development areas that are appropriate for reasonably compact development at a density of at least four residential units per gross acre and a minimum floor area ratio of 0.4 per gross acre for commercial development. The comprehensive plan shall designate one or more urban development areas sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Future growth shall be based on official estimates and projections of the Weldon Cooper Center for Public Service of the University of Virginia or other official government sources. The boundaries and size of each urban*

*development area shall be reexamined and, if necessary, revised every five years in conjunction with the update of the comprehensive plan and in accordance with the most recent available population growth estimates and projections. Such districts may be areas designated for redevelopment or infill development.*

*B. The comprehensive plan shall further incorporate principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections.*

*C. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.*

*D. No county, city, or town that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.*

*E. Any county, city, or town that would be required to amend its plan pursuant to this section that determines that its plan accommodates growth in a manner consistent with this section, upon adoption of a resolution certifying such compliance, shall not be required to further amend its plan.*

*F. Any county that amends its comprehensive plan pursuant to this section may designate one or more urban development areas in any incorporated town within such county, if the governing body of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county.*

*G. To the extent possible, state and local transportation, housing, and economic development funding shall be directed to the urban development area.*

[§ 15.2-2317](#). Applicability of article.

*This article shall apply to (i) any county having a population of 500,000 or more as determined by the most recent U.S. Census, (ii) any county or city adjacent thereto, (iii) any city contiguous to such adjacent county or city, (iv) any town within such county or an adjacent county, (v) any county having a population between 58,000 and 62,000 as determined by the 1990 U.S. Census, (vi) Fauquier County, (vii) Spotsylvania County and (viii) Frederick County any locality that has adopted zoning pursuant to Article 7 (§*

[15.2-2280](#) et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census.

§ [15.2-2318](#). Definitions.

As used in this article, unless the context requires a different meaning:

"Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be moved, (iii) survey, engineering, and architectural expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued by the locality to finance the road improvement.

"Impact fee" means a charge or assessment imposed against new development in order to generate revenue to fund or recover the costs of reasonable road improvements ~~needed~~ ~~by and attributable to~~ *benefiting* the new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to ~~expand existing roads to~~ meet demand which existed prior to the new development.

"Impact fee service area" means ~~land designated by ordinance within a locality~~, *an area designated within the comprehensive plan of a locality* having clearly defined boundaries and clearly related traffic needs and within which development is to be subject to the assessment of impact fees.

"Road improvement" includes construction of new roads or improvement or expansion of existing roads *and related appurtenances* as required by applicable ~~construction~~ standards of the Virginia Department of Transportation, *or the applicable standards of a locality with road maintenance responsibilities*, to meet increased demand attributable to new development. Road improvements do not include on-site construction of roads which a developer may be required to provide pursuant to §§ [15.2-2241](#) through [15.2-2245](#).

§ [15.2-2319](#). Authority to assess and impose impact fees.

Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the cost of reasonable road improvements ~~attributable in substantial part to that benefit~~ the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than ten members appointed by the governing body of the locality and at least forty percent of the membership shall be representatives from the development, building or real estate industries. The planning commission or other existing committee that meets the membership requirements may serve as the impact fee advisory committee. The committee shall serve in an advisory capacity to assist and advise the governing body of the locality with regard to the ordinance. No action of the committee shall be considered a necessary prerequisite for any action taken by the locality in regard to the adoption of an ordinance.

§ [15.2-2320](#). Impact fee service areas to be established.

The locality shall delineate one or more impact fee service areas within its ~~jurisdiction~~ *comprehensive plan*. Impact fees collected from new development within an impact fee service area shall be expended for road improvements ~~within~~ *benefiting* that impact fee service area. An impact fee service area may encompass more than one road improvement project. *A locality may exclude urban development areas designated pursuant to § [15.2-2223.1](#) from impact fee service areas.*

§ [15.2-2321](#). Adoption of road improvements program.

Prior to adopting a system of impact fees, the locality shall conduct an assessment of road improvement needs ~~within~~ *benefiting* an impact fee service area ~~and in the locality~~ and shall adopt a road improvements plan for the area showing the new roads proposed to be constructed and the existing roads to be improved or expanded and the schedule for undertaking such construction, improvement or expansion. The road improvements plan shall be adopted as an amendment to the required comprehensive plan and shall be incorporated into the capital improvements program or, in the case of the counties where applicable, the six-year plan for secondary road construction pursuant to § [33.1-70.01](#).

The locality shall adopt the road improvements plan after holding a duly advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, the proposed amount of the impact fee, and information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The locality at a minimum shall include the following items in assessing road improvement needs and preparing a road improvements plan:

1. An analysis of the existing capacity, current usage and existing commitments to future usage of existing roads, as indicated by (i) *current and projected service levels*, (ii) ~~current valid building permits outstanding, (ii) approved conditional rezonings, special exceptions, and special use permits,~~ and (iii) approved *and pending* site plans and subdivision plats. If the current usage and commitments exceed the existing capacity of the roads, the locality also shall determine the costs of improving the roads to meet the demand. The analysis shall *include any off-site road improvements or cash payments for road improvements accepted by the locality and shall include a plan to fund the current usages and commitments that exceed the existing capacity of the roads.*

2. The projected need for and costs of construction of new roads or improvement or expansion of existing roads attributable in whole or in part to projected new development. Road improvement needs shall be projected for the impact fee service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than ~~ten~~ 20 years in the future, at the end of a ~~ten-year~~ 20-year period. The assumptions with regard to land uses, densities, intensities, and population upon which road improvement projections are based shall be presented.

3. The total number of new service units projected for the impact fee service area when fully developed and, if full development is projected to occur more than ~~ten~~ 20 years in the future, at the end of a ~~ten-year~~ 20-year period. A "service unit" is a standardized measure of traffic use or generation. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial and industrial uses. The table shall be based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted trip generation studies, *and consistent with the traffic analysis standards adopted pursuant to § 15.2-2222.1.*

§ [15.2-2322](#). Adoption of impact fee and schedule.

After adoption of a road improvement program, the locality may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing reasonable road improvements ~~required by~~ *benefiting* new development. The ordinance shall set forth the schedule of impact fees.

§ [15.2-2323](#). When impact fees assessed and imposed.

The amount of impact fees to be imposed on a specific development or subdivision shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that the fee is to be collected at the time of the issuance of a ~~certificate of occupancy~~ *building permit*. The ordinance shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of interest for a fixed number

of years. The locality by ordinance may provide for negotiated agreements with the owner of the property as to the time and method of paying the impact fees.

The maximum impact fee to be imposed shall be determined (i) by dividing projected road improvement costs in the *impact fee* service area when fully developed by the number of projected service units when fully developed, or (ii) for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten years.

The ordinance shall provide for appeals from administrative determinations, regarding the impact fees to be imposed, to the governing body or such other body as designated in the ordinance. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

~~No impact fees shall be assessed or imposed upon a development or subdivision if the subdivider or developer has proffered conditions pursuant to §§ [15.2-2298](#) or [15.2-2303](#) for off-site road improvements and the proffered conditions have been accepted by the local government.~~

§ [15.2-2324](#). Credits against impact fee.

The value of any dedication, contribution or construction from the developer for off-site road *or other transportation* improvements ~~within~~ *benefiting* the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. *The locality shall treat as a credit any off-site transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality.* The locality may by ordinance provide for credits for approved on-site *trans- portation* improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees the extent to which (i) *other* developments have already contributed to the cost of existing roads which will *serve benefit* the development, (ii) new development will contribute to the cost of existing roads, and (iii) new development will contribute to the cost of road improvements in the future other than through impact fees, *including any special taxing districts, special assessments, or community development authorities.*

§ [15.2-2325](#). Updating plan and amending impact fee.

The locality shall update the needs assessment and the assumptions and projections at least once every two years. The road improvement plan shall be updated at least every two years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect any substantial changes in such assumptions and projections. *Any impact fees not yet paid shall be assessed at the updated rate.*

§ [15.2-2326](#). Use of proceeds.

A separate road improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in the interest-bearing account. Interest earned on deposits shall become funds of the account. The expenditure of funds from the account shall be only for road improvements ~~within~~ *bene-fitting* the impact fee service area as set out in the road improvement plan for the impact fee service area.

§ [15.2-2327](#). Refund of impact fees.

The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within a reasonable period of time, not to exceed fifteen years. *In the event that impact fees are not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.*

Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at the time the refund is made.

*Article 9.*

*Impact Fees.*

§ [15.2-2328](#). *Applicability of article.*

*The provisions of this article shall apply in their entirety to any locality that has established an urban transportation service district in accordance with § [15.2-2403.1](#).*

*However, the authority granted by this article may be exercised only in areas outside of urban transportation service districts and on parcels that are currently zoned agricultural and are being subdivided for by-right residential development. The authority granted by this article shall expire on December 31, 2008, for any locality that has not established an urban transportation service district and adopted an impact fee ordinance pursuant to this article by such date.*

§ [15.2-2329](#). *Imposition of impact fees.*

A. *Any locality that includes within its comprehensive plan a calculation of the capital costs of public facilities necessary to serve residential uses may impose and collect impact fees in amounts consistent with the methodologies used in its comprehensive plan to defray the capital costs of public facilities related to the residential development.*

*B. Impact fees imposed and collected pursuant to this section shall only be used for public facilities that are impacted by residential development.*

*C. A locality imposing impact fees as provided in this section shall allow credit against the impact fees for cash proffers collected for the purpose of defraying the capital costs of public facilities related to the residential development. A locality imposing impact fees as provided in this section shall also include within its comprehensive plan a methodology for calculating credit for the value of proffered land donations to accommodate public facilities, and for the construction cost of any public facilities or public improvements the construction of which is required by proffer.*

*D. A locality imposing impact fees under this section may require that such impact fees be paid prior to and as a condition of the issuance of any necessary building permits for residential uses.*

*E. For the purposes of this section, "public facilities" shall be deemed to include: (i) roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways; (ii) stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (iii) parks, open space, and recreation areas and related facilities; (iv) public safety facilities, including police, fire, emergency medical, and rescue facilities; (v) primary and secondary schools and related facilities; and (vi) libraries and related facilities; however, the definition "public facilities" for counties within the Richmond MSA shall be deemed to include: roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways.*

§ [15.2-2403](#). Powers of service districts.

After adoption of an ordinance or ordinances or the entry of an order creating a service district, the governing body or bodies shall have the following powers with respect to the service districts:

1. To construct, maintain, and operate such facilities and equipment as may be necessary or desirable to provide additional, more complete, or more timely governmental services within a service district, including but not limited to water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; control of infestations of insects that may carry a disease that is dangerous to humans, gypsy moths, cankerworms or other pests identified by the Commissioner of the Department of Agriculture and Consumer Services in accordance with

the Virginia Pest Law (§ 3.1-188.20 et seq.); public parking; extra security, street cleaning, snow removal and refuse collection services; sponsorship and promotion of recreational and cultural activities; upon petition of over 50 percent of the property owners who own not less than 50 percent of the property to be served, construction, maintenance, and general upkeep of streets and roads ~~that are not under the operation and jurisdiction of the Virginia Department of Transportation~~; *construction, maintenance, and general upkeep of streets and roads through creation of urban transportation service districts pursuant to § [15.2-2403.1](#)*; and other services, events, or activities that will enhance the public use and enjoyment of and the public safety, public convenience, and public well-being within a service district. Such services, events, or activities shall not be undertaken for the sole or dominant benefit of any particular individual, business or other private entity.

2. To provide, in addition to services authorized by subdivision 1, transportation and transportation services within a service district, including, but not limited to: public transportation systems serving the district; transportation management services; road construction; rehabilitation and replacement of existing transportation facilities or systems; and sound walls or sound barriers. However, any transportation service, system, facility, roadway, or roadway appurtenance established under this subdivision that will be operated or maintained by the Virginia Department of Transportation shall be established with the involvement of the governing body of the locality and meet the appropriate requirements of the Department. The proceeds from any annual tax or portion thereof collected for road construction pursuant to subdivision 6 may be accumulated and set aside for such reasonable period of time as is necessary to finance such construction; however, the governing body or bodies shall make available an annual disclosure statement, which shall contain the amount of any such proceeds accumulated and set aside to finance such road construction.

3. To acquire in accordance with § [15.2-1800](#), any such facilities and equipment and rights, title, interest or easements therefor in and to real estate in such district and maintain and operate the same as may be necessary and desirable to provide the governmental services authorized by subdivisions 1 and 2.

4. To contract with any person, municipality or state agency to provide the governmental services authorized by subdivisions 1 and 2 and to construct, establish, maintain, and operate any such facilities and equipment as may be necessary and desirable in connection therewith.

5. To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or tenants for such connections. The

owners or tenants shall have the right of appeal to the circuit court within 10 days from action by the governing body.

6. To levy and collect an annual tax upon any property in such service district subject to local taxation to pay, either in whole or in part, the expenses and charges for providing the governmental services authorized by subdivisions 1, 2 and 11 and for constructing, maintaining, and operating such facilities and equipment as may be necessary and desirable in connection therewith; however, such annual tax shall not be levied for or used to pay for schools, police, or general government services not authorized by this section, and the proceeds from such annual tax shall be so segregated as to enable the same to be expended in the district in which raised. In addition to the tax on property authorized herein, in any city having a population of 350,000 or more and adjacent to the Atlantic Ocean, the city council shall have the power to impose a tax on the base transient room rentals, excluding hotels, motels, and travel campgrounds, within such service district at a rate or percentage not higher than five percent which is in addition to any other transient room rental tax imposed by the city. The proceeds from such additional transient room rental tax shall be deposited in a special fund to be used only for the purpose of beach and shoreline management and restoration. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the service district, notwithstanding any special use value assessment of property within the service district for land preservation pursuant to Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent. In addition to the taxes and assessments described herein, a locality creating a service district may contribute from its general fund any amount of funds it deems appropriate to pay for the governmental services authorized by subdivisions 1, 2, and 11 of this section.

7. To accept the allocation, contribution or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district, locality, or state or federal agency for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion, and the operation or maintenance of any facilities and services in the district.

8. To employ and fix the compensation of any technical, clerical, or other force and help which from time to time, in their judgment may be necessary or desirable to provide the governmental services authorized by subdivisions 1, 2 and 11 or for the construction, operation, or maintenance of any such facilities and equipment as may be necessary or desirable in connection therewith.

9. To create and terminate a development board or other body to which shall be granted and assigned such powers and responsibilities with respect to a special service district as are delegated to it by ordinance adopted by the governing body of such locality or localities. Any such board or alternative body created shall be responsible for control and management of funds appropriated for its use by the governing body or bodies, and such funds may be used to employ or contract with, on such terms and conditions as the board or other body shall determine, persons, municipal or other governmental entities or such other entities as the development board or alternative body deems necessary to accomplish the purposes for which the development board or alternative body has been created. If the district was created by court order, the ordinance creating the development board or alternative body may provide that the members appointed to the board or alternative body shall consist of a majority of the landowners who petitioned for the creation of the district, or their designees or nominees.

10. To negotiate and contract with any person or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the district.

11. To acquire by purchase, gift, devise, bequest, grant, or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land as provided for in the Open-Space Land Act (§ [10.1-1700](#) et seq.). Notwithstanding the provisions of subdivision 3, the governing body shall not use the power of condemnation to acquire any interest in land for the purposes of this subdivision.

12. To contract with any state agency or state or local authority for services within the power of the agency or authority related to the financing, construction, or operation of the facilities and services to be provided within the district; however, nothing in this subdivision shall authorize a locality to obligate its general tax revenues, or to pledge its full faith and credit.

13. In the Town of Front Royal, to construct, maintain, and operate facilities, equipment, and programs as may be necessary or desirable to control, eradicate, and prevent the infestation of rats and removal of skunks and the conditions that harbor them.

*§ [15.2-2403.1](#). Creation of urban transportation service districts.*

*A. The boundaries of any urban transportation service district created pursuant to this article shall be agreed upon by both the local governing body of an urban county and by the Commonwealth Transportation Board. The overall density of an urban transportation service district shall be one residential unit per gross acre or greater. In the event of a*

*disagreement between the Board and the governing body of an urban county in regard to the boundaries of an urban transportation service district, the parties may request that the Commission on Local Government serve as a mediator. For purposes of this section, an "urban county" means any county with a population of greater than 90,000, according to the United States Census of 2000, that did not maintain its roads as of January 1, 2007.*

*B. Any urban county that has established an urban transportation service district in accordance with this section shall maintain the roads within such district. Any such county shall receive an amount equal to the per lane mile maintenance payments made to cities and certain towns pursuant to § [33.1-41.1](#) for the area within the district for purposes of road maintenance.*

*§ [15.2-4838.1](#). Use of certain revenues by the Authority.*

*A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § [15.2-4839](#) shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.*

*B. Forty percent of the revenues shall be distributed on a pro rata basis, with each locality's share being the total of such fees and taxes assessed or imposed by the Authority and received by the Authority that are generated or attributable to the locality divided by the total of such fees and taxes assessed or imposed by the Authority and received by the Authority. Of the revenues distributed pursuant to this subsection (i) in the Cities of Falls Church and Alexandria and the County of Arlington the first 50% shall be used solely for urban or secondary road construction and improvements and for public transportation purposes, and (ii) in the remaining localities, the first 50% shall be used solely for urban or secondary road construction and improvements. The remainder, as determined solely by the applicable locality, shall be used either for additional urban or secondary road construction; for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by the Authority; or for public transportation purposes. Solely for purposes of calculating the 40% of revenues to be distributed pursuant to this subsection, the revenue generated pursuant to § [58.1-3221.2](#) and Article 8 (§ [15.2-2317](#) et seq.) of Chapter 22 of this title by the counties and cities embraced by the Authority shall be considered revenue of the Authority. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, 2007. Each locality shall provide annually to the Northern Virginia Transportation Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.*

*C. The remaining 60% of the revenues from such sources shall be used by the Authority solely for transportation projects and purposes that benefit the counties and cities embraced by the Authority.*

*1. The revenues under this subsection shall be used first to pay any debt service owing on any bonds issued pursuant to § [15.2-4839](#), and then as follows:*

*a. The next \$50 million each fiscal year shall be distributed to the Washington Metropolitan Area Transit Authority (WMATA) and shall be used for capital improvements benefiting the area embraced by the Authority for WMATA's transit service (Metro). The Authority shall first make use of that portion of such annual distribution as may be necessary under the requirements of federal law for the payment of federal funds to WMATA, but only if the matching federal funds are exclusive of and in addition to the amount of other federal funds appropriated for such purposes and are in an amount not less than the amount of such funds appropriated in the federal fiscal year ending September 30, 2007;*

*For each year after 2018 any portion of the amount distributed pursuant to this subsection may be used for mass transit improvements in Prince William County;*

*b. The next \$25 million each fiscal year shall be distributed to the Virginia Railway Express for operating and capital improvements, including but not limited to track lease payments, construction of parking, dedicated rail on the Fredericksburg line, rolling stock, expanded service in Prince William County, and service as may be needed as a result of the Base Realignment and Closure Commission's action regarding Fort Belvoir.*

*2. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ [56-556](#) et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the Virginia Department of Transportation (VDOT) and the Commonwealth Transportation Board (CTB), but the Authority, VDOT and CTB shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, VDOT may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces. When determining what projects to construct under this subsection, the Authority shall base its decisions on the combination that (i) equitably*

*distributes the funds throughout the localities, and (ii) constructs projects that move the most people or commercial traffic in the most cost-effective manner, and on such other factors as approved by the Authority.*

*3. All revenues deposited to the credit of the Authority shall be used for projects benefiting the localities embraced by the Authority, with each locality's total long-term benefits being approximately equal to the total of the fees and taxes received by the Authority that are generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority.*

*D. For road construction and improvements pursuant to subsection B, the Department of Transportation may, on a reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the locality by the Authority.*

§ [15.2-4839](#). Authority to issue bonds.

The Authority may issue bonds and other evidences of debt as may be authorized by *this section or other law*. The provisions of Article 5 (§ [15.2-4519](#) et seq.) of Chapter 45 of this title shall apply, mutatis mutandis, to the issuance of such bonds or other debt.

*The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available except that funds from tolls collected pursuant to subdivision 7 of § [15.2-4840](#) shall be used only as provided in that subdivision.*

§ [15.2-4840](#). Other duties and responsibilities of Authority.

In addition to other powers herein granted, the Authority shall have the following duties and responsibilities:

1. General oversight of regional programs involving mass transit or congestion mitigation, including, but not necessarily limited to, carpooling, vanpooling, and ridesharing;
2. Long-range regional planning, both financially constrained and unconstrained;
3. Recommending to state, regional, and federal agencies regional transportation priorities, including public-private transportation projects, and funding allocations;
4. Developing, in coordination with affected counties and cities, regional priorities and policies to improve air quality;
5. Allocating to priority regional transportation projects any funds made available to the Authority and, at the discretion of the Authority, directly overseeing such projects;
6. Recommending to the Commonwealth Transportation Board priority regional transportation projects for receipt of federal and state funds;
7. ~~Recommending to the Commonwealth Transportation Board use and/or changes in use of~~ *Imposing, collecting, and setting the amount of tolls for use of facilities in the area*

embraced by the Authority, when the facility is either newly constructed or reconstructed solely with revenues of the Authority or solely with revenues under the control of the Authority in such a way as to increase the facility's traffic capacity, with the amount of any tolls variable by time of day, day of the week, vehicle size or type, number of axles, or other factors as the Authority may deem proper, and with all such tolls to be used for programs and projects that are reasonably related to or benefit the users of the applicable facility, including, but not limited to, for the debt service and other costs of bonds whose proceeds are used for such construction or reconstruction;

8. General oversight of regional transportation issues of a multijurisdictional nature, including but not limited to intelligent transportation systems, signalization, and preparation for and response to emergencies;

9. Serving as an advocate for the transportation needs of Northern Virginia before the state and federal governments;

10. Applying to and negotiating with the government of the United States, the Commonwealth of Virginia, or any agency or instrumentality, or political subdivision thereof, for grants and any other funds available to carry out the purposes of this chapter and receiving, holding, accepting, and administering from any source gifts, bequests, grants, aid, or contributions of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this chapter subject, however, to any conditions upon which gifts, bequests, grants, aid, or contributions are made. Unless otherwise restricted by the terms of the gift, bequest, or grant, the Authority may sell, exchange, or otherwise dispose of such money, securities, or other property given or bequeathed to it in furtherance of its purposes; and

11. Acting as a "responsible public entity" for the purpose of the acquisition, construction, improvement, maintenance and/or operation of a "qualifying transportation facility" under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.); and

12. To decide and vote to impose certain fees and taxes authorized under law for imposition or assessment by the Authority, provided that any such fee or tax assessed or imposed is assessed or imposed in all counties and cities embraced by the Authority. The revenues from such certain fees and taxes shall be kept in a separate account and shall be used only for the purposes provided in this chapter.

CHAPTER 42.

JOINT COMMISSION ON TRANSPORTATION ACCOUNTABILITY.

§ [30-278](#). Joint Commission on Transportation Accountability established; composition; terms; compensation and expenses; office space; quorum; voting on recommendations.

*There is hereby established in the legislative branch of state government the Joint Commission on Transportation Accountability. The Commission shall consist of six members of the House of Delegates appointed by the Speaker of the House of Delegates, of whom at least three shall be members of the House Committee on Transportation; four members of the Senate appointed by the Senate Committee on Rules of whom at least two shall be members of the Senate Committee on Transportation; and the Auditor of Public Accounts, who shall serve as a nonvoting ex officio member. Members shall serve terms coincident with their terms of office as members of the House of Delegates and the Senate. Members may be reappointed for successive terms.*

*Members of the Commission shall receive such compensation as provided in § [30-19.12](#) and shall be reimbursed for all their reasonable and necessary expenses incurred in the performance of their duties as members of the Commission. Funding for the costs of compensation and expenses of the members shall be provided from existing appropriations to the Commission. Adequate office space shall be provided by the Commonwealth. The Commission shall annually elect a chairman and a vice-chairman from among its membership. Meetings of the Commission shall be held upon the call of the chairman or whenever the majority of the members so request. A majority of the members appointed to the Commission shall constitute a quorum.*

*§ [30-279](#). Director, executive staff, and personnel.*

*The Commission shall appoint, subject to confirmation by a majority of the members of the General Assembly, a Director and fix his duties and compensation. The Director may, with prior approval of the Commission, employ and fix the duties and compensation of an adequate staff as may be requisite to make the studies and conduct the research and budget analyses required by this chapter. The Commission may request that the staff of the Joint Legislative Audit and Review Commission serve such purpose. Otherwise, the Director and the executive staff shall be appointed for a term of six years and shall consist of professional persons having experience and training in legislative budgetary procedures, management analyses, and cost accounting. The Director and any executive staff member may be removed from office for cause by a majority vote of the Commission. Such other professional personnel, consultants, advisers, and secretarial and clerical employees may be engaged upon such terms and conditions as set forth by the Commission.*

*§ [30-280](#). Powers and duties of Commission.*

*The Commission shall have the following powers and duties:*

- 1. To make performance reviews of operations of state agencies with transportation responsibilities to ascertain that sums appropriated have been or are being expended for*

*the purposes for which they were made and to evaluate the effectiveness of programs in accomplishing legislative intent;*

*2. To study, on a continuing basis, the operations, practices, and duties of state agencies with transportation responsibilities as they relate to efficiency in the use of space, personnel, equipment, and facilities;*

*3. To retain such consultants and advisers as the Commission deems necessary to evaluate financial and project management of state agencies with transportation responsibilities; and*

*4. To make such special studies of and reports on the operations and functions of state agencies with transportation responsibilities as it deems appropriate and as may be requested by the General Assembly.*

§ [30-281](#). *State agencies to furnish information and assistance.*

*All agencies of the Commonwealth, their staff, and employees shall provide the Commission with necessary information for the performance of its duties and afford the Commission's staff ample opportunity to observe agency operations.*

§ [30-282](#). *Payment of expenses of Commission.*

*The salaries, per diems, and other expenses necessary to the function of the Commission shall be payable from funds appropriated to the Commission.*

§ [33.1-3](#). *Secretary to be Chairman; Commonwealth Transportation Commissioner.*

*The Chairman, whose official title of the Commonwealth Transportation Board shall be the Secretary of Transportation, and who.*

*The Commonwealth Transportation Commissioner, hereinafter in this title sometimes called "the Commissioner," shall be the chief executive officer of the Department of Transportation. The Commissioner may, at the time of his appointment, be a nonresident of Virginia, shall be an experienced administrator, able to direct and guide the Department in the establishment and achievement of the Commonwealth's long-range highway and other transportation objectives and shall be appointed at large.*

*The Commonwealth Transportation Commissioner, hereinafter in this title sometimes called "the Commissioner," shall devote his entire time and attention to his duties as chief executive officer of the Department and shall receive such compensation as shall be fixed by the Governor Commonwealth Transportation Board, subject to the approval of the Board, unless such salary be fixed by the General Assembly in the appropriation act Governor. He shall also be reimbursed for his actual travel expenses while engaged in the discharge of his duties.*

*In the event of a vacancy due to the death, temporary disability, retirement, resignation or removal of the Commissioner, the Governor may appoint and thereafter remove at his*

pleasure an "Acting Commonwealth Transportation Commissioner" until such time as the vacancy may be filled as provided in § [33.1-1](#). Such "Acting Commonwealth Transportation Commissioner" shall have all powers and perform all duties of the Commissioner as provided by law, and shall receive such compensation as may be fixed by the Governor. In the event of the temporary disability, for any reason, of the Commissioner, full effect shall be given to the provisions of § [2.2-605](#).

§ [33.1-13](#). General powers of Commissioner.

Except such powers as are conferred by law upon the Commonwealth Transportation Board, the Commonwealth Transportation Commissioner shall have the power to do all acts necessary or convenient for constructing, improving and maintaining the roads embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports. And as executive head of the Transportation Department, the Commissioner is specifically charged with the duty of executing all orders and decisions of the Board and he may, subject to the provisions of this chapter, require that all appointees and employees perform their duties under this chapter.

*In addition, the Commissioner, in order to maximize efficiency, shall take such steps as may be appropriate to outsource or privatize any of the Department's functions that might reasonably be provided by the private sector.*

§ [33.1-19.1](#). Environmental permits for highway projects; timely review.

Notwithstanding any other provision of state law or regulation, any state agency, board, or commission that issues a permit required for a highway construction project pursuant to Title 10.1, 28.2, 29.1, or 62.1 of the Code of Virginia shall, within 15 days of receipt of an individual-~~or general~~ permit application, review the application for completeness and either accept the application or request additional specific information from the Department of Transportation. Unless a shorter period is provided by law, regulation, or agreement, the state agency, board, or commission shall within 120 days of receipt of a complete application issue the permit, issue the permit with conditions, deny the permit, or decide whether a public meeting or hearing is required by law. If a public meeting or hearing is held, it shall be held within 45 days of the decision to conduct such a proceeding and a final decision as to the permit shall be made within 90 days of completion of the public meeting or hearing. *For coverage under general permits issued pursuant to Title 10.1, 28.2, 29.1, or 62.1, the state agency, board, or commission that issues such permits shall, within 10 business days of receipt of an application from the Department of Transportation for a road or highway construction project, review the application for completeness and either accept the application or request additional specific information*

*from the Department of Transportation. Coverage under the general permit shall be approved, approved with conditions, or denied within 30 business days of receipt of a complete application.*

§ [33.1-23.03](#). Board to develop and update Statewide Transportation Plan.

The Commonwealth Transportation Board shall conduct a comprehensive review of statewide transportation needs in a Statewide Transportation Plan setting forth an inventory of all construction needs for all systems, and based upon this inventory, establishing goals, objectives, and priorities covering a twenty-year planning horizon, in accordance with federal transportation planning requirements. This plan shall embrace all modes of transportation and include technological initiatives. This Statewide Transportation Plan shall be updated as needed, but no less than once every five years. The plan ~~will provide consideration of projects and policies affecting~~ *shall promote economic development and all transportation modes and promote economic development*, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety. *The plan shall include quantifiable measures and achievable goals relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle facility use, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, and per capita vehicle miles traveled. The Board shall consider such goals in evaluating and selecting transportation improvement projects. The plan shall incorporate the approved long-range plans' measures and goals developed by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority.* Each such plan shall be summarized in a public document and made available to the general public upon presentation to the Governor and General Assembly.

It is the intent of the General Assembly that this plan assess transportation needs and assign priorities to projects on a statewide basis, avoiding the production of a plan which is an aggregation of local, district, regional, or modal plans.

§ [33.1-23.03:8](#). Priority Transportation Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§ [58.1-2200](#) et

seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect *immediately* before the effective date of Chapter 22, *computed without regard to increases in the rates of taxes under Chapter 22 pursuant to enactments of the 2007 Session of the General Assembly*. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues and allocated for highway and mass transit improvement projects as set forth in § [33.1-23.03:2](#), but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§ [58.1-2200](#) et seq.) of Title 58.1; ~~and~~

2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § [2.2-1503](#), for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § [33.1-23.03:2](#), but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section; ~~and~~

3. *All revenues deposited into the Fund pursuant to § [58.1-2531](#); and*

34. Any other such funds as may be transferred, allocated, or appropriated.

*All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed.* The Fund shall be considered a part of the Transportation Trust Fund.

Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B of this section.

Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § [33.1-23.1](#) or apportioning Transportation Trust Fund funds under § [58.1-638](#), but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation

projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

*C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund, shall be issued or entered into unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make 100% of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.*

*§ [33.1-23.4:01](#). Allocation of Proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds.*

*The Commonwealth Transportation Board shall allocate, use, and distribute the proceeds of any bonds it is authorized to issue on or after July 1, 2007, pursuant to subdivision 4f of § [33.1-269](#), as follows:*

- 1. A minimum of 20% of the bond proceeds shall be used for transit capital consistent with subdivision A 4 g of § [58.1-638](#).*
- 2. A minimum of 4.3% of the bond proceeds shall be used for rail capital consistent with the provisions of §§ [33.1-221.1:1.1](#) and [33.1-221.1:1.2](#).*
- 3. The remaining amount of bond proceeds shall be used for paying the costs incurred or to be incurred for construction of transportation projects with such bond proceeds used or allocated as follows: (a) first, to match federal highway funds projected to be made available and allocated to highway and public transportation capital projects by the Commonwealth Transportation Board, for purposes of allowing additional state construction funds to be allocated to the primary, urban, and secondary systems of highways pursuant to subdivisions B 1, B 2, and B 3 of § [33.1-23.1](#); (b) next, to provide any required funding to fulfill the Commonwealth's allocation of equivalent revenue sharing matching funds pursuant to § [33.1-23.05](#); and (c) third, to pay or fund the costs of statewide or regional projects throughout the Commonwealth. Costs incurred or to be incurred for construction or funding of these transportation projects shall include, but are not limited to, environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs or other financing expenses relating to such bonds. Such costs may*

*include the payment of interest on such bonds for a period during construction and not exceeding one year after completion of construction of the relevant project.*

*4. The total amount of bonds authorized shall be used for purposes of applying the percentages in subdivisions 1 through 3.*

§ [33.1-223.2:12](#). Tolls may vary to encourage travel during off-peak hours.

A. In order to provide an incentive for motorists to travel at off-peak hours, *and in accordance with federal requirements*, wherever a toll is imposed and collected by the Department or such other entity as may be responsible for imposing or collecting such toll, the amount of such toll may vary according to the time of day, day of the week, traffic volume, vehicle speed, vehicle type, ~~or any or all of these~~ *similar variables, or combinations thereof*. The amount of such toll and the time of day when such toll shall change shall be as fixed and revised by the Commonwealth Transportation Board or such other entity as may be responsible for fixing or revising the amount of such toll; provided, however, that any such variation shall be reasonably calculated to minimize the reduction in toll revenue generated by such toll.

B. *1. Beginning July 1, 2008, every agency of the Commonwealth or any political subdivision or instrumentality thereof having control of or day-to-day responsibility for the operation of any toll facility in the Commonwealth shall take all necessary actions to ensure that every newly constructed toll facility under its control is capable of fully automated electronic operation, employing technologies and procedures that permit the collection of tolls from users of the facility, to the extent possible, without impeding the traffic flow of the facility. An entity operating a toll facility that substantially upgrades its equipment or substantially renovates its facility after July 1, 2008, shall comply with the provisions of this subsection. The provisions of this section shall also apply to any nongovernmental or quasigovernmental entity operating a toll facility under a comprehensive agreement entered into, pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.), on or after January 1, 2008. Nothing in this subsection shall be construed to prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility.*

*2. For toll facilities within the territory embraced by the Northern Virginia Transportation Authority, the provisions of subdivision 1 apply to all toll facilities, regardless of whether or not they are newly constructed or substantially upgraded.*

§ [33.1-268](#). Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer

succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Transportation improvements in the Dulles Corridor, with an eastern terminus of the East Falls Church Metrorail station at Interstate Route 66 and a western terminus of

Virginia Route 772 in Loudoun County, including without limitation the Dulles Toll Road, the Dulles Access Road, outer roadways adjacent or parallel thereto, mass transit, including rail, bus rapid transit, and capacity enhancing treatments such as High-Occupancy Vehicle lanes, High-Occupancy Toll (HOT) lanes, interchange improvements, commuter parking lots, and other transportation management strategies.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § [33.1-279.1](#), any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and third, to the extent required from other legally available revenues of the Trust Fund and from any other available source of funds.

(r) U.S. 58 Corridor Development Program projects as defined in §§ [33.1-221.1:2](#) and [58.1-815](#).

(s) The Northern Virginia Transportation District Program as defined in § [33.1-221.1:3](#).

(t) Any program for highways or mass transit or transportation facilities, endorsed by the local jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

(u) Any project designated from time to time by the General Assembly financed in whole or part through the issuance of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes.

*(v) Any project authorized by the General Assembly financed in whole or in part by funds from the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#) or from the proceeds of bonds whose debt service is paid in whole or in part by funds from such Fund.*

(3) The word "undertaking" means all of the projects authorized to be acquired or constructed under this article.

(4) The word "improvements" means such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "cost of project" as applied to a project to be acquired by purchase or by condemnation, includes the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "cost of project" as applied to a project to be constructed, embraces the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry which is deemed by the Board to be competitive with any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or associations having any title or interest in any property rights, easements or franchises authorized to be acquired by this article.

(8) [Repealed.]

(9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by the Board pursuant to this article, including, without limitation, legally available Transportation Trust Fund revenues and any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth.

(10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

§ [33.1-269](#). General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;
2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;
3. Subject to the limitations and approvals of § [33.1-279.1](#), issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;
4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;
- 4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the

city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;

4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from the Commonwealth Transit Capital Fund established by the General Assembly pursuant to subdivision A 4 g of § [58.1-638](#), (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4d. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes" secured, subject to their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;

4e. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation by the General Assembly, solely from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation;

*4f. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds;*

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision, public utility or public service corporation owning or operating the same in, on, along, over or under the

project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board. The cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained by the Board.

On any toll project, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation. On all other projects, under this article, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, or political subdivision. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article;

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution of Virginia; and

11. Enter into any agreements or take such other actions as the Board shall determine in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the United States Department of Transportation with respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ [33.1-277](#). Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, from bond proceeds or earnings thereon and from any other available sources of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this article or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except

from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in subdivision (2) (s) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in subdivision (2) (t) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory

to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues from the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.

F. Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes issued under this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then, from such other funds, if any, which are designated by the General Assembly for such purpose.

G. Commonwealth of Virginia Transportation Credit Assistance Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation.

*H. Commonwealth of Virginia Transportation Capital Projects Revenue Bonds issued under the provisions of this article for projects as provided in subdivision 2 v of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds.*

CHAPTER 10.2.

HAMPTON ROADS TRANSPORTATION AUTHORITY.

§ [33.1-391.6](#). Short Title.

*This chapter shall be known and may be cited as the Hampton Roads Transportation Authority Act.*

*§ [33.1-391.7](#). Authority created.*

*The Hampton Roads Transportation Authority, hereinafter in this chapter known as "the Authority" is hereby created as a body politic and as a political subdivision of the Commonwealth. The Authority shall embrace the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The membership of the Authority shall be as provided in §§ [33.1-391.9](#) and [33.1-391.12](#). In addition, the Counties of Accomack and Northampton shall also be embraced by the Authority at such time that the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as provided under § [33.1-391.12](#).*

*§ [33.1-391.8](#). Powers of the Authority.*

*Notwithstanding any contrary provision of this title and in accordance with all applicable federal statutes and requirements, the Authority shall control and operate and may impose and collect tolls in amounts established by the Authority for the use of any new or improved highway, bridge, tunnel, or transportation facility to increase capacity on such facility (including new construction relating to, or improvements to, the bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel as described in § [33.1-391.12](#), pursuant to the conditions set forth in such section) constructed by the Authority or solely with revenues of the Authority or revenues under the control of the Authority. The amount of any such toll may be varied from facility to facility, by lane, by congestion levels, by day of the week, time of day, type of vehicle, number of axles, or any similar combination thereof, and a reduced rate may be established for commuters as defined by the Authority. For purposes of this section, the Midtown and Downtown tunnels located within the Cities of Norfolk and Portsmouth shall be considered a single transportation facility and both facilities may be tolled if improvements are made to either tunnel. Any tolls imposed by the Authority shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the facility or prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility. For all facilities tolled by the Authority, there shall be signs erected prior to the point of toll collection that clearly state how the majority of the toll revenue is being spent by the Authority to benefit the users of the facility.*

*§ [33.1-391.9](#). Composition of Authority; chairman and vice-chairman; quorum.*

*The Authority shall consist of the following members: (i) the chief elected officer of the governing body (or in the discretion of the chief elected officer, his designee, who shall*

*be a current elected officer of such governing body) of each of the Counties of Isle of Wight, James City, and York and the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, who shall serve with voting privileges; (ii) a member of the Commonwealth Transportation Board who resides in a county or city embraced by the Authority appointed by the Governor who shall serve ex officio without a vote; (iii) the Director of the Virginia Department of Rail and Public Transportation, or his designee, who shall serve ex officio without a vote; (iv) the Commonwealth Transportation Commissioner, or his designee, who shall serve ex officio without a vote; (v) two members of the Virginia House of Delegates each of whom shall reside in a city or county whose governing body has a voting member on the Authority, neither of whom shall reside in the same city or county, appointed by the Speaker of the House of Delegates, who shall serve ex officio without a vote; and (vi) one member of the Senate of Virginia who shall reside in a city or county whose governing body has a voting member on the Authority, appointed by the Senate Committee on Rules who shall serve ex officio without a vote. Legislative members shall serve terms coincident with their terms of office. Vacancies shall be filled by appointment for the unexpired term by the same process as used to make the original appointment. The Authority shall appoint a chairman and vice-chairman from among its voting membership.*

*A majority of the voting members of the Authority shall constitute a quorum for the transaction of business.*

*Decisions of the Authority shall require a quorum and shall be in accordance with voting procedures established by the Authority. Decisions of the Authority shall require the affirmative vote of a majority of the voting members of the Authority present and voting and such members present and voting in the affirmative shall be representatives of counties and cities that collectively include at least 51% of the population embraced by the Authority at the time of the vote. The population of counties and cities embraced by the Authority shall be the population as determined by the most recently preceding decennial census, except that after July 1 of the fifth year following such census, the population of each county and city shall be adjusted, based on final population estimates made by the Weldon Cooper Center for Public Service of the University of Virginia. Members of the Authority shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, in addition, shall be paid a per diem equal to the amount paid members of the Commonwealth Transportation Board for each day or portion thereof during which they are engaged in the official business of the Authority.*

*The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority, and the cost of such audit shall be borne by the Authority.*

§ 33.1-391.10. *Additional powers of the Authority.*

*The Authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:*

- 1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;*
- 2. To adopt and use a corporate seal and to alter the same at its pleasure;*
- 3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;*
- 4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the Authority's affairs;*
- 5. To apply for and accept money, materials, contributions, grants, or other financial assistance from the United States and agencies or instrumentalities thereof, the Commonwealth, and any political subdivision, agency, or instrumentality of the Commonwealth, and from any legitimate private source;*
- 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or otherwise for purposes consistent with this chapter; and to hold, encumber, sell, or otherwise dispose of such land or interest for purposes consistent with this chapter;*
- 7. To acquire by purchase, lease, contract, or otherwise, highways, bridges, tunnels, railroads, rolling stock, and transit and rail facilities and other transportation-related facilities; and to construct the same by purchase, lease, contract, or otherwise;*
- 8. In consultation with the Commonwealth Transportation Board and with each city or county in which the facility or any part thereof is or is to be located, to repair, expand, enlarge, construct, reconstruct, or renovate any or all of the transportation facilities referred to in this section, and to acquire any real or personal property needed for any such purpose;*
- 9. To enter into agreements or leases with public or private entities for the operation and maintenance of bridges, tunnels, transit and rail facilities, and highways;*
- 10. To make and execute contracts, deeds, mortgages, leases, and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;*

11. To the extent funds are made or become available to the Authority to do so, to employ employees, agents, advisors, and consultants, including without limitation, attorneys, financial advisers, engineers, and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation;

12. The authority shall comply with the provisions governing localities contained in § [15.2-2108.23](#);

13. To decide and vote to impose all of the fees and taxes authorized under law for use by the Authority. Furthermore, no such fee or tax shall apply to Accomack or Northampton County until such time that the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as provided under § [33.1-391.12](#); and

14. To the extent not inconsistent with the other provisions of this chapter, and without limiting or restricting the powers otherwise given the Authority, to exercise all of the powers given to transportation district commissions by §§ [15.2-4518](#) and [15.2-4519](#). The Authority shall only undertake those transportation projects that are included in the federally mandated 2030 Regional Transportation Plan approved by the Metropolitan Planning Organization, or any successive plan, and that are located in, or which provide a benefit to, the counties and cities that are members of the Authority, subject to the limitations related to those projects contained in this section.

The Authority shall phase construction of the transportation projects that are included in the federally mandated 2030 Regional Transportation Plan, or any successive plan.

Except as specifically provided herein, projects listed in the second phase shall not be undertaken until the Authority has considered and acted upon a financing plan for the maintenance, operation, and construction for the projects listed in the first phase that meet the requirements of this section.

*First Phase Projects:*

*Route 460 Upgrade; I-64 Widening on the Peninsula; I-64 Widening on the Southside; Downtown Tunnel/Midtown Tunnel/MLK Extension; Southeastern Parkway/Dominion Blvd/Route 17; I-664 Widening in Newport News; I-664 Widening on the Southside; I-664 Monitor Merrimac Memorial Bridge Tunnel Widening.*

*Second Phase Projects:*

*I-564 from I-64 to the Intermodal Connector; I-564 Connector to the Monitor Merrimac Memorial Bridge Tunnel; Craney Island Connector.*

§ [33.1-391.11](#). Authority a responsible public entity under Public-Private Transportation Act of 1995.

*The Authority is a responsible public entity as defined in the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) (the PPTA).*

*It is the intent of the General Assembly that the Authority shall encourage private sector participation in the aforementioned projects. Any cost savings realized under the PPTA relating to the construction of first phase projects may be applied to advancing the future construction of second phase projects. Further, nothing herein shall prohibit the Authority from receiving and acting on PPTA proposals on projects in either phase.*

*§ [33.1-391.12](#). Addition of the Chesapeake Bay Bridge-Tunnel to facilities controlled by Authority; expansion of Authority membership; applicability of local transportation fees to Accomack and Northampton Counties.*

*The bridges, tunnels, roadways, and related facilities known collectively as the Chesapeake Bay Bridge-Tunnel, which provide a vehicular connection across the mouth of the Chesapeake Bay between the City of Virginia Beach and Northampton County, shall become subject to the control of the Authority subject to the provisions of § [33.1-391.8](#), at such time as all of the bonds and other evidences of debt now or hereafter issued by or on behalf of the Chesapeake Bay Bridge and Tunnel Commission shall have been satisfied or paid in full. Until such bonds and other evidences of debt have been satisfied or paid in full, control of and responsibility for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities shall remain with the Chesapeake Bay Bridge and Tunnel Commission.*

*In discharging its responsibilities for the operation and maintenance of the Chesapeake Bay Bridge-Tunnel facilities, the Authority shall have, in addition to the powers it is given by this chapter, all of the powers and authority given to the Chesapeake Bay Bridge and Tunnel Commission by Chapter 693 of the Acts of Assembly of 1954 and by Chapter 714 of the Acts of the Assembly of 1956, as amended and incorporated by reference as § [33.1-253](#).*

*At such time as the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Authority as contemplated by this section, the Authority shall be enlarged by two members, who shall serve with voting privileges, one of whom shall be the chief elected officer of the governing body of the County of Accomack (or in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body), and one of whom shall be the chief elected officer of the governing body of the County of Northampton (or in the discretion of the chief elected officer, his designee, who shall be a current elected officer of such governing body).*

*§ [33.1-391.13](#). Issuance of bonds by the Chesapeake Bay Bridge and Tunnel Commission.*

*On a prospective basis, prior to issuing any bonds for the purposes of financing the construction of new or additional tunnels, the Chesapeake Bay Bridge and Tunnel Commission shall affirm that no bond, or payment of any temporary or interim financing shall have a maturity date that extends beyond the maturity date of any existing bond or note until such time as the Authority is consulted about such issuance.*

*§ [33.1-391.14](#). Continuing responsibilities of the Commonwealth Transportation Board and the Virginia Department of Transportation.*

*Except as otherwise explicitly provided in this chapter, until such time as the Authority and the Virginia Department of Transportation, or the Authority and the Commonwealth Transportation Board, agree otherwise in writing, the Commonwealth Transportation Board shall allocate funding to and the Department of Transportation shall perform or cause to be performed all maintenance and operation of the bridges, tunnels, and roadways pursuant to § [33.1-391.10](#), and shall perform such other required services and activities with respect to such bridges, tunnels, and roadways as were being performed on January 1, 2008.*

*§ [33.1-391.15](#). Use of revenues by the Authority.*

*Notwithstanding any other provision of this chapter, all moneys received by the Authority shall be used by the Authority solely for the benefit of those counties and cities that are embraced by the Authority, and such moneys shall be used by the Authority in a manner that is consistent with the purposes stated in this chapter.*

*§ [46.2-206.1](#). Imposition of certain additional fees on certain drivers.*

*A. The purpose of the civil remedial fees imposed in this section is to generate revenue from drivers whose proven dangerous driving behavior places significant financial burdens upon the Commonwealth. The civil remedial fees established by this section shall be in addition to any other fees, costs, or penalties imposed pursuant to the Code of Virginia.*

*B. The civil remedial fees established by this section shall be assessed on any resident of Virginia operating a motor vehicle on the highways of Virginia, including persons to whom Virginia driver's licenses, commercial driver's licenses, or learner's permits have been issued pursuant to this title; and persons operating motor vehicles without licenses or whose license has been revoked or suspended.*

*C. The court shall assess a person with the following fees upon each conviction of the following offenses:*

*1. Driving while his driver's license was suspended or revoked pursuant to § [18.2-272](#), [46.2-301](#), [46.2-302](#), [46.2-341.21](#), or [46.2-391](#) shall be assessed a fee to be paid in three annual payments of \$250 each;*

2. Reckless driving in violation of Article 7 (§ [46.2-852](#) et seq.) of Chapter 8 or aggressive driving in violation of § [46.2-868.1](#) shall be assessed a fee to be paid in three annual payments of \$350 each;

3. Driving while intoxicated in violation of § [18.2-266](#), [18.2-266.1](#), or [46.2-341.24](#) shall be assessed a fee to be paid in three annual payments of \$750 each;

4. Any other misdemeanor conviction for a driving and/or motor vehicle related violation of Title 18.2 or this title that is not included in one of the preceding three subdivisions shall be assessed a fee to be paid in three annual payments of \$300 each; and

5. Any felony conviction for a driving or motor vehicle-related offense under Title 18.2 or this title, shall be assessed a fee to be paid in three annual payments of \$1,000 each.

D. For the purposes of subsection C:

1. A finding of guilty in the case of a juvenile and a conviction under a substantially similar valid local ordinance of any locality of the Commonwealth, shall be a conviction.

2. The fees assessed under subsection C shall be implemented in a manner whereby no convictions for offenses committed prior to July 1, 2007, shall be considered.

E. The court shall collect, in full, the first annual payment of the fee imposed under subsection C at the time of conviction and shall order the person assessed a fee to submit the second annual payment to the Department within 14 calendar months of the date of conviction and the third annual payment to the Department within 26 months of the date of conviction. When transmitting conviction information to the Department the court shall also transmit notice that a fee has been imposed under this section and the deadline upon which the second and third annual payments must be submitted to the Department. The court shall order suspension of the driver's license or privilege to drive a motor vehicle in Virginia as provided in § [46.2-395](#) of any person failing to pay the first annual payment of the fee assessed under subsection C.

F. For all convictions reported to the Department for which fees are established under subsection C, the person assessed the fee shall submit the second annual payment to the Commissioner within 14 calendar months of the date of conviction and the third annual payment within 26 months of the date of conviction. The Commissioner, or his designee, shall establish guidelines, policies, or procedures to notify every person assessed a fee pursuant to subsection C of the second and the third annual payments. If the person fails to make such payment, the Commissioner shall suspend his driver's license or privilege to operate a motor vehicle in Virginia. No license shall be reissued or reinstated until all fees assessed pursuant to this section have been paid and all other reinstatement requirements as provided in this title have been satisfied.

*G. In addition to any fees set forth in subsection C, any person whose driver's record with the Department shows a balance of eight or more driver demerit points on July 15 shall be assessed a fee of \$100 plus \$75 for each demerit point in excess of eight, but not greater than \$700, provided that only those demerit points attributable to offenses which occurred on or after July 1, 2007 shall be used to calculate and assess such fees.*

*H. The Commissioner, or his designee, shall assess the fees set forth in subsection G annually, beginning on July 15, 2007.*

*I. The Commissioner, or his designee, shall establish guidelines, policies, or procedures to notify every person assessed a fee pursuant to subsection G. If any assessment made under subsection G remains unpaid 60 days following the date on which the notice of assessment was mailed, the Commissioner shall suspend the driver's license or privilege to drive a motor vehicle in Virginia of the person against whom the assessment was imposed. No license shall be reissued or reinstated until all fees assessed pursuant to this section have been paid and all other reinstatement requirements as provided in this title have been satisfied.*

*J. In the event that a person disputes a conviction on his driver's record based upon identity, if the person presents the Department a certified copy of a petition to a court of competent jurisdiction seeking to vacate an order of such conviction, the Department shall suspend the imposition of the assessment. Such suspension shall be valid for one year from the date of the commencement or until 30 days after an entry of a final order on such petition, whichever occurs first.*

*K. Funds collected through the imposition of the fees as provided for in this section shall be used to pay the Department's cost in imposing and collecting such assessments as provided in the general appropriation act, and any remainder shall be deposited into the Highway Maintenance and Operating Fund.*

§ [46.2-694](#). Fees for vehicles designed and used for transportation of passengers; weights used for computing fees; burden of proof.

A. The annual registration fees for motor vehicles, trailers, and semitrailers designed and used for the transportation of passengers on the highways in the Commonwealth are:

1. ~~Twenty-three~~ *Thirty-three* dollars for each private passenger car or motor home if the passenger car or motor home weighs 4,000 pounds or less, provided that it is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.
2. ~~Twenty-eight~~ *Thirty-eight* dollars for each passenger car or motor home which weighs more than 4,000 pounds, provided that it is not used for the transportation of passengers

for compensation and is not kept or used for rent or for hire, or is not operated under a lease without a chauffeur.

3. Thirty cents per 100 pounds or major fraction thereof for a private motor vehicle other than a motorcycle with a normal seating capacity of more than 10 adults including the driver if the private motor vehicle is not used for the transportation of passengers for compensation and is not kept or used for rent or for hire or is not operated under a lease without a chauffeur. In no case shall the fee be less than \$23 if the vehicle weighs 4,000 pounds or less or \$28 if the vehicle weighs more than 4,000 pounds.

4. Thirty cents per 100 pounds or major fraction thereof for a school bus. In no case shall the fee be less than \$23 if the vehicle weighs 4,000 pounds or less or \$28 if the vehicle weighs more than 4,000 pounds.

5. Twenty-three dollars for each trailer or semitrailer designed for use as living quarters for human beings.

6. Thirteen dollars plus \$ 0.30 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of passengers, operating either intrastate or interstate. Interstate common carriers of interstate passengers may elect to be licensed and pay the fees prescribed in subdivision 7 of this subsection on submission to the Commissioner of a declaration of operations and equipment as he may prescribe. An additional \$5 shall be charged if the motor vehicle weighs more than 4,000 pounds.

7. Thirteen dollars plus \$ 0.70 per 100 pounds or major fraction thereof for each motor vehicle, trailer, or semitrailer used as a common carrier of interstate passengers if election is made to be licensed under this subsection. An additional \$5 shall be charged if the motor vehicle weighs more than 4,000 pounds. In lieu of the foregoing fee of \$ 0.70 per 100 pounds, a motor carrier of passengers, operating two or more vehicles both within and outside the Commonwealth and registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration, may apply to the Commissioner for prorated registration. Upon the filing of such application, in such form as the Commissioner may prescribe, the Commissioner shall apportion the registration fees provided in this subsection so that the total registration fees to be paid for such vehicles of such carrier shall be that proportion of the total fees, if there were no apportionment, that the total number of miles traveled by such vehicles of such carrier within the Commonwealth bears to the total number of miles traveled by such vehicles within and outside the Commonwealth. Such total mileage in each instance is the estimated total mileage to be traveled by such vehicles during the license year for which such fees are paid, subject to

the adjustment in accordance with an audit to be made by representatives of the Commissioner at the end of such license year, the expense of such audit to be borne by the carrier being audited. Each vehicle passing into or through Virginia shall be registered and licensed in Virginia and the annual registration fee to be paid for each such vehicle shall not be less than \$33. For the purpose of determining such apportioned registration fees, only those motor vehicles, trailers, or semitrailers operated both within and outside the Commonwealth shall be subject to inclusion in determining the apportionment provided for herein.

8. Thirteen dollars plus \$ 0.80 per 100 pounds or major fraction thereof for each motor vehicle, trailer or semitrailer kept or used for rent or for hire or operated under a lease without a chauffeur for the transportation of passengers. An additional fee of \$5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

9. Twenty-three dollars for a taxicab or other vehicle which is kept for rent or hire operated with a chauffeur for the transportation of passengers, and which operates or should operate under permits issued by the Department as required by law. An additional fee of \$5 shall be charged if the vehicle weighs more than 4,000 pounds. This subsection does not apply to vehicles used as common carriers.

10. Eighteen dollars for a motorcycle, with or without a sidecar. To this fee shall be added a surcharge of \$3 which shall be distributed as provided in § [46.2-1191](#).

11. Twenty-three dollars for a bus used exclusively for transportation to and from church school, for the purpose of religious instruction, or church, for the purpose of divine worship. If the empty weight of the vehicle exceeds 4,000 pounds, the fee shall be \$28.

12. Thirteen dollars plus \$ 0.70 per 100 pounds or major fraction thereof for other passenger-carrying vehicles.

13. An additional fee of \$4 per year shall be charged and collected at the time of registration of each pickup or panel truck and each motor vehicle under subdivisions 1 through 12 of this subsection. All funds collected pursuant to this subdivision shall be paid into the state treasury and shall be set aside as a special fund to be used only for emergency medical service purposes. The moneys in the special fund shall be distributed as follows:

a. Two percent shall be distributed to the State Department of Health to provide funding to the Virginia Association of Volunteer Rescue Squads to be used solely for the purpose of conducting volunteer recruitment, retention and training activities;

b. Thirty percent shall be distributed to the State Department of Health to support (i) emergency medical services training programs (excluding advanced life support classes); (ii)

advanced life support training; (iii) recruitment and retention programs (all funds for such support shall be used to recruit and retain volunteer emergency medical services personnel only, including public awareness campaigns, technical assistance programs, and similar activities); (iv) emergency medical services system development, initiatives, and priorities based on needs identified by the State Emergency Medical Services Advisory Board; (v) local, regional, and statewide performance contracts for emergency medical services to meet the objectives stipulated in § [32.1-111.3](#); (vi) technology and radio communication enhancements; and (vii) improved emergency preparedness and response. Any funds set aside for distribution under this provision and remaining undistributed at the end of any fiscal year shall revert to the Rescue Squad Assistance Fund;

c. Thirty-two percent shall be distributed to the Rescue Squad Assistance Fund;

d. Ten percent shall be available to the State Department of Health's Office of Emergency Medical Services for use in emergency medical services; and

e. Twenty-six percent shall be returned by the Comptroller to the locality wherein such vehicle is registered, to provide funding for training of volunteer or salaried emergency medical service personnel of licensed, nonprofit emergency medical services agencies and for the purchase of necessary equipment and supplies for use in such locality for licensed, nonprofit emergency medical and rescue services.

The Comptroller shall clearly designate on the warrant, check, or other means of transmitting these funds that such moneys are only to be used for purposes set forth in this subdivision. Such funds shall be in addition to any local appropriations and local governing bodies shall not use these funds to supplant local funds. Each local governing body shall report annually to the Board of Health on the use of the funds returned to it pursuant to this section. In any case in which the local governing body grants the funds to a regional emergency medical services council to be distributed to the licensed, nonprofit emergency medical and rescue services, the local governing body shall remain responsible for the proper use of the funds. If, at the end of any fiscal year, a report on the use of the funds returned to the locality pursuant to this section for that year has not been received from a local governing body, any funds due to that local governing body for the next fiscal year shall be retained until such time as the report has been submitted to the Board.

B. All motor vehicles, trailers, and semitrailers registered as provided in subsection B of § [46.2-646](#) shall pay a registration fee equal to one-twelfth of all fees required by subsection A of this section or § [46.2-697](#) for such motor vehicle, trailer, or semitrailer, computed to the nearest cent, multiplied by the number of months in the registration period for such motor vehicles, trailers, and semitrailers.

C. The manufacturer's shipping weight or scale weight shall be used for computing all fees required by this section to be based upon the weight of the vehicle.

D. The applicant for registration bears the burden of proof that the vehicle for which registration is sought is entitled by weight, design, and use to be registered at the fee tendered by the applicant to the Commissioner or to his authorized agent.

§ [46.2-694.1](#). Fees for trailers and semitrailers not designed and used for transportation of passengers.

Unless otherwise specified in this title, the registration fees for trailers and semitrailers not designed and used for the transportation of passengers on the highways in the Commonwealth shall be as follows:

Registered Gross Weight	1-Year Fee	2-
Year Fee      Permanent Fee		
0-1,500 lbs	<del>\$8.00</del> \$18.00	<del>\$16.00</del>
\$36.00 <del>\$50.00</del> \$70.00		
1,501-4,000 lbs	<del>\$18.50</del> \$28.50	<del>\$37.00</del>
\$57.00 <del>\$50.00</del> \$75.00		
4,001 lbs & above	<del>\$23.50</del> \$40.00	<del>\$47.00</del>
\$80.00 <del>\$50.00</del> \$100.00		

From the foregoing registration fees, the following amounts, regardless of weight category, shall be paid by the Department into the state treasury and set aside for the payment of the administrative costs of the safety inspection program provided for in Article 21 (§ [46.2-1157](#) et seq.) of Chapter 10 of this title: (i) from each one-year registration fee, one dollar and fifty cents; (ii) from each two-year registration fee, three dollars; and (iii) from each permanent registration fee, four dollars.

§ [46.2-697](#). Fees for vehicles not designed or used for transportation of passengers.

A. Except as otherwise provided in this section, the fee for registration of all motor vehicles not designed and used for the transportation of passengers shall be ~~thirteen dollars~~ \$23 plus an amount determined by the gross weight of the vehicle or combination of vehicles of which it is a part, when loaded to the maximum capacity for which it is registered and licensed, according to the schedule of fees set forth in this section. For each 1,000 pounds of gross weight, or major fraction thereof, for which any such vehicle is registered, there shall be paid to the Commissioner the fee indicated in the following schedule immediately opposite the weight group and under the classification

established by the provisions of subsection B of § [46.2-711](#) into which such vehicle, or any combination of vehicles of which it is a part, falls when loaded to the maximum capacity for which it is registered and licensed. The fee for a pickup or panel truck shall be ~~twenty-three dollars~~ \$33 if its gross weight is 4,000 pounds or less, and ~~twenty-eight dollars~~ \$38 if its gross weight is 4,001 pounds through 6,500 pounds. The fee shall be ~~twenty-nine dollars~~ \$39 for any motor vehicle with a gross weight of 6,501 pounds through 10,000 pounds.

Gross Weight Groups (pounds)	Fee Per Thousand Pounds of Gross Weight		
		Private	For Rent or
	Carriers	For Hire Carriers	
10,001 -			
11,000	<del>\$2.60</del>	3.17	\$4.75
11,001 -			
12,000	<del>2.80</del>	3.42	4.90
12,001 -			
13,000	<del>3.00</del>	3.66	5.15
13,001 -			
14,000	<del>3.20</del>	3.90	5.40
14,001 -			
15,000	<del>3.40</del>	4.15	5.65
15,001 -			
16,000	<del>3.60</del>	4.39	5.90
16,001 -			
17,000	<del>4.00</del>	4.88	6.15
17,001 -			
18,000	<del>4.40</del>	5.37	6.40
18,001 -			
19,000	<del>4.80</del>	5.86	7.50
19,001 -			

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20,000	<del>5.20</del>	6.34	7.70
20,001 -			
21,000	<del>5.60</del>	6.83	7.90
21,001 -			
22,000	<del>6.00</del>	7.32	8.10
22,001 -			
23,000	<del>6.40</del>	7.81	8.30
23,001 -			
24,000	<del>6.80</del>	8.30	8.50
24,001 -			
25,000	<del>6.90</del>	8.42	8.70
25,001 -			
26,000	<del>6.95</del>	8.48	8.90
26,001 -			
27,000	<del>8.25</del>	10.07	10.35
27,001 -			
28,000	<del>8.30</del>	10.13	10.55
28,001 -			
29,000	<del>8.35</del>	10.18	10.75
29,001 -			
40,000	<del>8.45</del>	10.31	10.95
40,001 -			
45,000	<del>8.55</del>	10.43	11.15
45,001 -			
50,000	<del>8.75</del>	10.68	11.25
50,001 -			
55,000	<del>9.25</del>	11.29	13.25
55,001 -			
76,000	<del>11.25</del>	13.73	15.25
76,001 -			
80,000	<del>13.25</del>	16.17	16.25

For all such motor vehicles exceeding a gross weight of 6,500 pounds, an additional fee of five dollars shall be imposed.

B. In lieu of registering any motor vehicle referred to in this section for an entire licensing year, the owner may elect to register the vehicle only for one or more quarters of a

licensing year, and in such case, the fee shall be twenty-five percent of the annual fee plus five dollars for each quarter that the vehicle is registered.

C. When an owner elects to register and license a motor vehicle under subsection B of this section, the provisions of §§ [46.2-646](#) and [46.2-688](#) shall not apply.

D. Notwithstanding any other provision of law, no vehicle designed, equipped, and used to tow disabled or inoperable motor vehicles shall be required to register in accordance with any gross weight other than the gross weight of the towing vehicle itself, exclusive of any vehicle being towed.

E. All registrations and licenses issued for less than a full year shall expire on the date shown on the license and registration.

*§ [46.2-702.1](#). Distribution of certain revenue.*

*A. Except as provided in subsection B, the net additional revenues generated by increases in the registration fees under §§ [46.2-694](#), [46.2-694.1](#), and [46.2-697](#) pursuant to enactments of the 2007 Session of the General Assembly, shall be deposited into the Highway Maintenance and Operating Fund.*

*B. In the case of vehicles registered under the International Registration Plan, an amount that is approximately equal to the net additional revenues generated by increases in the registration fees under §§ [46.2-694](#), [46.2-694.1](#), and [46.2-697](#) that are in regard to such vehicles pursuant to enactments of the 2007 Session of the General Assembly shall be deposited into the Highway and Maintenance Operating Fund.*

*C. For purposes of this title, "net additional revenues" shall mean the additional revenues provided pursuant to enactments of the 2007 Session of the General Assembly minus any refunds or remittances required to be paid.*

*§ [46.2-755.1](#). Additional annual license fees in certain localities.*

*In addition to taxes and license fees imposed pursuant to § [46.2-752](#) and to all other taxes and fees permitted by law, the Hampton Roads Transportation Authority established pursuant to § [33.1-391.7](#) and the Northern Virginia Transportation Authority established pursuant to § [15.2-4830](#) are authorized to charge an additional non-refundable annual license fee in the amount of \$10 for each vehicle registered in any county or city that is embraced by the respective Authority, for such vehicles subject to state registration fees under this Title. Such additional license fees shall not, however, be charged for any vehicle registered under the International Registration Plan developed by International Registration Plan, Inc.*

*§ [46.2-755.2](#). Additional initial registration fees in certain localities.*

*In addition to taxes and license fees imposed pursuant to § [46.2-752](#) and to all other taxes and fees permitted by law, the Hampton Roads Transportation Authority*

*established pursuant to § [33.1-391.7](#) and the Northern Virginia Transportation Authority established pursuant to § [15.2-4830](#) are authorized to charge an additional non-refundable initial, one-time registration fee on any vehicle registered in any county or city that is embraced by the respective Authority, for such vehicles subject to state registration fees under this Title. The fee shall be imposed at a rate of 1% of the value of the vehicle at the time the vehicle is first registered in such county or city by the owner of the vehicle. The value of the vehicle shall be determined on the same basis as is or would be used to determine the basis for motor vehicle sales and use tax as set forth in Chapter 24 (§ [58.1-2400](#) et seq.) of Title 58.1. The fee -authorized by this section shall be assessed at the time the vehicle is first registered in the county or city embraced by the respective Authority by the owner of the vehicle, and shall be imposed only once, so long as the ownership of the vehicle upon which they are imposed remains unchanged.*

*The fee authorized by this section shall not be imposed upon (i) vehicles registered prior to January 1, 2008 unless the ownership of the vehicle changes on or after January 1, 2008; (ii) vehicles registered under the International Registration Plan developed by International Registration Plan, Inc.; and (iii) any vehicle for which the sole basis for imposing the fee would be a change in the ownership of the vehicle due to (a) a gift to the spouse, son, or daughter of the transferor, (b) a transfer to a spouse, heir under the will, or heir at law by intestate succession as a result of the death of the owner of the vehicle, or (c) the addition or removal of a spouse.*

§ [46.2-1135](#). Liquidated damages for violation of weight limits.

A. Any person violating any weight limit as provided in this chapter or in any permit issued pursuant to Article 18 (§ [46.2-1139](#) et seq.) of this chapter by the Department or its designee or by local authorities pursuant to this chapter shall be assessed liquidated damages. The amount of those damages shall be:

Excess weight over the prescribed or permitted axle weight limits	Assessed amount per pound
<del>4,000 pounds or less</del>	<del>1 cent per pound</del>

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<del>4,001 to 8,000 pounds</del>	<del>10 cents per pound</del>
<del>8,001 to 12,000 pounds</del>	<del>20 cents per pound</del>
<del>12,001 pounds or more</del>	<del>30 cents per pound</del>
<i>2,000 pounds or less</i>	<i>1 cent per pound</i>
<i>2,001 to 4,000 pounds</i>	<i>3 cents per pound</i>
<i>4,001 to 8,000 pounds</i>	<i>12 cents per pound</i>
<i>8,001 to 12,000 pounds</i>	<i>22 cents per pound</i>
<i>12,001 pounds or more</i>	<i>35 cents per pound</i>

Excess weight over  
the prescribed  
gross weight  
limit

Assessed  
amount per  
pound

<del>4,000 pounds or less</del>	<del>1 cent per pound</del>
<del>4,001 to 8,000 pounds</del>	<del>5 cents per pound</del>
<del>8,001 to 12,000 pounds</del>	<del>10 cents per pound</del>
<del>12,001 pounds or more</del>	<del>15 cents per pound</del>
<i>2,000 pounds or less</i>	<i>1 cent per pound</i>
<i>2,001 to 4,000 pounds</i>	<i>3 cents per pound</i>
<i>4,001 to 8,000 pounds</i>	<i>7 cents per pound</i>

*8,001 to 12,000 pounds      12 cents per pound*

*12,001 pounds or more      20 cents per pound*

All gross permit violations shall be assessed \$.20 per pound over the permitted weight limit.

*In addition to all damages assessed herein, for every violation of any weight limit as provided in this chapter or in any permit issued pursuant to Article 18 (§ [46.2-1139](#) et seq.) of this chapter, there shall be assessed additional liquidated damages of \$20.*

If a person has no prior violations under the motor vehicle weight laws, and the excess weight does not exceed ~~2,500~~ 1,500 pounds, the general district court may waive the liquidated damages against such person. Except as provided by § [46.2-1138](#), such assessment shall be entered by the court or by the Department as a judgment for the Commonwealth, the entry of which shall constitute a lien upon the overweight vehicle. Except as provided by § [46.2-1138](#), such sums shall be paid to the Department or collected by the attorney for the Commonwealth and forwarded to the State Treasurer and allocated to the fund appropriated for the construction and maintenance of state highways.

B. If the gross weight of the vehicle exceeds lawful limits by at least 25 percent but no more than 50 percent, the amount of the liquidated damages shall be two times the amount provided for in the foregoing provisions of this section; if the gross weight of the vehicle exceeds lawful limits by more than 50 percent, the amount of the liquidated damages shall be three times the amount provided for in the foregoing provisions of this section. The provisions of this subsection shall not apply to pickup or panel trucks.

*C. The increases in the liquidated damages under subsection A pursuant to enactments of the 2007 Session of the General Assembly shall not be applicable to any motor vehicle hauling forest or farm products from the place where such products are first produced, cut, harvested, or felled to the location where they are first processed. The amount of liquidated damages assessed against such motor vehicles shall be:*

<i>Excess weight over the prescribed or permitted axle</i>	<i>Assessed amount per</i>
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<i>weight limits</i>	<i>pound</i>
<i>4,000 pounds or less</i>	<i>1 cent per pound</i>
<i>4,001 to 8,000 pounds</i>	<i>10 cents per pound</i>
<i>8,001 to 12,000 pounds</i>	<i>20 cents per pound</i>
<i>12,001 pounds or more</i>	<i>30 cents per pound</i>

<i>Excess weight over the prescribed gross weight limit</i>	<i>Assessed amount per pound</i>
<i>4,000 pounds or less</i>	<i>1 cent per pound</i>
<i>4,001 to 8,000 pounds</i>	<i>5 cents per pound</i>
<i>8,001 to 12,000 pounds</i>	<i>10 cents per pound</i>
<i>12,001 pounds or more</i>	<i>15 cents per pound</i>

**§ [46.2-1167.1](#). Additional fee permitted in certain counties and cities.**

*In addition to all other charges and fees permitted by law, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority are authorized to charge an additional fee at the time of inspection in the amount of \$10 for all vehicles for which an amount is permitted to be charged for inspection pursuant to § [46.2-1167](#) in the area embraced by the respective Authority and which shall be transmitted to the respective Authority.*

**§ [58.1-605](#).** To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ [58.1-603](#) and [58.1-604](#) and shall be subject to all the provisions of this chapter and the rules and

regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next six months as follows: one-sixth of the total adjustment shall be included in the payments for the next six months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the

error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G above, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest statewide school census. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last preceding school age population census, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such census and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the

amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

*K. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority may impose a retail sales tax at the rate of 5% on (i) charges for separately stated labor or services in the repair of motor vehicles and (ii) charges for the repair of a motor vehicle in cases in which the true object of the repair is a service provided within a city or county embraced by the respective Authority.*

*2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority as appropriate.*

*3. No discount under § [58.1-622](#) shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be administered and collected in the same manner and subject to the same penalties as provided for the local retail sales tax.*

§ [58.1-606](#). To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § [58.1-605](#) may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof,

and the rules and regulations published with respect thereto, except that no discount under § [58.1-622](#) shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § [58.1-605](#).

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

D. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

E. Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign

any shipment to a particular city or county, the local use tax on the tangible personal property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

F. Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § [58.1-605](#). The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

G. All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § [58.1-605](#) with respect to local sales tax revenue.

*H. 1. Notwithstanding the other provisions of this chapter, the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority may impose a retail use tax at the rate of 5% on (i) charges for separately stated labor or services for the repair of motor vehicles and (ii) charges for the repair of a motor vehicle in cases in which the true object of the repair is a service provided within a city or county embraced by the respective Authority.*

*2. The revenue generated and collected pursuant to the tax authorized under this subsection, less the applicable portion of any refunds to taxpayers and after subtraction of the direct costs of administration by the Department, shall be deposited and held in a special trust fund under the control of the State Treasurer entitled "Special Sales and Use Tax Motor Vehicle Repair Fund." The State Treasurer on a monthly basis shall distribute the amounts deposited in the special trust fund to the Hampton Roads Transportation Authority or the Northern Virginia Transportation Authority as appropriate.*

*3. No discount under § [58.1-622](#) shall be allowed for the tax described under this subsection. Except as otherwise provided herein, the tax under this subsection shall be*

*administered and collected in the same manner and subject to the same penalties as provided for the local retail use tax.*

*§ [58.1-625.1](#). Certain dealers required to separately state labor or service charges in the repair of motor vehicles.*

*Any dealer or other person required to collect any tax imposed under this chapter, or pursuant to any authority granted under this chapter, who is located in any county or city embraced by the Northern Virginia Transportation Authority established under § [15.2-4830](#) or the Hampton Roads Transportation Authority established under § [33.1-391.7](#), shall separately state on any bill, invoice, ticket, or other billing statement the amount charged by such dealer or person for labor or services performed in the repair of motor vehicles. This section shall apply only in the counties or cities embraced by the Northern Virginia Transportation Authority if the Authority is imposing the taxes authorized pursuant to subsection K of § [58.1-605](#) and subsection H of § [58.1-606](#), or in the counties or cities embraced by the Hampton Roads Transportation Authority if the Authority is imposing the taxes authorized pursuant to subsection K of § [58.1-605](#) and subsection H of § [58.1-606](#).*

*§ [58.1-802.1](#). Regional congestion relief fee.*

*In addition to any other tax imposed under the provisions of this chapter, the Hampton Roads Transportation Authority established pursuant to § [33.1-391.7](#) and the Northern Virginia Transportation Authority established pursuant to § [15.2-4830](#) may impose a fee, delineated as the "Regional congestion relief fee," on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city embraced by the respective Authority is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.40 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.*

*The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.*

*Fees imposed by this section shall be collected pursuant to subsection B of § [58.1-802](#). However, the compensation allowed to the clerk of the court under such subsection shall not be applicable with regard to the fee collected under this section. The clerk shall return all fees collected pursuant to the authority granted under this section to the Hamp-*

*ton Roads Transportation Authority or the Northern Virginia Transportation Authority, as appropriate, as soon as practicable.*

§ [58.1-811](#). Exemptions.

A. The taxes imposed by §§ [58.1-801](#) and [58.1-807](#) shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;
2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § [57-16.1](#), where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;
3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;
4. To the Virginia Division of the United Daughters of the Confederacy;
5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;
6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;
7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333 or 337 of the Internal Revenue Code as it exists at the time of liquidation;
8. To the surviving or new corporation, partnership or limited liability company upon merger or consolidation of two or more corporations, partnerships or limited liability companies, or in a reorganization within the meaning of § 368 (a) (1) (C) and (F) of the Internal Revenue Code as amended;
9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;
10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;
11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited

liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § [55-58.1](#), and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means, located in a county with a population of not less than 28,500 and not more than 28,650 or a city with a population of not less than 66,000 and not more than 70,000.

B. The taxes imposed by §§ [58.1-803](#) and [58.1-804](#) shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § [57-16.1](#);

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;

or

5. Securing a loan made by an organization described in subdivision 14 of subsection A of this section.

C. The tax imposed by § [58.1-802](#) and the fees imposed by § [58.1-802.1](#) shall not apply to any:

1. Transaction described in subdivisions 6 through 13 of subsection A of this section;

2. Instrument or writing given to secure a debt;
3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;
4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district or other political subdivision thereof;
5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § [58.1-802](#) or subject to the fee under § [58.1-802.1](#); or
6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § [57-16.1](#).

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § [58.1-807](#) shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ [58.1-801](#), [58.1-802](#), [58.1-802.1](#), [58.1-807](#), [58.1-808](#) and [58.1-814](#) shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § [57-8](#) and the ecclesiastical officers mentioned in § [57-16](#).

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) or similar federal law.

§ [58.1-815.4](#). *Distribution of recordation tax for certain transportation-related purposes.*

*Effective July 1, 2008, of the state recordation taxes imposed pursuant to §§ [58.1-801](#) and [58.1-803](#), the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:*

- 1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 e of § [58.1-638](#); and*
- 2. The revenues collected from \$0.01 of the total tax shall be deposited into the Highway Maintenance and Operating Fund.*

*Article 4.1.*

*Motor Vehicle Fuel Sales Tax in Certain Localities.*

*§ [58.1-1724.2](#). Rules and regulations; bracket system.*

*The Tax Commissioner shall promulgate rules and regulations for the registration of dealers and the procedures for filing returns for the payment of the tax imposed pursuant to this article. Such regulations shall include provisions for a bracket system, designed so that the tax will appear on the fuel pump as a part of the total cost of a unit of fuel, whether the unit is a gallon or other measure. The bracket system shall state the tax per unit measure in tenths of a cent, and shall be in increments of no more than 2 1/2 cents.*

*§ [58.1-1724.3](#). Sales tax on fuel in certain localities.*

*A. In addition to all other taxes, fees, and other charges imposed on fuels subject to tax under Chapter 22 (§ [58.1-2200](#) et seq.) of this title, the Hampton Roads Transportation Authority may impose a sales tax of 2% of the retail price of such fuels sold at retail within any county or city embraced by the Authority. The Commissioner shall transfer the revenues collected to the Hampton Roads Transportation Authority established under § [33.1-391.7](#). As used in this section "sold at retail" means a sale to a consumer or to any person for any purpose other than resale.*

*B. The tax imposed under this section shall be subject to the provisions of the Virginia Retail Sales and Use Tax Act (§ [58.1-600](#) et seq.), except that the exemption provided for motor vehicle fuels under § [58.1-609.1](#), and the bracket system provided in such act, shall not be applicable.*

*§ [58.1-1724.4](#). Exclusion from professional license tax.*

*The amount of the tax imposed by this article and collected by a dealer in any taxable year shall be excluded from gross receipts for purposes of any tax imposed under Chapter 37 (§ [58.1-3700](#) et seq.) of this title.*

*§ [58.1-1724.5](#). Refund of motor vehicle fuel sales tax.*

*Anyone who purchases fuel (i) that is taxed under the provisions of § [58.1-1724.3](#) and (ii) upon which a refund is granted for motor fuels taxes paid pursuant to the provisions of*

*Chapter 22 (§ [58.1-2200](#) et seq.), may file a claim for a refund of taxes paid under this article within 30 days after receipt of a refund under the above chapter on forms and under regulations adopted by the Department of Taxation.*

*§ [58.1-1724.6](#). Disposition of tax revenues.*

*All taxes paid to the Commissioner pursuant to this article, after subtraction of the direct costs of administration by the Department, shall be transferred to the Hampton Roads Transportation Authority on a monthly basis.*

*§ [58.1-1724.7](#). Disclosure of information; penalties.*

*For purposes of administering the tax levied under this article, the Commissioner, upon written request, is authorized to provide to the finance officer of the Hampton Roads Transportation Authority, such information as may be necessary for the performance his of official duties. Any person to whom information is provided pursuant to this section shall be subject to the prohibitions and penalties prescribed in § [58.1-3](#).*

*§ [58.1-2217](#). Taxes levied; rate.*

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol.

B. There is hereby levied a tax at the rate of ~~sixteen~~*seventeen and one-half* cents per gallon on diesel fuel.

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of seventeen and one-half cents per gallon, along with any penalties and interest that may accrue.

E. There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of ~~sixteen~~*seventeen and one-half* cents per gallon, along with any penalties and interest that may accrue.

F. In accordance with § [62.1-44.34:13](#), a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ [58.1-2249](#). Tax on alternative fuel.

A. There is hereby levied a tax at the rate of ~~sixteen~~*seventeen and one-half* cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle.

There is hereby levied a tax at a rate equivalent to ~~sixteen~~*seventeen and one-half* cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of fifty dollars per vehicle on each highway vehicle that is fueled from a private source if the alternative fuels tax levied under this article has not been paid on fuel used in the vehicle. If such a highway vehicle is not in operation by January 1 of any year, the license tax shall be reduced by one-twelfth for each complete month which shall have elapsed since the beginning of such year.

§ [58.1-2289](#). Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. Except as provided in § [33.1-23.03:1](#), no portion of the revenue derived from taxes collected pursuant to §§ [58.1-2217](#), [58.1-2249](#) or § [58.1-2701](#), and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.

Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. ~~The~~ *Except as provided in subsection F, the tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.*

C. ~~One-half cent of the tax collected on each gallon of fuel on which thea refund has been paid at the rate of seventeen cents per gallon, or in the case of diesel fuel, fifteen and one-half cents per gallon for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.~~

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the pub-

lic docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.1-223](#), a sum as established by the General Assembly.

E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.

*F. The additional revenues, less any additional refunds authorized, generated by increases in the rates of taxes under this chapter pursuant to enactments of the 2007 Session of the General Assembly shall be collected pursuant to Article 4 of this chapter and deposited into the Highway Maintenance and Operating Fund.*

§ [58.1-2402.1](#). *Local rental car transportation fee.*

*A. In addition to all other taxes, fees, and other charges imposed under law, the Hampton Roads Transportation Authority established pursuant to § [33.1-391.7](#) and the Northern Virginia Transportation Authority established pursuant to § [15.2-4830](#), may impose a fee of 2% of the gross proceeds on the daily rental of a vehicle in any county or city embraced by the respective Authority wherein the daily rental of the vehicle occurs, regardless of whether such vehicle is required to be licensed in the Commonwealth. The fee shall not be levied upon a rental to a person for re-rental as an established business or part of an established business or incidental or germane to such business.*

*B. After subtraction of the direct costs of administration by the Department, the Commissioner shall transfer the revenues collected pursuant to this section to the Hampton Roads Transportation Authority and the Northern Virginia Transportation Authority, as appropriate.*

*C. Any and all fees imposed pursuant to this section shall be collected by the Department of Motor Vehicles. The Commissioner shall maintain records of the fee imposed and collected by locality.*

*D. The fee imposed pursuant to the authority granted under this section shall be implemented, enforced, and collected in the same manner that rental taxes under this chapter are implemented, enforced, and collected.*

§ [58.1-2403](#). Exemptions.

No tax shall be imposed as provided in § [58.1-2402](#) or [58.1-2402.1](#) if the vehicle is:

1. Sold to, rented or used by the United States government or any governmental agency thereof;
2. Sold to, rented or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or rescue squad not operated for profit;
4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;
5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;
6. A manufactured home permanently attached to real estate and included in the sale of real estate;
7. A gift to the spouse, son, or daughter of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;
8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;
9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;
10. Being registered for the first time in this Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax

paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;

11. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale;

12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;

13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;

14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;

15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;

16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § [15.2-2703](#), for the sole purpose of disposition when such company has paid the registered owner of such vehicle a total loss claim;

17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;

18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501 (e) of the United States Internal Revenue Code;

19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;

20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501 (e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501 (c) (3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;

21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world;

23. A truck, tractor truck, trailer, or semitrailer, as severally defined in § [46.2-100](#), except trailers and semitrailers not designed or used to carry property and vehicles registered under § [46.2-700](#), with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no tax shall be imposed pursuant to subdivisions 1 and 3 of subsection A of § [58.1-2402](#);

24. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries of the trust may also be named in the trust instrument, when no consideration has passed between the titleholder and the beneficiaries; and transferred to the original titleholder from the trustees holding title to the motor vehicle;

25. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case;

26. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been paid to the Commonwealth by the lessee purchasing the vehicle; or

27. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person.

§ [58.1-2425](#). Disposition of revenues.

A. ~~All~~ Except as provided in § [58.1-2402.1](#) funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in § [58.1-2402.1](#) and in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the

construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § [46.2-100](#), shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) all funds collected from the additional tax imposed by subdivision A 4 of § [58.1-2402](#) on the rental of daily rental vehicles shall be distributed quarterly to the city, town, or county wherein such vehicle was delivered to the rentee; (iii) effective January 1, 1987, an amount equivalent to the net additional revenues generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), [58.1-2401](#), [58.1-2402](#) and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iv) except as otherwise provided in clause (iii) of this sentence, all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 3 of § [58.1-2402](#) at the tax rate in effect on December 31, 1986, shall be paid by the Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § [33.1-221.1:1](#); and (v) all additional revenues resulting from the fee imposed under subdivision A 5 of § [58.1-2402](#) as enacted by the 2004 Session of the General Assembly shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (iii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

§ [58.1-2531](#). *Distribution of certain revenue.*

A. *Beginning with the Commonwealth's fiscal year beginning on July 1, 2008 and for each fiscal year thereafter, an amount equal to one-third of all revenues collected by the Commission in the most recently ended fiscal year from the tax imposed under this chapter, less one-third of the total amount of such tax refunded in the most recently ended fiscal year, shall be deposited by the Comptroller to the Priority Transportation Fund established under § [33.1-23.03:8](#).*

*B. For purposes of the Comptroller's deposits under this section, the Commissioner of the Bureau of Insurance shall, no later than July 15 of each year, provide a written certification to the Comptroller that reports the amount to be deposited pursuant to subsection A. After the required amount has been deposited as provided in subsection A, all remaining revenues from the tax imposed under this chapter shall be deposited into the general fund of the state treasury. The Comptroller shall make all deposits under this section as soon as practicable.*

§ [58.1-2701](#). Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~nineteen and one-half cents~~ \$0.21 per gallon calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of ~~\$100~~ \$150 per year for each qualified highway vehicle. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ [46.2-685](#) et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be pro-rated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ [58.1-2706](#). Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~sixteen~~ *seventeen and one-half* cents per gallon on all motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed.

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ten days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

§ 58.1-3221.2. *Classification of certain commercial and industrial real property and taxation of such property by certain localities included in the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority.*

*A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are embraced by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.*

*B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.25 per \$100 of assessed value as the governing body may, by*

*ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality embraced by the Hampton Roads Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:*

*(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used exclusively for transportation purposes that benefit the locality imposing the tax; and*

*(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as a separate class of real property for local taxation in accordance with the provisions of this section.*

*C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities embraced by the Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.*

*D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property located in special regional transportation tax districts specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.25 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual*

*assessed value of all real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of any locality embraced by the Hampton Roads Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:*

- (1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall be used for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable;*
- (2) Any local ordinance adopted in accordance with the provisions of subsection C and this subsection shall include the requirement that the additional real property taxes so authorized are to be imposed annually in accordance with applicable law;*
- (3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall not be permitted to also impose the additional real property taxes set forth in subsection C and this subsection. In addition, any locality electing to impose the additional real property taxes on all real property located in such locality that is specially classified in subsections A and B must do so in the manner prescribed in subsections A and B and not by creation of a special transportation tax district as set forth in subsection C and this subsection. The creation of such special regional transportation tax districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;*
- (4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of \$0.25 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of \$0.10 per \$100 of assessed value in any locality embraced by the Hampton Roads Transportation Authority; and*
- (5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and*

*collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.*

*§ [58.1-3825.1](#). Additional transient occupancy tax in certain counties and cities in Northern Virginia.*

*In addition to such transient occupancy taxes as are authorized by this chapter, the Northern Virginia Transportation Authority established under § [15.2-4830](#) may impose an additional transient occupancy tax at the rate of 2% of the amount of charge for the occupancy of any room or space occupied provided that such room or space is located within a county or city embraced by the Authority. Such revenues shall be used according to the provisions of § [15.2-4838.1](#).*

*2. That the Commonwealth Transportation Board is authorized to issue bonds to fund transportation projects throughout the Commonwealth as follows:*

*§ 1. Title. This act shall be known and may be cited as the "Commonwealth Transportation Capital Projects Bond Act of 2007."*

*§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ [33.1-267](#) et seq. of the Code of Virginia) as amended from time to time, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series ....." at one or more times in an aggregate principal amount not to exceed \$3 billion, after all costs; provided that the aggregate principal amount issued in any one fiscal year shall not exceed \$300 million, excluding any refunding bonds. If, the aggregate principal amount issued in any fiscal year is less than \$300 million, then the amount by which such issuance is less than \$300 million may be issued in any subsequent fiscal year in addition to the \$300 million authorized in the subsequent fiscal year. The issuance of any bonds under this Act is subject to the provisions of subsection C of § [33.1-23.03:8](#) of the Code of Virginia.-*

*§ 3. The net proceeds of the Bonds shall be used exclusively for the purpose of providing funds for paying the costs incurred or to be incurred for construction or funding of transportation projects pursuant to § [33.1-23.4:01](#) of the Code of Virginia, including but not limited to environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs and other financing expenses. Such costs may include the pay-*

*ment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.*

*§ 4. The proceeds of the Bonds, including any premium received on the sale thereof, shall be made available by the Commonwealth Transportation Board to pay costs of the projects and, where appropriate, may be paid to any authority, locality, commission, or other entity for the purposes of paying for costs of the projects. The proceeds of the Bonds may be used together with any federal, local, or private funds that may be made available for such purpose. The proceeds of the Bonds, together with any investment earnings thereon, may, at the discretion of the Commonwealth Transportation Board, secure the payment of principal or purchase price of and redemption premium, if any, and interest on the Bonds.*

*§ 5. The terms and structure of each issue of the Bonds shall be determined by the Commonwealth Transportation Board, subject to approval by the Treasury Board in accordance with § [2.2-2416](#) of the Code of Virginia, as amended. The Bonds of each issue shall be dated; shall be issued in a principal amount (subject to the limitations set forth in § 2 and in subsection C of § [33.1-23.03:8](#) of the Code of Virginia); shall bear interest at such rate or rates, which may be fixed, adjustable, variable or a combination thereof and may be determined by a formula or other method; shall mature at such time or times not exceeding 25 years from their date or dates; and may be made subject to purchase or redemption before their maturity or maturities, at such price or prices and under such terms and conditions, all as may be determined by the Commonwealth Transportation Board. The Commonwealth Transportation Board shall determine the form of the Bonds, whether the Bonds are certificated or uncertificated, and fix the authorized denomination or denominations of the Bonds and the place or places of payment of principal or purchase price of, and redemption premium, if any, and interest on the Bonds, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth. The principal or purchase price of, and redemption premium, if any, and interest on the Bonds shall be made payable in lawful money of the United States of America. Each issue of the Bonds may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal or purchase price of and redemption premium, if any, and interest on such Bonds. All Bonds shall have and are hereby declared to have, as between successive holders, all of the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*

*The Commonwealth Transportation Board may sell the Bonds from time to time at public or private sale, by competitive bidding, negotiated sale, or private placement, for such price or prices as it may determine to be in the best interests of the Commonwealth.*

*§ 6. The Bonds shall be signed on behalf of the Commonwealth Transportation Board by the chairman or vice-chairman of the Commonwealth Transportation Board, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Board, which shall be attested to by the manual or facsimile signature of the secretary or assistant secretary of the Commonwealth Transportation Board. In the event that the Bonds shall bear the facsimile signature of the chairman or vice-chairman of the Commonwealth Transportation Board, such Bonds shall be signed by such administrative assistant as the chairman of the Transportation Board shall determine or by any registrar/paying agent who may be designated by the Commonwealth Transportation Board. In case any officer whose signature or a facsimile of whose signature appears on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery.*

*§ 7. All expenses incurred under this Act or in connection with the issuance of the Bonds shall be paid from the proceeds of such Bonds or from any available funds as the Commonwealth Transportation Board shall determine.*

*§ 8. The Commonwealth Transportation Board is hereby authorized to borrow money at such rate or rates through the execution and issuance of the Bonds for the same, but only in the following circumstances and under the following conditions:*

*a. In anticipation of the sale of the Bonds, the issuance of which shall have been authorized by the Commonwealth Transportation Board and shall have been approved by the Governor, if the Commonwealth Transportation Board shall deem it advisable to postpone the issuance of such Bonds; or*

*b. For the renewal of any anticipation notes herein authorized.*

*§ 9. The proceeds of the Bonds and of any anticipation notes herein authorized (except the proceeds of the Bonds the issuance of which has been anticipated by such anticipation notes) shall be placed by the State Treasurer in a special fund in the state treasury, or may be placed with a trustee in accordance with [§ 33.1-283](#) of the Code of Virginia, as amended, and shall be disbursed only for the purpose for which such Bonds and such anticipation notes shall be issued; provided, however, that proceeds derived from the sale of the Bonds herein authorized shall be first used in the payment of any anticipation notes that may have been issued in anticipation of the sale of such Bonds and any renewals of such Bonds. The proceeds of the Bonds and of any anticipation*

*notes herein authorized, together with any investment earnings thereon, shall not be taken into account in computing, and shall be in addition to funds allocated pursuant to the highway allocation formula set forth in § [33.1-23.1](#) of the Code of Virginia, as amended.*

*§ 10. The Commonwealth Transportation Board is hereby authorized to receive any other funds that may be made available to pay costs of the projects and, subject to appropriation, to make available the same to the payment of the principal or purchase price of, and redemption premium, if any, and interest on the Bonds authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with § [33.1-283](#) of the Code of Virginia, as amended, to pay a part of the costs of the projects or to pay principal or purchase price of, and redemption premium, if any, and interest on the Bonds.*

*§ 11. The Commonwealth Transportation Board, in connection with the issuance of the Bonds, shall establish a fund in accordance with § [33.1-286](#) of the Code of Virginia, as amended, either in the state treasury or with a trustee in accordance with § [33.1-283](#) of the Code of Virginia, as amended, which shall secure and be used for the payment of the Bonds to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of, and redemption premium, if any, and interest on the Bonds, as and when due and payable, (i) from the revenues deposited into the Priority Transportation Fund pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any legally available funds.*

*§ 12. Bond proceeds and moneys in any reserve funds and sinking funds in respect of the Bonds shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth, or by a trustee in accordance with § [33.1-283](#) of the Code of Virginia, as amended.*

*§ 13. The interest income from and any profit made on the sale of the obligations issued under the provisions of this Act shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.*

*§ 14. All obligations issued under the provisions of this Act are hereby made securities in which all persons and entities listed in § [33.1-280](#) of the Code of Virginia, as amended, may properly and legally invest funds under their control.*

3. That the revenues generated by the provisions of this act shall not be used to calculate or reduce the share of local, federal, and state revenues otherwise available to

participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

4. That prior to December 1 each year beginning 2008, the Washington Metropolitan Transit Authority shall submit to the Auditor of Public Accounts its annual audit report and financially audited statements for the most recent fiscal year.

5. That the Hampton Roads Transportation Authority established under § [33.1-391.7](#) of the Code of Virginia shall develop as part of a long-range plan quantifiable measures and achievable goals for the area embraced by the Authority relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle (HOV) usage, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, and per-capita vehicle miles traveled. In addition, the Northern Virginia Transportation Authority established under § [15.2-4830](#) of the Code of Virginia shall also develop as part of a long-range plan quantifiable measures and achievable goals for the area embraced by the Authority relating to, but not limited to, congestion reduction and safety, transit and high-occupancy vehicle (HOV) usage, job-to-housing ratios, job and housing access to transit and pedestrian facilities, air quality, and per-capita vehicle miles traveled. Such goals shall be subject to the approval of the Commonwealth Transportation Board on a biennial basis.

6. That the fees and taxes authorized by this Act for imposition or assessment by the Hampton Roads Transportation Authority shall only be imposed or assessed by the Authority if (i) at least seven of the twelve governing bodies of the counties and cities embraced by the Authority (but excluding the governing body of the County of Accomack and the governing body of the County of Northampton) that include at least 51% of the population of the counties and cities embraced by the Authority (but excluding the populations of the Counties of Accomack and Northampton) pass a duly adopted resolution stating its approval of such power of the Authority no later than December 31, 2007, and then (ii) at least seven of the twelve voting members of the Authority (but excluding voting members representing the Counties of Accomack and Northampton), that include at least 51% of the population of the counties and cities embraced by the Authority vote in the affirmative to impose or assess all of the fees and taxes authorized under this Act for imposition and assessment by the Authority in all of the counties and cities embraced by the Authority. For purposes of this enactment, "population" means the population as

determined by the most recently preceding United States decennial census or the most recent population estimates of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is most recent.

Such governing bodies in clause (i) shall provide a copy of the resolution to the Clerks of the House of Delegates and the Senate as soon as practicable. The Authority shall provide written notice of an affirmative vote pursuant to clause (ii) to the Clerks of the House of Delegates and the Senate as soon as practicable. Upon receiving any such resolution or written notice, the Clerks shall provide a copy to the Governor.

In addition, if such fees or taxes are imposed or assessed, such fees and taxes shall not apply to the Counties of Accomack and Northampton until such time as the Chesapeake Bay Bridge-Tunnel facilities become subject to the control of the Hampton Roads Transportation Authority as provided in § [33.1-391.12](#) of the Code of Virginia.

7. That the Virginia Department of Transportation, with the advice and consent of the Commonwealth Transportation Board, shall, on or before January 1, 2009, submit to the Governor and the General Assembly a plan to reassign the various highways, bridges, and other facilities comprising the state primary, secondary, and urban highways systems so that the assignment of components to such systems is based, to the maximum degree practicable, on the components' functional classification. Such plan shall include an analysis of the costs, benefits, and programmatic and other implications of such reassignment.

8. That the Virginia Department of Transportation shall, on or before January 1, 2008, submit a written report to the General Assembly on its plans to create opportunities to enhance mobility and free-flowing traffic on Department-controlled toll facilities by embracing technological advances.

9. That the tenth enactment clauses of Chapter 1019 and Chapter 1044 of the Acts of Assembly of 2000 are repealed effective July 1, 2007.

10. That counties shall have until July 1, 2011, to amend their comprehensive plans in accordance with the provisions of § [15.2-2223.1](#) of the Code of Virginia pursuant to this act.

11. That the fees collected pursuant to § [46.2-206.1](#) in the fiscal year ending June 30, 2008, shall be deposited and held in a special fund in the state treasury and transferred on August 15, 2008, to the Highway Maintenance and Operating Fund.

12. That in conjunction with the construction of rail mass transit in the right of way of the Dulles Access/Toll Road Connector (DATRC), sound walls shall be constructed along residential properties from the beginning of the DATRC to Dulles International Airport if required by the issued Record of Decisions pursuant to the National Environmental Policy Act (42 U.S.C. § 4321 et seq., as may be amended).

13. That the Northern Virginia Transportation Authority established under § [15.2-4830](#) of the Code of Virginia shall provide written notice to the Clerks of the House of Delegates and the Senate of any affirmative vote of the Authority to assess or impose any fee or tax authorized under this act for imposition or assessment by the Authority. The Authority shall provide such notice as soon as practicable. Upon receiving such written notice, the Clerks shall provide a copy of the same to the Governor. Furthermore, the Authority, the cities and counties embraced by the Authority, the Commissioner of the Department of Taxation, the Commissioner of the Department of Motor Vehicles, and other appropriate entities shall develop guidelines, policies, and procedures for the efficient and effective collection and administration of the fees and taxes authorized by this act for use by the Authority. The guidelines, policies, and procedures shall be made public at least 60 days prior to their implementation. The development of these guidelines, policies, and procedures shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia). The Secretary of Finance may authorize an anticipation loan for purposes of meeting the requirements of this enactment.

14. That the Hampton Roads Transportation Authority, the cities and counties embraced by the Authority, the Commissioner of the Department of Taxation, the Commissioner of the Department of Motor Vehicles, and other appropriate entities shall develop guidelines, policies, and procedures for the efficient and effective collection and administration of the fees and taxes authorized for use by the Authority. The guidelines, policies, and procedures shall be made public at least 60 days prior to their implementation. The development of the guidelines, policies, and procedures shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia). The Secretary of Finance may authorize an anticipation loan for purposes of meeting the requirements of this enactment.

15. That the staff of the Hampton Roads Planning District Commission and the Virginia Department of Transportation shall work cooperatively to assist the proper formation and effective organization of the Hampton Roads Transportation Authority. Until such time as the Authority is fully established and functioning, the staff of the Hampton Roads

Planning District Commission shall serve as its staff, and the Hampton Roads Planning District Commission shall provide the Authority with office space and administrative support. The Authority shall reimburse the Hampton Roads Planning District Commission for the cost of such staff, office space, and administrative support as appropriate.

16. That, as provided under § [58.1-3221.2](#), the tax authorized thereunder may only be imposed by a city or county embraced by the Northern Virginia Transportation Authority established under § [15.2-4830](#), or a city or county embraced by the Hampton Roads Transportation Authority established under § [33.1-391.7](#).

17. That the Department of Motor Vehicles shall work with the appropriate state agencies to develop guidelines, policies, and procedures for the efficient and effective collection and administration of the fees set forth under § [46.2-206.1](#) of the Code of Virginia. The guidelines, policies, and procedures shall be made public at least 60 days before their implementation. The development of the guidelines, policies, and procedures shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia).

18. That the tax authorized pursuant to § [58.1-540](#) of the Code of Virginia shall not be imposed by a city or county embraced by the Northern Virginia Transportation Authority if the Authority is imposing any of the fees or taxes authorized under law for imposition or assessment by the Authority.

19. That the tax authorized pursuant to § [58.1-540](#) of the Code of Virginia shall not be imposed by a city or county embraced by the Hampton Roads Transportation Authority if the Authority is imposing any of the fees or taxes authorized under law for imposition or assessment by the Authority.

20. That the Northern Virginia Transportation Authority and the counties and cities embraced by the Authority shall work cooperatively with the towns located within such counties for purposes of implementation of the provisions of this act.

21. That the revenue generated by this act shall be used solely for transportation purposes.

22. That the provisions of this act which generate additional revenue for the Transportation Trust Fund, established under § [33.1-23.03:1](#) of the Code of Virginia, or the Highway Maintenance and Operating Fund shall expire on December 31 of any year in which the General Assembly appropriates any of the revenues designated under gen-

eral law to the Highway Maintenance and Operating Fund or the Transportation Trust Fund for any non-transportation related purpose.

23. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions of this act shall remain in effect.

## **Chapter 83 Subaqueous land; Marine Resources Commission to convey certain S&S Marine Supply in Hampton.**

An Act to authorize the Marine Resources Commission to convey certain lands in the City of Hampton.

[\[S 1367\]](#)

Approved February 21, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to S&S Marine Supply and its successors and assigns, upon such terms and conditions and the payment of fair market value considerations as are deemed proper by the Commission, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:*

*Beginning at the northwest corner of Parcel C, said parcel being as particularly designated as "Parcel C," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation of Virginia," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; said point of beginning being on the approximate mean low water line as shown on said plat; thence, N 08°37'08" W, 19', more or less, to a point being N 08°37'08" W, 75.98' from the centerline of the 30' right-of-way (ingress/egress easement) as shown in D.B. 470, PG. 706; thence, N 80°26'24" E, 86', more or less, to the approximate mean low water line as shown on said plat; thence along the mean low water line in an westerly direction, 90', more or less, to the point of beginning; containing 1,200 square feet (0.03 acres), more or less.*

§ 2. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to S&S Marine Supply and its successors and assigns, upon such terms and conditions and the payment of fair market value considerations as are deemed proper by the Commission, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:

Beginning at the northeast corner of Parcel C, said parcel being as particularly designated as "Parcel C," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation of Virginia," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, N 80°26'24" E, 7', more or less, to a point N 80°26'24" E, 256.29' from the northwest corner of Parcel I, here before described; thence, S 33°18'44" E, 10.74' to a point; thence S 08°13'08" E, 245.01' to a point; thence S 87°25'44" W, 129', more or less, to the existing approximate mean low water line; thence along the mean low water line in a westerly direction 84', more or less, to a point; thence N 30°52'27" W, 58', more or less, to a point, that point also being the southwest corner of said parcel C and the approximate mean low water line as shown on said plat; thence along the mean low water line in an easterly and northerly direction, 399', more or less, to the point of beginning; containing 10,900 square feet (0.25 acres), more or less.

§ 3. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to lola L. Lawson and her successors and assigns, upon such terms and conditions and the payment of fair market value considerations as are deemed proper by the Commission, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:

Beginning at the southwest corner of Parcel A-1, said parcel being as particularly designated as "Parcel A-1," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Ivy Home Company," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised October 13, 1971, and recorded in Deed Book 468, page 357 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, along the westerly boundary of said Parcel A-1, N 09°53'02" W, 130.48' to a point; thence, N 35°06'58" E, 35.36' to a point;

*thence N 09°53'01" W, 9', more or less, to the existing approximate mean low water line; thence along the mean low water line in an easterly direction, 169', more or less, to a point; thence, S 60°51'00" E, 14', more or less to a point; thence, N 82°09'47" E, 6.12' to a point; thence S 07°54'07" E, 163.54' to a point; thence S 33°18'44" E, 2.09' to a point also being located N 80°26'24" E, 189.72' from the point of beginning; thence S 80°26'24" W, 7', more or less, to the approximate mean low water line as shown on said plat; thence, along the mean low water line, 326', more or less to a point on the southerly line of aforesaid Parcel A-1; thence, S 80°26'24" W, 19', more or less to the point of beginning; containing 22,400 square feet (0.51 acres), more or less.*

## **Chapter 155 American Former Prisoners of War Memorial Highway; designating as portion of Route 19 in Russell Co.**

An Act to designate a portion of U.S. Route 19 the "American Former Prisoners of War Memorial Highway."

[\[S 1092\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 19 in Russell County between Virginia Route 80 at Rosedale and the Russell/Tazewell County boundary is hereby designated the "American Former Prisoners of War Memorial Highway." The Department of Transportation, at the request of the local governing body, shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 173 Trooper Ricky Marshall McCoy Memorial Bridge; designating as I-95 bridge over Route 635.**

An Act to designate the Interstate Route 81 bridge over Virginia Route 635 in Roanoke County at its jurisdictional boundary with the City of Salem the "Trooper Ricky Marshall McCoy Memorial Bridge."

[\[S 1370\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Interstate Route 81 bridge over Virginia Secondary Route 635 in Roanoke County, at its jurisdictional boundary with the City of Salem, shall be designated the "Trooper Ricky Marshall McCoy Memorial Bridge." The Department of Transportation shall place and maintain signs appropriate for this designation to be visible from Interstate Route 81 and Route 635. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 174 First Landing State Park; Department of Conservation and Recreation to lease portion thereof.**

An Act to authorize the Department of Conservation and Recreation, Lessor, to lease certain land within First Landing State Park to the City of Virginia Beach, Lessee.

[\[S 1418\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to §§ [10.1-104](#) and [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation, Lessor, is hereby authorized to lease on behalf of the Commonwealth, upon terms and conditions the Department deems proper, with approval of the Governor and in a form approved by the Attorney General, a portion of First Landing State Park in the City of Virginia Beach to the City of Virginia Beach, Lessee.*

*§ 2. The purpose of the lease is to allow certain property currently owned by the Commonwealth within First Landing State Park, to be used for a recreational facility not operated under the purview of the Department of Conservation and Recreation.*

*§ 3. The lease shall be subject to (i) the public participation guidelines of the Administrative Process Act (§ [2.2-4000](#) et seq.) and (ii) inclusion in the master plan for the park.*

*§ 4. Any further subletting of the property by the Lessee shall be subject to review and approval by the Department, with approval of the Governor and in a form approved by the Attorney General. Upon expiration of the lease, or when the Lessee no longer wishes to have the property operated under the terms of the lease, the Lessee shall return the property to the Department in the condition specified by the lease.*

*§ 5. The lease agreement shall incorporate language that ensures that the property and any facilities constructed on the site provide for adequate public access and use to comply with all requirements of the federal Land and Water Conservation Act.*

*§ 6. The provisions of this act shall expire on July 1, 2009, unless the lease agreement is entered into by the Lessor and Lessee on or before July 1, 2009.*

## **Chapter 184 License plates, special; issuance to registered nurses.**

An Act to authorize the issuance of revenue-sharing special license plates for registered nurses.

[\[H 1964\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. On receipt of an application and payment of the fee prescribed by this act, and upon written evidence that the applicant is a registered nurse, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for registered nurses.*

*The annual fee for plates issued pursuant to this act shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this act, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Registered Nurses Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Nurses Association Foundation and used by the Foundation to support initiatives to alleviate Virginia's nursing shortage. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and*

*paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 235 License plates, special; issuance honoring Robert E. Lee.**

An Act to authorize the issuance of special license plates honoring Robert E. Lee.

[\[S 803\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates honoring Robert E. Lee.*

## **Chapter 195 Miller School of Albemarle; eliminates provision that 2 members of Board be appointed by Gov.**

An Act to amend and reenact § 2 of the first enactment of Chapter 306 of the Acts of Assembly of 1986, as amended by Chapter 319 of the Acts of Assembly of 2002, as amended by Chapter 148 of the Acts of Assembly of 2004, relating to The Miller School of Albemarle.

[\[H 2342\]](#)

Approved March 9, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 306 of the Acts of Assembly of 1986, as amended by Chapter 319 of the Acts of Assembly of 2002, as amended by Chapter 148 of the Acts of Assembly of 2004, is amended and reenacted as follows:

§ 2. The Miller School of Albemarle shall be governed by a Board of Trustees consisting of no more than 23 members, according to its bylaws. ~~Two members shall be appointed by the Governor of Virginia subject to confirmation by the Senate and the House of~~

~~Delegates, two members shall be appointed by the Judge of the Circuit Court of Albemarle County, and the remaining members shall be elected by~~ *Members of the board shall be elected by* the entire Board according to its bylaws.

All trustees serving as of July 1, 2004, shall be eligible to complete their respective terms. Thereafter, all appointments and elections shall be for four years except appointments and elections to fill vacancies, which shall be for the unexpired term of the vacancy.

No member shall be eligible to serve more than two consecutive four-year terms.

## **Chapter 237 Portsmouth Port and Industrial Commission.**

An Act to amend and reenact Chapter 157 of the Acts of Assembly of 1954, as amended, by adding a section numbered 25, relating to powers of the Portsmouth Port and Industrial Commission.

[\[S 957\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1. That Chapter 157 of the Acts of Assembly of 1954, as amended, is amended and reenacted by adding a section numbered 25 as follows:

*§ 25. Without in any manner limiting the general powers granted by this Act, the Commission shall have the power:*

*(a) To provide financing by leasing, selling, which shall include selling by pocket deeds, or making loans for facilities for a § 501(c)(3) organization, including all items of cost for such facilities and for working capital for use by such § 501(c)(3) organization, and to adopt such resolutions and to enter into indentures, contracts, instruments and agreements as may be expedient to issue qualified § 501(c)(3) bonds and to provide for such loans and any security therefor. Such loans shall be made only from revenues of the Commission that have not been pledged or assigned for the payment of any of the Commission's other bonds or notes. All bonds or notes issued by the Commission for the benefit of a § 501(c)(3) organization shall be payable solely from the revenues and receipts derived from the leasing or sale by the Commission of such facilities or from payments received by the Commission in connection with loans financing such facilities. Facilities may be located within or without the City of Portsmouth. The Commission shall*

*not have the power to operate any facilities for a §501(c)(3) organization other than as a lessor.*

*(b) To charge to conduit borrowers an administrative fee upon the issuance of its bonds and notes, whether issued to finance facilities for a § 501(c)(3) organization or to finance projects authorized elsewhere in Chapter 157, as amended, which administrative fee shall comply with the limitations imposed by § 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, and to enter into agreements with other bond-issuing authorities or localities to share or allocate administrative fee payments on such terms as may be agreed upon, either in a standing agreement or in separate agreements for each financing.*

*For purposes of this section:*

*"Cost," "facilities," and "loans" shall have the respective meanings ascribed thereto in § [15.2-4902](#) of the Code of Virginia, as amended;*

*"Qualified §501(c)(3) bond" shall have the meaning ascribed thereto in § 145 of the Internal Revenue Code of 1986, as amended;*

*"§ 501(c)(3) organization" means an organization, other than an organization organized and operated exclusively for religious purposes, which is described in § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501(a) of such Internal Revenue Code.*

## **Chapter 271 Charles B. Morris Memorial Bridge; designating as I-77 bridge over Route 58 in Carroll County.**

An Act to designate the Interstate 77 bridge over U.S. Route 58 in Carroll County the "Charles B. Morris Memorial Bridge."

[\[H 2105\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1 That the Interstate 77 bridge over U.S. Route 58 in Carroll County is hereby designated the "Charles B. Morris Memorial Bridge." The Department of Transportation, at the request of the local governing body, shall place and maintain appropriate signs indicating the designation of this bridge. The cost and installation of such signs shall be*

*reimbursed by the local governing body to the Virginia Department of Transportation. This designation shall not affect any other designation heretofore or hereafter applied to this bridge or any portion thereof.*

## **Chapter 274 Monacan Parkway; designating as portion of Route 29 within Town of Amherst and Campbell County.**

An Act to designate a portion of U.S. Route 29 the "Monacan Parkway."

[\[H 2165\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 29 between its intersection with U.S. Route 29 (business) in the Town of Amherst and its intersection with U.S. Route 460 in Campbell County is hereby designated the "Monacan Parkway." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

## **Chapter 293 Lance Corporal Jason Redifer Memorial Bridge; designating as Route 608 bridge over I-64 in Augusta.**

An Act to designate the Virginia Route 608 bridge over Interstate Route 64 in Augusta County at *Fishersville* the "Lance Corporal Jason Redifer Memorial Bridge."

[\[H 2540\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 608 bridge over Interstate Route 64 in Augusta County at Fishersville is hereby designated the "Lance Corporal Jason Redifer Memorial Bridge." The Department of Transportation shall place and maintain appropriate signs indicating the*

*designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 294 Lance Corporal Daniel Scott Resner Bubb Memorial Bridge; designating as Route 256 bridge over I-81.**

An Act to designate the Virginia Route 256 bridge over Interstate Route 81 in Augusta County at Weyers Cave the "Lance Corporal Daniel Scott Resner Bubb Memorial Bridge."

[\[H 2541\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 256 bridge over Interstate Route 81 in Augusta County at Weyers Cave is hereby designated the "Lance Corporal Daniel Scott Resner Bubb Memorial Bridge." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 303 House of Delegates districts; technical adjustment in boundary line within King William County.**

An Act to make a technical adjustment in a part of the boundary between the Ninety-seventh and Ninety-eighth House of Delegates districts within King William County.

[\[H 2780\]](#)

Approved March 12, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the segment of the boundary between the Ninety-seventh and Ninety-eighth House of Delegates districts within King William County beginning at the point where Chelsea Road (State Route 1003) intersects the corporate limits of the town of West*

*Point, then southeast on Chelsea Road to Geron Lane, then northeast on Geron Lane to an unnamed tributary (the boundary between census blocks 511019503001007 and 511019503001011) of the Mattaponi River, then north on the unnamed tributary to the west bank of the Mattaponi River, and then northwest along said west bank to the north corporate limits of the town of West Point, said point of intersection being the northwest corner of census block 511019503001000, is superseded by a line beginning at the point where Chelsea Road (State Route 1003) intersects the corporate limits of the town of West Point, then clockwise northeast and then southeast on the corporate limits to the west bank of the Mattaponi River, said point of intersection being the northwest corner of census block 511019503001000.*

### **Chapter 330 National Association of Counties; locality to participate.**

An Act to authorize a locality to participate in programs offered by the National Association of Counties.

[\[H 2735\]](#)

Approved March 13, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any locality may participate in programs offered by the National Association of Counties.*

### **Chapter 401 Career and Technical Education, Advisory Council on; extends sunset date.**

An Act to amend the Code of Virginia by adding in Chapter 30 of Title 30 a section numbered [30-200.1](#), and to repeal the second enactment of Chapter 526 of the Acts of Assembly of 2002, relating to continuation of the Advisory Council on Career and Technical Education.

[\[H 2040\]](#)

Approved March 15, 2007

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 30 of Title 30 a section numbered [30-200.1](#) as follows:

§ [30-200.1](#). *Sunset.*

*This chapter shall expire on July 1, 2012.*

2. That the second enactment of Chapter 526 of the Acts of Assembly of 2002 is repealed.

## **Chapter 339 Portsmouth Port & Industrial Commission; authority to provide financing by leasing, etc. facilities.**

An Act to amend and reenact Chapter 157 of the Acts of Assembly of 1954, as amended, by adding a section numbered 25, relating to powers of the Portsmouth Port and Industrial Commission.

[\[H 2989\]](#)

Approved March 13, 2007

Be it enacted by the General Assembly of Virginia:

1. That Chapter 157 of the Acts of Assembly of 1954, as amended, is amended and reenacted by adding a section numbered 25 as follows:

§ 25. *Without in any manner limiting the general powers granted by this Act, the Commission shall have the power:*

*(a) To provide financing by leasing, selling, which shall include selling by pocket deeds, or making loans for facilities for a § 501(c)(3) organization, including all items of cost for such facilities and for working capital for use by such § 501(c)(3) organization, and to adopt such resolutions and to enter into indentures, contracts, instruments and agreements as may be expedient to issue qualified § 501(c)(3) bonds and to provide for such loans and any security therefor. Such loans shall be made only from revenues of the Commission that have not been pledged or assigned for the payment of any of the Commission's other bonds or notes. All bonds or notes issued by the Commission for the benefit of a § 501(c)(3) organization shall be payable solely from the revenues and receipts derived from the leasing or sale by the Commission of such facilities or from payments received by the Commission in connection with loans financing such facilities. Facilities may be located within or without the City of Portsmouth. The Commission shall*

*not have the power to operate any facilities for a § 501(c)(3) organization other than as a lessor.*

*(b) To charge to conduit borrowers an administrative fee upon the issuance of its bonds and notes, whether issued to finance facilities for a § 501(c)(3) organization or to finance projects authorized elsewhere in Chapter 157, as amended, which administrative fee shall comply with the limitations imposed by § 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, and to enter into agreements with other bond-issuing authorities or localities to share or allocate administrative fee payments on such terms as may be agreed upon, either in a standing agreement or in separate agreements for each financing.*

*For purposes of this section:*

*"Cost," "facilities," and "loans" shall have the respective meanings ascribed thereto in § [15.2-4902](#) of the Code of Virginia, as amended;*

*"Qualified § 501(c)(3) bond" shall have the meaning ascribed thereto in § 145 of the Internal Revenue Code of 1986, as amended;*

*"§ 501(c)(3) organization" means an organization, other than an organization organized and operated exclusively for religious purposes, which is described in § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501(a) of such Internal Revenue Code.*

## **Chapter 398 Nursing home beds; authorizes issuance of certificates of public need for relocation thereof.**

An Act to authorize and exempt relocation of nursing home beds from certificate of public need regulation under certain circumstances.

[\[H 1992\]](#)

Approved March 15, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Relocation of certain nursing home beds under limited circumstances.*

*A. Notwithstanding (i) the provisions of §§ [32.1-102.3](#) and [32.1-102.3:2](#), (ii) any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, and (iii) the provisions of any current Requests for*

*Applications issued by the Commissioner of Health pursuant to § [32.1-102.3:2](#), the Commissioner of Health shall accept applications and may issue certificates of public need for nursing home beds when such beds are a relocation from one facility to another facility under common ownership or control, regardless of whether they are in the same planning district, if, as of December 31 of the year preceding the year in which relocation is proposed, the following criteria are met:*

- 1. The occupancy rate of the facility seeking to relocate beds, based upon the total number of beds for which the facility is licensed, was less than 67%;*
- 2. Greater than 25% of the residents of the facility from which beds are to be relocated, immediately prior to moving to the facility, resided outside the planning district in which the facility is located; and*
- 3. Any facility to which beds are to be relocated has experienced an average occupancy rate that meets or exceeds 90%.*

*B. A relocation of nursing home beds under the circumstances described herein shall not constitute a "project" as defined in § [32.1-102.1](#). An entity may not relocate more than two-thirds of the total number of beds for which the facility was licensed prior to any relocation pursuant to this section. Any restrictions that apply to the certificate at the time of the relocation shall remain in effect following the relocation.*

## **Chapter 466 Retirement System; additional information to localities and authorized to assess fees.**

An Act to direct the Virginia Retirement System to provide additional information to localities.

[\[H 2095\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In addition to the annual actuarial evaluation currently provided to participating localities by the Virginia Retirement System, VRS annually shall provide each participating locality the locality-specific data on which the annual actuarial evaluation is based, and such other information as may be necessary for each locality to determine the specific assumptions that are driving its VRS-related costs, and to understand the retirement*

*costs of different classes of covered employees. The Virginia Retirement System is authorized to assess fees for data collection, reporting, actuarial analysis, and other requested services beyond those required for the annual actuarial valuation provided to each participating employer. Such fees may be collected from funds maintained and invested by the Virginia Retirement System on behalf of each requesting employer.*

## **Chapter 348 Richmond, City of; Governor to disclaim state interests to certain escheated parcels therein.**

An Act to authorize the Governor to disclaim any interests of the Commonwealth in and to certain lots or parcels of real property in the City of Richmond previously determined to have escheated by virtue of an inquest proceeding and verdict of jury, dated December 29, 1989.

[\[H 3181\]](#)

Approved March 13, 2007

WHEREAS, by virtue of an inquest proceeding held pursuant to § [55-172](#) of the Code of Virginia and the verdict of jury therein, dated December 29, 1989, and recorded in the Clerk's Office of the Circuit Court of the City of Richmond in Deed Book 224, page 453, certain lots or parcels of real property in the City of Richmond were determined to have escheated to the Commonwealth; and

WHEREAS, the said verdict of jury, or escheat verdict, was not indexed in the name of the then last known owner or owners as listed for such properties in the escheat verdict; and

WHEREAS, it is in the public interest to authorize the Governor to disclaim any interest of the Commonwealth in and to such properties; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Authorization of Governor to disclaim interests.*

*Notwithstanding any applicable provisions in the Code of Virginia or other laws of this Commonwealth, including those pertaining to escheats generally and to the disclaimer of property, and it being in the public interest to eliminate potential injury and loss due to the discovery of invalid title arising from certain prior escheat proceedings and inquest held in the City of Richmond that resulted in a verdict of jury dated December 29, 1989, and recorded in the Clerk's Office of the Circuit Court of the City of Richmond in Deed*

*Book 224, page 453, evidencing the determination that specified properties therein listed had escheated to the Commonwealth, which escheat verdict was not indexed in the name of the then last known owner or owners thereof as therein listed for each lot or parcel, the Governor, acting for and on behalf of the Commonwealth, is hereby authorized to disclaim any and all right, title and interest of the Commonwealth in and to the lots or parcels of real property listed in the aforesaid verdict of jury, dated December 29, 1989, by the execution of an instrument of disclaimer which shall be recorded among the land records of the Circuit Court of the City of Richmond where deeds are recorded and indexed in the Grantor index under the Commonwealth of Virginia. Upon execution and recordation, the instrument of disclaimer shall be deemed to supersede and take precedence over the aforesaid verdict of jury, including any determinations of escheat therein contained, and upon its recordation, said disclaimer instrument shall have the legal force and effect of disclaiming, releasing and renouncing all of the right, title and interest of the Commonwealth of Virginia in and to each lot or parcel of real property listed in the aforesaid verdict of jury effective as of, and retroactive to, the date or dates that such properties or the title thereto escheated to the Commonwealth. The instrument of disclaimer (i) may describe the properties disclaimed through incorporation by reference to the recorded verdict of jury, (ii) shall expressly declare the disclaimer, release and renouncement of title and the extent thereof, and (iii) shall be signed and acknowledged by the Governor in the manner provided for deeds. The form of the disclaimer instrument shall be approved by the Attorney General. A copy of the recorded instrument shall be mailed to the Director of Finance for the City of Richmond.*

*§ 2. Confirmation to current owners.*

*The Commonwealth, acting through the Department of General Services, may confirm the foregoing, provided the state treasurer determines it appropriate so to do upon receipt of proof of ownership, including affidavits and other documentation as may be deemed sufficient, by execution and delivery of a quitclaim and release deed to the current owner or owners of any lot or parcel specified in the verdict, provided such deed has the prior approval of the Governor and has been approved as to form by the Attorney General.*

*§ 3. Effect of disclaimer on passing of title.*

*Upon recordation of such instrument of disclaimer, title to lots or parcels of real property disclaimed by the Commonwealth hereunder shall relate back and thereafter pass or descend, whether by deed, will, intestacy, condemnation, judicial sale, tax sale, or by operation of law, as if the escheat had never occurred. Further, nothing in this Act nor the recordation of an instrument of disclaimer shall affect the validity or finality of any*

*order or decree entered in any prior condemnation or other judicial proceeding involving title to any of the properties listed in the aforesaid verdict of jury or the title acquired by any condemning authority. Nothing in this Act shall preclude the right of any person to pursue a suit to quiet title or other judicial remedy to clear the title to any affected lot or parcel as may be provided by law.*

## **Chapter 847 Budget Bill.**

An Act to amend and reenact Chapter 3 of the 2006 Acts of Assembly, Special Session I, as amended by Chapter 10 of the 2006 Acts of Assembly, Special Session I, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2007, and the thirtieth day of June, 2008.

[\[H 1650\]](#)

Approved April 4, 2007

## **Chapter 490 Reversion of federal lands; State to take title to lands in NoVa with environmental contamination.**

An Act to specify the conditions under which certain lands may revert to the Commonwealth.

[\[H 2431\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Notwithstanding the limitation on the transfer or reversion of lands to the Commonwealth contained in subsection B of § [1-405](#) of the Code of Virginia, lands located within the Northern Virginia Planning District that contain environmental contamination may revert or transfer to the Commonwealth if the United States enters into a written agreement with the Commonwealth pursuant to § [2.2-1149](#) to indemnify the Commonwealth against all costs and liabilities associated with such environmental contamination and related corrective action or otherwise provides satisfactory assurances that all corrective action necessary to protect human health and the environment will be

taken at the sole expense of the United States. The written agreement shall be in a form approved by the Attorney General of Virginia.

§ 2. *In addition to the requirements set forth in § 1, such transfer or reversion shall not occur unless and until the United States has agreed, and provides assurances satisfactory to the Commonwealth, to provide all transportation infrastructure improvements required to accommodate the development of any property owned by the United States and contiguous or adjacent to the property subject to the transfer or reversion.*

§ 3. *Except as provided in § 1, the provisions of § [1-405](#) of the Code of Virginia shall apply mutatis mutandis to this act.*

§ 4. *As used in this act, "corrective action" and "environmental contamination" shall mean the same as those terms are defined in § [1-405](#) of the Code of Virginia.*

## **Chapter 554 Virginia Beach Police Department Marine Patrol; enforcement of federal security and safety zones.**

An Act to amend and reenact § [28.2-106.1](#) of the Code of Virginia, relating to the Virginia Marine Police enforcement of federal security and safety zones and to authorize the Virginia Beach Marine Patrol to enforce federal security and safety zones.

[\[S 900\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That § [28.2-106.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [28.2-106.1](#). Patrol and enforcement of federal safety zones and restricted areas. Pursuant to authority provided in 46 U.S.C. § 70119 *federal authorization*, the Virginia Marine Police may patrol and enforce all federal security zones and, *federal safety zones, and federal restricted areas* located within the tidal waters of the Commonwealth, including but not limited to those security zones and safety zones designated in 33 C.F.R. Part 165. Pursuant to authority provided in 33 U.S.C. § 1225, the Virginia Marine Police may patrol and enforce all federal restricted areas located within the tidal waters of the Commonwealth.

2. That the Virginia Beach Police Department Marine Patrol is authorized to patrol and enforce federal zones as follows:

*§ 1. That pursuant to federal authorization, the Virginia Beach Police Department Marine Patrol may patrol and enforce all federal security zones, federal safety zones, and federal restricted areas located within the tidal waters of the Commonwealth that fall within the Virginia Beach Police Department's jurisdiction.*

## **Chapter 564 Drug and alcohol treatment pilot program; local or regional jail may establish for inmates.**

An Act to provide for the establishment of pilot programs for drug and alcohol treatment in local and regional jails.

[\[S 1069\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any local or regional jail may establish a drug and alcohol treatment program for inmates housed within its facilities. Such program, modeled on programs already in use in local correctional facilities in the Commonwealth, shall consist of established methods for assisting people in eliminating the negative influence in their lives of drug or alcohol abuse and addiction. Each program shall make a report to the General Assembly by December 1, 2007, which shall enumerate the participating local facilities, the percentage of the population participating in each facility, the availability of the program on a continuing basis to recidivists regardless of the facility to which they may be committed, and the overall efficacy of the program.*

## **Chapter 580 War Memorial; State Treasurer to advance loan for construction of wing.**

An Act to authorize the State Treasurer to advance a no-interest, short-term treasury loan for an educational wing for the Virginia War Memorial.

[\[S 1352\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That upon certification by the Secretary of Administration that \$2 million in private funds have been raised, are available, and will be used to support construction of an educational wing for the Virginia War Memorial, the State Treasurer shall advance a loan of \$3.5 million to the Department of General Services for the state share of the construction in the form of a short-term treasury loan, with no interest.*

## **Chapter 585 Hampton University; amending incorporation thereof to expand the purpose of the University.**

An Act to amend and reenact the second enactment of Chapter 122 of the Acts of Assembly of 1870, relating to the incorporation of Hampton University.

[\[S 1425\]](#)

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 122 of the Acts of Assembly of 1870 is amended and reenacted as follows:

2. That the purposes of the said Hampton Normal and Agricultural Institute *University* shall be as follows: ~~For the instruction of youth in the various common school, academic, and collegiate branches, the best methods of teaching the same, and the best mode of practical industry in its application to agricultural and the mechanic arts; and for the carrying out of these purposes, the said trustees may establish any departments or schools in the said institution.~~ *to operate an institution of higher education, provide instruction and training, advance education and science, conduct medical and scientific research in the public interest, promote health and social welfare, benefit the community, and such other educational, charitable, scientific and literary purposes as the trustees may from time to time determine.*

## **Chapter 795 School boards; referendum for election of chairman in Page County.**

An Act to provide for a referendum in Page County on the election at large of the chairman of the school board.

[\[S 1232\]](#)

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The officials conducting the November 6, 2007, election in Page County shall conduct a referendum on that date in the County to poll the voters on the question of whether they favor the election of the chairman of the school board by the County at large.*

*The question on the ballot shall be:*

*"Shall there be an additional member of the County School Board, who shall be the County School Board Chairman and who shall be elected by the voters of the County at large?"*

*The ballots shall be prepared and voted, the referendum shall be conducted, and the results shall be ascertained and certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia.*

*The electoral board shall cause notice of the election to be published in a newspaper of general circulation in the County at least once in the period 45 to 60 days before the election.*

*If the voters approve the election of a chairman of the school board by the County at large at the November 2007 election, the chairman shall be elected at the November 2009 election for a four-year term and shall be elected thereafter for a four-year term. The chairman shall be the sixth member of the board.*

## **Chapter 852 Road to Revolution Heritage Trail; establishment thereof.**

An Act to establish The Road to Revolution Heritage Trail.

[\[H 1722\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established The Road to Revolution, a heritage trail of sites*

*significant to Patrick Henry, orator of the American Revolution and independent Virginia's first governor, to highlight and celebrate Henry's leading role in liberating Virginia from Colonial rule to independence. The Trail shall consist of the following sites: Henry's birthplace at Studley, Virginia; Rural Plains at Mechanicsville, Virginia; Pine Slash at Studley, Virginia; Hampden-Sydney College at Hampden-Sydney, Virginia; St. John's Church at Richmond, Virginia; Scotchtown at Beaverdam, Virginia; Hanover Tavern at Hanover, Virginia; the Hanover County Courthouse at Hanover, Virginia; Historic Polegreen Church at Mechanicsville, Virginia; Red Hill Plantation and the Patrick Henry National Memorial, at Brookneal, Virginia. The Virginia Department of Transportation shall erect one identifying sign in the Department's right-of-way at each site only by request of a local government, historical organization, or foundation with custodial responsibilities for that site. Directional signs for travelers to these sites may be erected and maintained by similar request. Directional signage shall be placed at the nearest intersection to each site in the Department's right-of-way if there is no conflict with other Department signage. All signs shall consist of a common sign design developed by a committee consisting of one representative of each historical organization, foundation, or local governing body and the Director of the Department of Historic Resources. Sign panels and posts shall meet Department of Transportation specifications. All costs associated with manufacturing, erection, and maintenance of signs under this section shall be borne by the requesting party. Signs erected by the Virginia Department of Transportation under this section shall be developed in accordance with applicable provisions of § [10.1-2209](#) and placed in accordance with all applicable Virginia Department of Transportation regulations.*

## **Chapter 586 Coal and gas road improvement tax, local; extends sunset provision.**

An Act to amend and reenact § [58.1-3713](#) of the Code of Virginia and to repeal the second enactment of Chapter 646 of the Acts of Assembly of 1978, as amended by Chapter 539 of the Acts of Assembly of 1985, as amended by Chapter 393 of the Acts of Assembly of 1991, as amended by Chapters 614 and 635 of the Acts of Assembly of 1995, and as amended by Chapter 274 of the Acts of Assembly of 2002, relating to the sunset date of the local coal and gas road improvement tax.

[\[S 734\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-3713](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-3713](#). Local coal and gas road improvement and Virginia Coalfield Economic Development Authority tax.

A. In addition to the taxes authorized under § [58.1-3712](#), any county or city may adopt a license tax on every person engaging in the business of severing coal or gases from the earth. The rate of such tax shall not exceed one percent. The provisions of § [58.1-3712](#) as they relate to measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this section.

The moneys collected for each county or city from the tax imposed under authority of this section shall be paid into a special fund of such county or city to be called the Coal and Gas Road Improvement Fund of such county or city, and shall be spent for such improvements to public roads as the coal and gas road improvement advisory committee and the governing body of such county or city may determine as provided in subsection B of this section. The county may also, in its discretion, elect to improve city or town roads with its funds if consent of the city or town council is obtained. Such funds shall be in addition to those allocated to such counties from state highway funds which allocations shall not be reduced as a result of any revenues received from the tax imposed hereunder. In those localities which comprise the Virginia Coalfield Economic Development Authority, the tax imposed under this section shall be paid as follows: (i) three-fourths of the revenue shall be paid to the Coal and Gas Road Improvement Fund and used for the purposes set forth herein; however, one-fourth of such revenue may be used to fund the construction of new water and/or sewer systems and lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity, and (ii) one-fourth of the revenue shall be paid to the Virginia Coalfield Economic Development Fund. Furthermore, with regard to the portion paid to the Coal and Gas Road Improvement Fund, a county or city may provide for an additional one-fourth allocation for the construction of new water or sewer systems or lines or the repair or enhancement of existing water or sewer systems or lines in areas with natural water supplies which are insufficient from the standpoint of quality or quantity; however, if this option is initiated by a county or city, it must satisfy the requirements set forth in § [58.1-3713.01](#). Notwithstanding the foregoing limitations regarding revenues used for water systems and/or sewer systems, such revenues designated for water and water systems and/or sewer systems shall be dis-

tributed directly to the local public service authority for such purposes instead of the local governing body.

B. Any county or city imposing the tax authorized in this section shall establish a Coal and Gas Road Improvement Advisory Committee, to be composed of four members: (i) a member of the governing body of such county or city, appointed by the governing body, (ii) a representative of the Department of Transportation, and (iii) two citizens of such county or city connected with the coal and gas industry, appointed for a term of four years, initially commencing July 1, 1989, by the chief judge of the circuit court.

Such committee shall develop on or before July 1 of each year a plan for improvement of roads during the following fiscal year. Such plan shall have the approval of three members of the committee and shall be submitted to the governing body of the county or city for approval. The governing body may approve or disapprove such plan, but may make no changes without the approval of three members of the committee.

*C. The provisions of this section shall expire on December 31, 2012.*

2. That the second enactment of Chapter 646 of the Acts of Assembly of 1978, as amended by Chapter 539 of the Acts of Assembly of 1985, as amended by Chapter 393 of the Acts of Assembly of 1991, as amended by Chapters 614 and 635 of the Acts of Assembly of 1995, and as amended by Chapter 274 of the Acts of Assembly of 2002, is repealed.

## **Chapter 625 Parasail operators; Board of Game and Inland Fisheries to promulgate regulations applicable thereto.**

An Act to regulate parasail operators.

[\[H 2031\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Regulation of parasail operators.*

*The Board of Game and Inland Fisheries shall promulgate regulations applicable to the commercial operations of parasail operators on waters of the Commonwealth. Such regulations shall take into consideration the operating standards and guidelines of the Professional Association of Parasail Operators.*

## **Chapter 635 Electronic health records; requires those purchased by state agency to adhere to accepted standard.**

An Act to establish an interoperable infrastructure for electronic health records.

[\[H 2198\]](#)

Approved March 20, 2007

Whereas, promoting the formation of an interoperable electronic health records system architecture is a key element in providing optimal quality of patient care and transparency in the health care industry; and

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any state agency of the Commonwealth that purchases a system or software that pertains to or interacts with electronic patient information or electronic health records shall ensure that such system or software adheres to accepted standards for interoperability and data exchange or has been certified by a recognized certification body. Further, any state agency that makes grants available to other entities for electronic patient information or electronic health records shall ensure that such systems or software shall adhere to accepted standards for interoperability, privacy and data exchange or has been certified by a nationally recognized certification body.*

## **Chapter 669 License plates, special; issuance to members of U.S. Coast Guard.**

An Act to authorize the issuance of special license plates for members of the U.S. Coast Guard.

[\[H 2787\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for members of the U.S. Coast Guard.*

*On receipt of an application and written evidence that the applicant is on active duty with, has been honorably discharged after at least six months of active duty service in, or has retired from the United States Coast Guard and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates whose design incorporates an emblem of the United States Coast Guard. Unremarried surviving spouses of persons eligible to receive special license plates under this act may also be issued special license plates under this act.*

## **Chapter 677 Life-sharing communities; defines and establishes criteria for licensing and inspection thereof.**

An Act to establish licensing and inspection criteria for life-sharing communities.

[\[H 2962\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Life-sharing communities.*

A. *For the purposes of this section:*

*“Life-sharing community” is defined as a residential setting, operated by a non-profit organization, that (i) offers a safe environment in free standing, self-contained homes for residents that have been determined by a licensed health-care professional as having at least one developmental disability; (ii) is an environment located in a community setting where residents participate in therapeutic activities including artistic crafts, stewardship of the land, and agricultural activities; (iii) consists of the residents as well as staff and volunteers who live together in residential homes; (iv) operates at a ratio of at least one staff member, volunteer, or supervising personnel for every three residents in each self-contained home household; and (v) has at least one supervisory staff member on premises to be responsible for the care, safety, and supervision of the residents at all times.*

*“Resident” means an individual who has been determined by a physician or nurse practitioner to have at least one developmental disability and who resides at the life-sharing community on a full-time basis.*

*“Volunteer” means an individual who resides in the life-sharing community on a full-time basis and who assists residents with their daily activities and receives no wages. A volunteer may receive a small stipend for personal expenses.*

*B. Any facility seeking to operate as a life-sharing community shall file with the Commissioner: (i) a statement of intent to operate as a life-sharing community; (ii) a certification that at the time of admission, a contract and written notice was provided to each resident and his legally authorized representative that includes a statement of disclosure that the facility is exempt from licensure as an “assisted living facility,” and (iii) documentary evidence that such life-sharing community is a private non-profit organization in accordance with 501 (c) (3) of the Internal Revenue Code of 1954, as amended.*

*C. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall certify that the local health department, building inspector, fire marshal, or other local official designated by the locality to enforce the Statewide Fire Prevention Code, and any other local official required by law to inspect the premises, have inspected the physical facilities of the life-sharing community and have determined that the facility is in compliance with all applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code and the Uniform Statewide Building Code.*

*D. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall provide the Commissioner documentary evidence that:*

- 1. Life-sharing community staff and volunteers have completed a training program that includes instruction in personal care of residents, house management, and therapeutic activities;*
- 2. Volunteers and staff have completed first aid and Cardio-Pulmonary Resuscitation training;*
- 3. Each resident’s needs are evaluated using the Uniform Assessment Instrument, and Individual Service Plans are developed for each resident annually;*
- 4. The residents of the life-sharing community are each 21 years of age or older;*
- 5. A criminal background check through the Criminal Records Exchange has been completed for each (i) full-time salaried staff member and (ii) volunteer as defined in this section.*

*E. A residential facility operating as a life-sharing facility shall be exempt from the licensing requirements of Article 1 (§ [63.2-1800](#) et seq.) of Chapter 18 of Title 63.2 applicable to assisted living facilities.*

*F. The Commissioner may perform unannounced on-site inspections of a life-sharing community to determine compliance with the provisions of this section and to investigate any complaint that the life-sharing community is not in compliance with the provisions of this section, or to otherwise ensure the health, safety, and welfare of the life-sharing community residents. The Commissioner may revoke the exemption from licensure pursuant to this chapter for any life-sharing community for serious or repeated violation of the requirements of this section and order that the facility cease operations or comply with the licensure requirements of an assisted living facility. If a life-sharing community does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such life-sharing community of the nature of its noncompliance and may thereafter take action as he determines appropriate, including a suit to enjoin the operation of the life-sharing community.*

*G. All life-sharing communities shall provide access to their facilities and residents by staff of community services boards and behavioral health authorities as defined in § [37.2-100](#) for the purpose of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of consumers residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.*

*H. Any residents of any life-sharing community shall be accorded the same rights and responsibilities as residents in assisted living facilities as provided in subsections A through F of § [63.2-1808](#).*

*I. A life-sharing community shall not admit or retain individuals with any of the conditions or care needs as provided in subsection C of § [63.2-1805](#).*

*J. Notwithstanding § [63.2-1805](#), at the request of the resident, hospice care may be provided in a life-sharing community under the same requirements for hospice programs provided in Article 7 (§ [32.1-162.1](#) et seq.) of Chapter 5 of Title 32.1 if the hospice program determines that such a program is appropriate for the resident.*

## **Chapter 687 Russell County Water & Sewer Authority; each member thereof to be customer of service provided.**

An Act to require members of the Russell County *Water and Sewer* Authority to be consumers of services provided by the Authority.

[\[H 3119\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That each member of the Russell County Water and Sewer Authority shall be a customer of a service provided by the Authority.*

## **Chapter 690 First Landing State Park; Department of Conservation to lease certain land therein.**

An Act to authorize the Department of Conservation and Recreation, lessor, to lease certain land within First Landing State Park to the City of Virginia Beach, lessee.

[\[H 3151\]](#)

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, in accordance with and as evidence of General Assembly approval pursuant to §§ [10.1-104](#) and [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation, lessor, is hereby authorized to lease on behalf of the Commonwealth, upon terms and conditions the Department deems proper, with approval of the Governor and in a form approved by the Attorney General, a portion of First Landing State Park in the City of Virginia Beach to the City of Virginia Beach, lessee.*

*§ 2. The purpose of the lease is to allow certain property currently owned by the Commonwealth within First Landing State Park, to be used for a recreational facility not operated under the purview of the Department of Conservation and Recreation.*

*§ 3. The lease shall be subject to (i) the public participation guidelines of the Administrative Process Act (§ [2.2-4000](#) et seq.) and (ii) inclusion in the master plan for the park.*

*§ 4. Any further subletting of the property by the lessee shall be subject to review and approval by the Department, with approval of the Governor, and in a form approved by the Attorney General. Upon expiration of the lease, or when the lessee no longer wishes to have the property operated under the terms of the lease, the lessee shall return the property to the Department in the condition specified by the lease.*

*§ 5. The lease agreement shall incorporate language that ensures that the property and any facilities constructed on the site provide for adequate public access and use to comply with the requirements of the federal Land and Water Conservation Act.*

*§ 6. The provisions of this act shall expire on July 1, 2009, unless the lease agreement is entered into by the lessor and lessee on or before July 1, 2009.*

## **Chapter 719 Volunteer assistant attorneys; adds City of Richmond to those localities with authority to appoint.**

An Act to amend and reenact the second enactment of Chapter 913 of the Acts of Assembly of 2000, relating to appointment of volunteer assistant attorneys for the Commonwealth.

[\[S 1067\]](#)

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 913 of the Acts of Assembly of 2000 is amended and reenacted as follows:

2. That the provisions of this act shall apply to any city with a population over 350,000-~~and~~, any city contiguous thereto, *and to the City of Richmond.*

## **Chapter 730 No Child Left Behind Act; Board of Education requesting waiver from certain provisions.**

An Act to direct the Board of Education to request a waiver from the duplicative provisions of the No Child Left Behind Act and to make a recommendation to the General Assembly regarding Virginia's continued implementation of such Act.

[\[S 1212\]](#)

Approved March 21, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. Pursuant to § 9401 of the federal No Child Left Behind Act (NCLB), Public Law*

*107-110, the Board of Education shall continue to seek waivers from compliance with those provisions of NCLB that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children.*

*The Board shall report on the status of its waivers from compliance to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007. Such report shall contain a summary of the waivers requested from the United States Department of Education during the calendar year 2007, a summary of the responses from the United States Department of Education, and a timeline providing the submission date of every waiver request and the date that a response was provided.*

*B. In the event that any or all waiver requests are not approved by the United States Department of Education, the Board shall transmit a summary of all requests not approved to the Virginia Congressional delegation for its consideration in the reauthorization of the Elementary and Secondary Education Act. Such report or reports shall be submitted in a manner prescribed by the Board.*

*If the reauthorization of the Elementary and Secondary Education Act does not provide the necessary revisions in the federal law to grant states and localities the flexibilities requested in Virginia's waiver requests, the Board shall make a recommendation to the General Assembly on Virginia's continued implementation of NCLB.*

*C. The Board of Education and Office of the Attorney General of Virginia may bring suit against the United States Department of Education if, as a result of the Commonwealth's withdrawal from the voluntary NCLB, funds that are not directly related to NCLB and that help children from low-income families meet challenging academic content and achievement standards are withheld.*

## **Chapter 855 Rappahannock Area Community Services Board; Governor to convey certain property in Caroline County.**

An Act to authorize the Governor to convey certain real property to Caroline County.

[\[H 1851\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Upon compliance with the provisions of § [33.1-90](#) of the Code of Virginia, as

*amended, and other applicable laws pertaining to real property acquired for transportation projects and the subsequent sale or disposition thereof, and provided there has been no timely exercise of any statutory right to purchase (in the nature of a right of first refusal) available to the prior owner or owners of the subject property or to others afforded such right, and for the assessed value as determined by the Caroline County Commissioner of the Revenue, the Commonwealth Transportation Commissioner is hereby authorized to convey without warranty of title, to Caroline County for the use of the Rappahannock Area Community Services Board all that certain piece or parcel of land, which land was previously acquired by the Department of Transportation for highway right-of-way purposes, located in the County of Caroline, Virginia, and being more particularly described as follows: all of that certain piece or parcel of land, situate in the Reedy Church District, Caroline County, Virginia, containing 0.8709 acres, as shown and described on a certain plat captioned Plat Showing 0.8709 Acres of Land; the Commonwealth of Virginia; dated March 9, 2006, and prepared by Sullivan, Donahoe and Ingalls. The property is further described by metes and bounds as follows: beginning at an iron rod found thirty feet south of the centerline of Golansville Road, then proceeding S68°06'49"E 68.67 feet to an iron rod found; then proceeding S68°06'49"E 16.90 feet to an iron rod set; then proceeding S56°57'10"W 186.59 feet to an iron rod set; then proceeding S58°58'01"W 109.00 feet to an iron rod set; then proceeding N62°49'15"W 99.61 feet to an iron rod found; then proceeding N08°18'34"E 68.18 feet to a point; then proceeding N19°31'44"E 74.33 feet to an iron rod found; then proceeding N89°52'30"E 240.00 feet to the point of beginning.*

*§ 2. Any such conveyance of the above-described real property to Caroline County, or such other entity, local government or governments as may be deemed appropriate, shall be subject to approval by the Commonwealth Transportation Board, and shall be made in a form approved by the Attorney General. Caroline County shall pay all costs and expenses incurred in the transfer and shall be responsible for the abatement, and related costs, of any currently existing environmental contamination on the property to the extent required by applicable law. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

*A conveyance of such property to Caroline County is for the purpose of effectuating a subsequent conveyance of such property to the Rappahannock Community Services Board. The deeds of conveyance to and from Caroline County shall provide that in the event the Rappahannock Community Services Board ceases to utilize the property*

*primarily as an adult day care facility or for the provision of mental health, substance abuse and other related services, or Caroline County does not use the property for other governmental purposes, the Commonwealth shall give written notice thereof to Caroline County and or Rappahannock Community Services Board, which shall thereafter have ninety (90) days to comply with the aforesaid requirements. If compliance shall not be achieved within such time period, upon written demand by the Commonwealth, Caroline County or Rappahannock Community Services Board, whichever may be in title, shall immediately convey the property to the Commonwealth, free of any liens or encumbrances except those existing as of the date of conveyance from the Commonwealth. If Caroline County or the Rappahannock Community Services Board fails to immediately comply with the terms hereof, the Commonwealth may petition any court of competent jurisdiction to enforce the reverter herein provided.*

## **Chapter 878 Sex offender treatment offices; prohibited in certain residential areas.**

An Act to prohibit the location of sex offender treatment offices in certain residential areas.

[\[H 2776\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, no individual shall knowingly provide sex offender treatment services to a convicted sex offender in an office or similar facility located in a residentially zoned subdivision.*

## **Chapter 940 Tolls; VDOT to impose and collect for use of Route 17 in City of Chesapeake.**

An Act to authorize toll collections to finance improvements on Dominion Boulevard in the City of Chesapeake.

[\[H 2951\]](#)

Approved April 10, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commonwealth Transportation Board shall fix, revise, and collect tolls for the use of U.S. Route 17 in the City of Chesapeake and shall authorize such reconfiguration of U.S. Route 17 in the City of Chesapeake as may be necessary or desirable to permit the collection of such tolls. The schedule of toll rates shall consider results of a financing study undertaken jointly by the City of Chesapeake and the Virginia Department of Transportation that will evaluate appropriate tolling options for financing the cost of the reconfiguration of the highway, replacement of the "Steel Bridge" on U.S. Route 17 over the Southern Branch of the Elizabeth River, and widening of Dominion Boulevard in the City of Chesapeake; however, toll rates for vehicles having three or more axles shall not be lower than \$3 per trip.*

2. That the provisions of this act shall become effective upon concurrence and approval of the Federal Highway Administration.

## **Chapter 875 Subaqueous land; Marine Resources Commission to convey certain S&S Marine Supply in Hampton.**

An Act to authorize the Marine Resources Commission to convey certain lands in the City of Hampton.

[\[H 2642\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to S&S Marine Supply and its successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:*

*Beginning at the northwest corner of Parcel C, said parcel being as particularly designated as "Parcel C," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation Of Virginia," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; said point of beginning being on the approximate mean low water line as shown on said plat; thence, N 08°37'08" W, 19', more or less, to a point being N 08°37'08" W, 75.98' from the centerline of the 30' right-of-way (ingress/egress easement) as shown in D.B. 470, PG. 706; thence, N 80°26'24"E, 86', more or less, to the approximate mean low water line as shown on said plat; thence along the mean low water line in a westerly direction, 90', more or less, to the point of beginning; containing 1,200 square feet (0.03 acres), more or less.*

*§ 2. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to S&S Marine Supply and its successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:*

*Beginning at the northeast corner of Parcel C, said parcel being as particularly designated as "Parcel C," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Marine International Corporation Of Virginia," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised August 30, 1972, and recorded in Deed Book 470, page 706 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, N 80°26'24" E, 7', more or less, to a point N 80°26'24" E, 256.29' from the northwest corner of Parcel I, here before described; thence, S 33°18'44"E, 10.74' to a point; thence S 08°13'08" E, 245.01' to a point; thence S 87°25'44" W, 129', more or less, to the existing approximate mean low water line; thence along the mean low water line in a westerly direction 84', more or less, to a point; thence N 30°52'27" W, 58', more or less, to a point, that point also being the southwest corner of said parcel C and the approximate mean low water line as shown on said plat; thence along the mean low water line in an easterly and northerly direction, 399', more or less, to the point of beginning; containing 10,900 square feet (0.25 acres), more or less.*

*§ 3. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to lola L. Lawson and her successors and assigns, upon*

*such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 4 and 5, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the City of Hampton, Virginia, being more particularly described as follows:*

*Beginning at the southwest corner of Parcel A-1, said parcel being as particularly designated as "Parcel A-1," on a certain plat entitled, "Plat Showing Parcels - A, B, C, C-1, C-2 and C-3; Property of Ivy Home Company," which said plat was made by William M. Sours, C.L.S., dated November 4, 1970, revised November 24, 1970, and revised October 13, 1971, and recorded in Deed Book 468, page 357 in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia; thence, along the westerly boundary of said Parcel A-1, N 09°53'02" W, 130.48' to a point; thence, N 35°06'58"E, 35.36' to a point; thence N 09°53'01" W, 9', more or less, to the existing approximate mean low water line; thence along the mean low water line in an easterly direction, 169', more or less, to a point; thence, S 60°51'00" E, 14', more or less to a point; thence, N 82°09'47" E, 6.12' to a point; thence S 07°54'07" E, 163.54' to a point; thence S 33°18'44" E, 2.09' to a point also being located N 80°26'24" E, 189.72' from the point of beginning; thence S 80°26'24" W, 7', more or less, to the approximate mean low water line as shown on said Plat; thence, along the mean low water line, 326', more or less to a point on the southerly line of aforesaid Parcel A-1; thence, S 80°26'24" W, 19', more or less to the point of beginning; containing 22,400 square feet (0.51 acres), more or less.*

*§ 4. Except as provided in § 5, the grantee shall compensate the Commonwealth in an amount commensurate with the property interest being conveyed, which shall be considered equivalent to 25 percent of the assessed value of the specified parcel, exclusive of any buildings or other improvements. The assessed value shall be established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. If no such assessments are available for the specified parcel, then the assessed value shall be calculated as the percentage, by square footage or acreage, that the specified parcel represents of the larger parcel for which such assessments are available.*

*§ 5. If the Commission determines that unique circumstances exist, the Commission may allow the grantee to compensate the Commonwealth in an amount less than 25 percent of the assessed value of the specified parcel. Any such determination by the Commission shall be justified in writing and shall not be subject to judicial review.*

## Chapter 884 Subaqueous lands; Marine Resources Commission to convey adjoining parcels thereof.

An Act to authorize the Marine Resources Commission to convey a certain parcel of subaqueous land in the Elizabeth River.

[\[H 2990\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to December Partners, LLC, and its successors and assigns, upon such terms and conditions and the payment of an amount commensurate with the property interest being conveyed as provided in §§ 2 and 3, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of subaqueous land in the Elizabeth River in the City of Norfolk, being more particularly described as follows:*

*All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk, as shown on the plan entitled "Exhibit Plan Showing Subaqueous Land Situate Below Property of December Partners, LLC, A Virginia Limited Liability Company, Norfolk, Virginia Scale: 1"=50' January 5, 2007", and being more particularly described as follows:*

*Commencing at the intersection of the Southern Line of Front Street and a line 30 feet from and parallel to the West Line of 2nd Street; thence from the point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point; thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "point of beginning." Thence from the "point of beginning" the following courses and distances:*

*South 22 degrees 22 minutes 30 seconds West a distance of 310.62 feet to a point; thence North 67 degrees 41 minutes 08 seconds West a distance of 105.87 feet to a point; thence North 22 degrees 33 minutes 49 seconds East a distance of 179.21 feet to a point; thence South 80 degrees 55 minutes 55 seconds East a distance of 8.86 feet to a point; thence North 22 degrees 48 minutes 57 seconds East a distance of 34.54 feet to a point; thence North 65 degrees 04 minutes 36 seconds West a distance of 6.58 feet to*

*a point; thence North 16 degrees 54 minutes 38 seconds East a distance of 38.20 feet to a point; thence North 20 degrees 18 minutes 27 seconds East a distance of 48.28 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 9.80 feet to a point, thence South 66 degrees 53 minutes 27 seconds East a distance of 107.48 feet to the said "point of beginning." The described subaqueous property contains an approximate total area of 32,631 square feet or 0.749 acres more or less.*

*§ 2. Except as provided in § 3, the grantee shall compensate the Commonwealth in an amount commensurate with the property interest being conveyed, which shall be considered equivalent to 25 percent of the assessed value of the specified parcel, exclusive of any buildings or other improvements. The assessed value shall be established as the average of the local real estate tax assessments for the most recent 10 years available for the specified parcel. If no such assessments are available for the specified parcel, then the assessed value shall be calculated as the percentage, by square footage or acreage, that the specified parcel represents of the larger parcel for which such assessments are available.*

*§ 3. If the Commission determines that unique circumstances exist, the Commission may allow the grantee to compensate the Commonwealth in an amount less than 25 percent of the assessed value of the specified parcel. Any such determination by the Commission shall be justified in writing and shall not be subject to judicial review.*

## **Chapter 912 Southampton County Jail Farm; Board of Corrections to convey to Southampton County sheriff's office.**

An Act to convey a parcel of real property to Southampton County.

[\[S 1047\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Corrections is hereby authorized to convey, in its "as is" condition and for the nominal monetary consideration of \$1.00, to the County of Southampton approximately 47 acres of property with improvements thereon lying north of Rivers Mill Road, Route 612, in the Drewryville District known as the Southampton County Jail Farm, formerly known as Capron Correctional Field Unit #20, which is part of a 1,824*

*acre parcel owned by the Commonwealth of Virginia as described in that certain deed recorded in Deed Book 0078, Page 5 and depicted on a 1937 plat recorded in Plat Book 3, Page 24-A in the land records of the Circuit Court Clerk for Southampton County. The County of Southampton shall pay all costs and expenses incurred in the transfer of the property and shall be responsible for the abatement, and related costs, of any currently existing environmental contamination on the property to the extent required by applicable law. Such property is for the use of the Office of the Sheriff of Southampton County as a work release center and for other jail and public safety purposes. As such, the deed shall provide that in the event Southampton County transfers or conveys all or any portion of the property to any other person or entity or in the event Southampton County ceases to use the property primarily for purposes aforesaid its ownership shall cease and fee title to the entire property shall automatically revert to the Commonwealth of Virginia.*

*§ 2. Such conveyance shall be approved by the Governor pursuant to § [2.2-1150](#) and made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 913 State Police Headquarters, former; State to convey property on Rt. 83 to Buchanan County.**

An Act to authorize the Commonwealth to convey certain property in the County of Buchanan.

[\[S 1083\]](#)

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth of Virginia is hereby authorized to convey in its "as is" condition, for the nominal monetary consideration of \$1, with the approval of the Governor pursuant to § [2.2-1150](#) and in a form approved by the Attorney General, to the County of Buchanan, the former Virginia State Police Area Office property on State Route 83 near the area known as Vasant, Virginia, identified as parcel #193 on tax map 2HH-185, Insert A, and generally described as being 0.44 acres more or less with improvements*

*thereon and situated in the Prater Magisterial District of Buchanan County, Virginia and shown as lots 5-11 on the N.W. Looney Subdivision, Plat Book 4, page 5 of record in the Circuit Court Clerk's office of Buchanan County, Virginia. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish such conveyance. The County of Buchanan shall (i) use such property for public safety or law-enforcement purposes, (ii) pay all costs and expenses incurred in the transfer, and (iii) be responsible for the abatement, and related costs, of any currently existing environmental contamination on the property to the extent required by applicable law. The deed shall provide that in the event the county transfers or conveys all or any portion of the property to any other person or entity or in the event the county ceases to use the property primarily for government or law-enforcement purposes its ownership shall cease and fee title to the entire property shall automatically revert to the Commonwealth.*

## Uncodified Acts of Assembly - 2008

### Chapter 44 Jerry Falwell Parkway; designating as portion of Route 460 between City of Lynchburg & Campbell Co.

An Act to designate a portion of U.S. Route 460 the "Jerry Falwell Parkway."

[\[S 654\]](#)

Approved February 26, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 460 between the Monacan Bridge in the City of Lynchburg and Wards Road in Campbell County is hereby designated the "Jerry Falwell Parkway." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portion thereof.*

### Chapter 65 Virginia War Memorial; State Treasurer to advance loan for construction of an educational wing.

An Act to authorize the State Comptroller to advance a no-interest, short-term treasury loan for improvements to the Virginia War Memorial, and to repeal Chapter 580 of the Acts of Assembly of 2007.

[\[H 474\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That upon certification by the Governor or his designee that \$2 million in private funds have been raised, pledged, or expended to support construction of an educational wing for the Virginia War Memorial and expand the Shrine of Memory to include Virginians killed in action in the War on Terror, the State Comptroller shall advance a loan*

*of \$5.97 million to the state agency specified by the Governor or his designee for the state share of the construction in the form of a short-term treasury loan, with no interest.*

*§ 2. The State Comptroller shall advance \$500,000 of the \$5.97 million upon certification that \$1 million in private funds have been raised, pledged, or expended for the educational wing. This amount shall be used for the educational wing portion of the project.*

2. That Chapter 580 of the Acts of Assembly of 2007 is repealed.

## **Chapter 72 Hospice facilities; continued operation of certain.**

An Act to allow certain hospice facilities to continue operating pending the promulgation of final licensure regulations.

[\[H 604\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Continued operation of certain hospice facilities.*

*Notwithstanding the provisions of § [32.1-162.3](#) of the Code of Virginia, any hospice facility operating as of January 1, 2008, in independent cities within Planning District 7, 10, or 11 shall be authorized to continue operating, pending the promulgation of final licensure regulations by the Board of Health as required by § [32.1-162.5](#) of the Code of Virginia.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 114 License plates, special; repeals authorizations for issuance of certain license plates.**

An Act to repeal §§ [46.2-742.6](#), [46.2-749.122](#) through [46.2-749.125](#), [46.2-749.129](#), [46.2-749.134](#), and [46.2-749.135](#) of the Code of Virginia and Chapter 184 of the Acts of Assembly of 2007, relating to special license plates for persons awarded the Global War on Terrorism Service Medal, for Virginia scuba divers, promoting lung cancer research, awareness, and prevention, promoting Virginia wines, for supporters of the Robert Russa Moton Museum, for supporters of the Virginia Housing Partnership, for supporters

of the On the Rebound Bulldog Rescue Foundation, for supporters of the Northern Virginia Swim League, and for nurses.

[\[H 87\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ [46.2-742.6](#), [46.2-749.122](#) through [46.2-749.125](#), [46.2-749.129](#), [46.2-749.134](#), and [46.2-749.135](#) of the Code of Virginia and Chapter 184 of the Acts of Assembly of 2007 are repealed.

### **Chapter 197 Trooper Robert A. Hill Memorial Bridge; designating as bridge over Route 58 in Southampton County.**

An Act to designate the Virginia Route 687 bridge over U.S. Route 58 in Southampton County the "Trooper Robert A. Hill Memorial Bridge."

[\[H 1464\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 687 (Delaware Road) bridge over U.S. Route 58 in Southampton County is hereby designated the "Trooper Robert A. Hill Memorial Bridge." The Department of Transportation shall place and maintain signs to be visible from U.S. Route 58 and Virginia Route 687 in Southampton County. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

### **Chapter 207 Higher Educational Institutions Bond Act of 2008; created.**

An Act to authorize the issuance of bonds, in an amount up to \$350,565,000 plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and

with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 31\]](#)

Approved March 3, 2008

Whereas, Article X, Section 9(c), Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9(c), Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9(c), Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2008."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs,*

*reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>George Mason University</i>	<i>President's Park</i>		<i>17540</i>
<i>Phase II Renovation</i>		<i>\$15,633,000</i>	
<i>George Mason University</i>	<i>Smithsonian CRC</i>		<i>17572</i>
<i>Housing</i>		<i>17,804,000</i>	
<i>George Mason University</i>	<i>Housing VIII</i>	<i>17570</i>	<i>102,460,000</i>
<i>Old Dominion University</i>	<i>Construct Residence</i>		<i>17342</i>
<i>Hall, Phase II</i>		<i>34,779,000</i>	
<i>Radford University</i>	<i>Construct Residence</i>		<i>17565</i>

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<i>Halls</i>		<i>36,000,000</i>	
<i>The College of William</i>		<i>Renovate Graduate</i>	<i>17555</i>
<i>and Mary In</i>			
<i>Virginia</i>	<i>Student Dormitories</i>		<i>2,500,000</i>
<i>The College of William</i>		<i>Renovate Campus</i>	<i>17554</i>
<i>and Mary In</i>			
<i>Virginia</i>	<i>Center and Trinkle Hall</i>		<i>35,000,000</i>
<i>Virginia Polytechnic</i>		<i>Renovate Owens and</i>	<i>17558</i>
<i>Institute and State</i>		<i>West End Market</i>	
<i>Food</i>	<i>5,000,000</i>		
<i>University</i>		<i>Courts</i>	
<i>Virginia Polytechnic</i>		<i>Renovate Ambler</i>	<i>17557</i>
<i>Institute and</i>			
<i>State</i>	<i>Johnson Hall</i>		<i>55,000,000</i>
<i>University</i>			
<i>Virginia Polytechnic</i>		<i>New Residence</i>	
<i>Hall</i>	<i>16682</i>	<i>8,047,000</i>	
<i>Institute and State</i>			
<i>University</i>			
<i>Virginia State University</i>		<i>Demolish Student</i>	<i>17531</i>

*Village and Construct*

*Gateway 500, Phase II*

*38,342,000*

*Total*

*\$350,565,000*

**§ 3. *Application of Proceeds.***

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

**§ 4. *Details, sale of bonds and BANs.***

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State*

*Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds/Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such*

*capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with para-*

*graph A. of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B. of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c), Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9(c) or (b), as the case may be, of the Constitution of Virginia.*

§ 13. *Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 421 Clarksville-Boydton Airport Commission; authorized to issue bonds.**

An Act to amend and reenact § 3 of Chapter 680 of the Acts of Assembly of 2005 and to amend Chapter 680 of the Acts of Assembly of 2005 by adding sections numbered 15 through 22, relating to the Clarksville-Boydton Airport Commission.

[\[S 794\]](#)

Approved March 5, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 3 of Chapter 680 of the Acts of Assembly of 2005 is amended and reenacted and that Chapter 680 of the Acts of Assembly of 2005 is amended by adding sections numbered 15 through 22 as follows:

§ 3. The Commission established hereunder shall have all powers necessary or convenient to carry out the general purposes of this act, including the following powers in addition to others herein granted:

A. To sue and be sued; to adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

B. To employ technical experts and other officers, agents, and employees as it may require, and to fix their qualifications and duties, and to fix their compensation within the limits of available funds.

C. To accept gifts and make application for and receive grants from the Commonwealth of Virginia or any political subdivision thereof, and from the United States and any of its agencies.

D. To acquire within the territorial limits of the region for which it is formed, by purchase, lease, gift, condemnation or otherwise, whatever land may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining, and operating one or more airports or landing fields.

E. To acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate the use of any airports, air landing fields, structures, air navigation facilities, and other property incidental thereto, within the area for which it is created; provided, however, that no such airport shall be established or operated without the permission of the Virginia Department of Aviation.

F. To construct, install, maintain, and operate facilities for the servicing of aircraft, and for the accommodation of cargo, freight, mail, express, etc., and comfort of air travelers, and to purchase and sell equipment and supplies as an incident to the operation of its airport facilities.

G. To determine rates and charges for the use of its airport and other facilities.

H. To enforce all rules, regulations, and statutes relating to its airports, including airport zoning regulations.

I. To exercise within its area such powers and authority with respect to airports and air navigation facilities as may be conferred by law upon the governing bodies of the towns of the Commonwealth.

J. To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance, and operation of its facilities and properties.

K. To engage directly or through its agents or employees in the operation for profit of concessions in connection with its airports or other facilities, including the sale of airplanes and aircraft fuel, or to grant such privileges and concessions to others.

L. To comply with the provisions of the laws of the United States and the Commonwealth of Virginia and any rules and regulations made thereunder for the expenditure of state or federal moneys in connection with airports, landing fields, and air navigation facilities, and to accept, receive, and receipt for federal moneys granted the commission, or granted any of the political subdivisions by which it is formed, for airport purposes.

*M. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues.*

*§ 15. Commission to issue bonds.*

*The Commission shall have power and is hereby authorized to issue bonds from time to time in its discretion for any of its purposes, including the payment of all or any part of the cost of any of its facilities and the refunding of any bonds previously issued by it.*

*The Commission shall not issue bonds unless and until the maximum amount of each issue and the general purposes thereof have been approved by the governing body of each participating political subdivision. Subject to the foregoing, bonds may be issued under this act notwithstanding any debt or other limitation prescribed in any other statute and without obtaining the consent of any city, town, or county government or any commission, board, bureau, or agency of the Commonwealth or of any of the foregoing, and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions, or things that are specifically required by this act.*

*The Commission may issue such types of bonds as it may determine, specifically bonds payable as to principal and interest: (i) from its revenue generally; (ii) exclusively from the income and revenues of a particular project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, as such participating political subdivision, or other entities may be authorized to make under general law or by pledge of any income or revenues of the Commission, or where such mortgage has been approved by the participating political subdivisions, a mortgage of any facilities of the Commission.*

*Bonds of the Commission shall be authorized by resolution and may be issued in one or more series, shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the Commission, and may be made redeemable before maturity at the option of the Commission at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had*

*remained in office until such delivery. Notwithstanding any of the other provisions of this act, or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the conversion and reconversion into coupon bonds of any bonds registered as to both principal and interest and vice versa. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Commission.*

*Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery.*

*§ 16. Resolution or trust indenture to secure bonds.*

*In connection with the issuance of bonds and in order to secure the payment of such bonds, the Commission shall have power:*

- 1. To pledge by resolution, trust indenture, or other agreement, all or any part of its fees, rents, or revenues;*
- 2. To covenant to impose and maintain such schedule of fees, rents and charges as will produce funds sufficient to pay operating costs and debt service;*
- 3. To covenant against pledging all or any part of its fees, rents and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;*
- 4. To provide for the release of fees, rents, and revenues from any pledge and to reserve rights and powers in the fees, rents and revenues that are subject to a pledge;*
- 5. To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any facility or facilities of the Commission or any part thereof or with respect to limitations on its right to undertake additional projects;*
- 6. To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;*
- 7. To covenant as to what other, or additional, debt may be incurred by it;*
- 8. To provide for the terms, forms, registration, exchange, execution, and authentication of bonds;*
- 9. To provide for the replacement of lost, destroyed, or mutilated bonds;*

10. To covenant as to the use of any or all of its property, real or personal, subject to the continued use of such property for airport purposes;

11. To create or to authorize the creation of special funds in which there may be segregated: (i) the proceeds of any loan or grant; (ii) all of the fees, rents and revenues of any facility or facilities or parts thereof; (iii) any moneys held for the payment of the costs of operation and maintenance of any such facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (iv) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as reserve for such payments; (v) any moneys held for any other reserve or contingencies; and (vi) to covenant as to the use and disposal of the moneys held in such funds;

12. To redeem its bonds, and to covenant for their redemption and to provide the terms and conditions thereof;

13. To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner;

14. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

15. To covenant as to the maintenance of its facilities, the insurance to be carried thereon and the use and disposition of insurance moneys;

16. To vest in a bondholder the right, in the event of the failure of the Commission to observe or perform any covenant on its part to be kept or performed, to cure any such default, and, subject to the limitation on total indebtedness expressed in this act, to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the Commission with such interest, security and priority as may be provided in any trust indenture, lease or contract of the Commission with reference thereto;

17. To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

18. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition or obligation;

19. To covenant to surrender possession of all or any part of any facility or facilities acquired or constructed from bond proceeds, the revenues from which have been pledged upon the happening of any event of default, as defined in the contract, and to vest in a bondholder the right without judicial proceeding to take possession and to use,

*operate, manage, and control such facility or any part thereof, and to collect and receive all fees, rents, and revenues arising therefrom in the same manner as the Commission itself might do and to dispose of the moneys collected in accordance with the agreement of the Commission with such obligee, subject to the continued use of such facilities for airport purposes;*

*20. To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the bondholders or any proportion of them may enforce any such covenant;*

*21. To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character;*

*22. To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as any purchaser of the bonds of the Commission may reasonably require; and*

*23. To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the Commission that tend to make the bonds more marketable; notwithstanding that such covenant, acts or things may not be enumerated herein, it being the intention hereof to give the Commission power to do all things in the issuance of bonds, and in the provisions for their security that are not inconsistent with the Constitution of Virginia or this act.*

*§ 17. Fees, rents and charges.*

*The Commission is hereby authorized to and shall fix, revise, charge, and collect fees, rents and other charges for the use and services of any facilities. Such fees, rents, and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing, and operating the facilities and the principal and any interest on its bonds as the same shall become due and payable, including reserves therefor. Such fees, rents, and other charges shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth or any participating political subdivision. The fees, rents, and other charges received by the Commission, except such part thereof as may be necessary to pay the cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in any resolution authorizing the issuance of such bonds or in any trust indenture or agreement securing the same, shall to the extent necessary, be set aside at*

*such regular intervals as may be provided in any such resolution or trust indenture or agreement in a sinking fund or sinking funds pledged to, and charged with, the payment and the interest of such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. So long as any of its bonds are outstanding, the fees, rents, and charges so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Commission irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need to be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of any such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement.*

*§ 18. Credit of Commonwealth and political subdivisions not pledged.*

*The bonds of the Commission shall not be a debt of the Commonwealth or any political subdivision thereof, other than the Commission, and neither the Commonwealth nor any political subdivision thereof, other than the Commission, shall be liable thereon, nor shall such bonds be payable out of any funds or properties other than those of the Commission. All bonds of the Commission shall contain on the face thereof a statement to such effect. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction.*

*§ 19. Members and persons executing bonds not liable thereon.*

*Neither the Commission nor any person executing the bonds shall be liable personally on the Commission's bonds by reasons of the issuance thereof.*

*§ 20. Remedies of bondholder.*

*Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, may, either at law or in equity, by suit, action, injunction, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this act or under such trust indenture agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such trust indenture or agreement or resolution to be performed by the Commission or by any officer or agent thereof, including the fixing, charging and collection of fees, rents and other charges. Any resolution authorizing the issuance of the Commission's bonds or*

*trust indenture or agreement securing the same may limit or abrogate the individual right of action by the holders of such bonds or coupons appertaining thereto.*

*§ 21. Taxation.*

*The exercise of the powers granted by this act shall in all respects be presumed to be for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their health, safety, welfare, convenience and prosperity, and as the operation and maintenance of any project that the Commission is authorized to undertake will constitute the performance of an essential governmental function, the Commission shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this act and the bonds issued under the provisions of this act, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof. Persons, firms, partnerships, associations, corporations and organizations leasing property of the Commission or doing business on property of the Commission shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted, including, but not limited to, any leasehold tax on real property and taxes on tangible personal property and machinery and tools, taxes for admission, taxes on hotel and motel rooms, taxes on the sale of tobacco products, taxes on the sale of meals and beverages, privilege taxes and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or calling and taxes upon consumers of gas, electricity, telephone and other public utility services.*

*§ 22. Bonds as legal investments.*

*Bonds issued by the Commission under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.*

## Chapter 440 Development rights; allows Albemarle County to enact an ordinance for severance and transfer.

An Act to allow Albemarle County to enact an ordinance for the transfer and severance of development rights.

[\[H 991\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of Article 7.1 (§ [15.2-2316.1](#) et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia, the provisions of this act shall apply to Albemarle County.*

*§ 2. Definitions.*

*As used in this act, the term:*

*"Development rights" or "transferable development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance.*

*"Receiving area" means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.*

*"Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights affixed to the property. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the development rights being transferred and affixed thereto. Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.*

*"Sending area" means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be severed and transferred to a receiving area.*

*"Sending property" means a lot or parcel within a sending area from which development rights are authorized by the ordinance to be severed.*

*"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.*

*"Transfer of development rights" means the process by which development rights are conveyed to one or more parties, or transferred to become affixed to one or more receiving properties, pursuant to this act.*

*§ 3. Albemarle County may provide for transfer of development rights.*

*A. Pursuant to the provisions of this act, the governing body of Albemarle County by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer and severance of development rights within its jurisdiction. The county shall give notice and hold a public hearing in accordance with § [15.2-2204](#) of the Code of Virginia prior to approval by the governing body.*

*B. Albemarle County may not require property owners to transfer development rights as a condition of the development of any property. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties. However, if a property in the receiving area does not have sufficient development rights for the proposed development at the time an application for development is submitted by the owner of a receiving property, the owner of said receiving property may accept development rights from a sending property pursuant to this act.*

*C. In accordance with implementing the provisions of this act, Albemarle County shall adopt an ordinance and shall provide for:*

- 1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and lienholders of such property owners, if any. The instruments shall identify the development rights being severed and the sending properties or receiving properties, as applicable;*
- 2. Assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;*
- 3. The severance of transferable development rights from the sending property;*
- 4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance and prior to the rights being affixed to a receiving property;*
- 5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;*

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. Permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights;

10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area;

11. The review of an application to transfer development rights by the planning commission or its agent to determine whether the application complies with the provisions of the ordinance. The application shall be deemed approved upon the determination of compliance with the ordinance and upon recordation of the instrument in the land records of the office of the circuit court clerk for the locality that transfers and affixes development rights to one or more receiving properties; and

12. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act.

D. The ordinance may provide for the allowance for residential density to be converted to an increase in the square feet of a commercial, industrial, or other use on the receiving property.

E. Development rights severed pursuant to this act shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a different property in a receiving area shall be subject to review pursuant to the provisions of the ordinance adopted pursuant to subdivision C 11.

F. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the

*transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ [58.1-3200](#) et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia.*

*G. Severance of development rights shall become effective upon the recording of the conveyance and submittal of a certified copy of such recording to the local assessor. Transfers of development rights, approved by the County to be affixed to one or more receiving properties, shall become effective upon the recording of the conveyance.*

*H. Albemarle County shall incorporate the map identified in subdivision C 6 into the comprehensive plan.*

*I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, materially restrict, or reduce the uses, or the density of use permitted in the zoning district applicable to any receiving properties to which development rights have been transferred and affixed thereto, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.*

*J. In adopting an ordinance pursuant to this act, Albemarle County may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county.*

*K. Albemarle County and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ [15.2-3200](#) et seq.), 33 (§ [15.2-3300](#) et seq.), 36 (§ [15.2-3600](#) et seq.), 38 (§ [15.2-3800](#) et seq.), 39 (§*

[15.2-3900](#) et seq.), or 41 (§ [15.2-4100](#) et seq.) of Title 15.2 of the Code of Virginia, the agreement shall be subject to the review and implementation process established by Chapter 34 (§ [15.2-3400](#) et seq.) of Title 15.2 of the Code of Virginia.

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.
2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirm or deny the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.
3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

2. That the provisions of this act shall expire on July 1, 2012, if Albemarle County has not enacted an ordinance for the transfer of development rights as described in this act prior to that time. Further, that the provisions of this act shall not become effective unless or until Albemarle County adopts an ordinance pursuant to this chapter.

## **Chapter 574 Hampton Roads Sanitation District; redefines term sewage disposal system.**

An Act to amend and reenact §§ 8, 29, and 35, and § 45, as amended, of Chapter 66 of the Acts of Assembly of 1960, relating to the Hampton Roads Sanitation District.

[\[S 706\]](#)

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 8, 29, and 35, and § 45, as amended, of Chapter 66 of the Acts of Assembly of 1960 are amended and reenacted as follows:

§ 8. As used in this act the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "District" means the Hampton Roads Sanitation District hereinabove mentioned.

(b) The word "Commission" means the Hampton Roads Sanitation District Commission hereinabove mentioned, or if said Commission shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to said Commission shall be conferred by law.

(c) The word "sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building, together with such Industrial wastes as may be present.

(d) The term "industrial wastes" means liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource.

(e) The term "sewage disposal system" means and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, including industrial wastes, or any integral part thereof, and, without limiting the generality of the foregoing definition, shall embrace treatment plants, pumping stations, intercepting sewers, ~~pressure lines,~~ *force mains, gravity mains, laterals, reclaimed water distribution lines*, and all necessary appurtenances and equipment, and shall include all lands, property, rights, rights of way, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(f) The term "sewer improvements" shall embrace sewer mains and laterals for the reception of sewage from premises connected therewith and carrying such sewage to a sewage disposal system.

(g) The term "sewerage system" shall embrace sewage disposal systems, sewer improvements and all other real and personal property operated by the Commission for the purposes of this act.

(h) The word "cost" as applied to a sewage disposal system or to extensions or additions thereto or to sewer improvements shall include the cost of construction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, rights of way, easements and franchises acquired, financing charges, interest prior to and during

construction and, if deemed advisable by the Commission, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, provisions for working capital and a reserve for interest, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized.

(i) The word "owner" shall include all individuals, copartnerships, associations or corporations and also counties, cities, towns and other political subdivisions and all public agencies and instrumentalities.

(j) The word "bonds" or the words "revenue bonds" shall embrace revenue bonds, notes and other obligations of the District issued under the provisions of this act.

(k) The word "pollution" means the condition of water resulting directly or indirectly from any of the following acts:

(1) contaminating such water;

(2) rendering such water unclean or impure;

(3) rendering such water injurious to public health, or unfit for public use;

(4) rendering such water harmful for cattle, stock or other animals;

(5) rendering such water deleterious to, or unfit for, fish or shellfish, or fish or shellfish propagation, or aquatic animals, or plant life in such water;

(6) rendering such water unfit for commercial use; or

(7) rendering such water harmful to fish or shellfish used for human consumption.

§ 29. All moneys received pursuant to the provisions of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act, and none of such moneys shall be required to be paid into the State treasury or into the treasury or to any officer of any county, city, town or other political subdivision. The Commission may provide for the payment of the proceeds of the sale of the bonds and the revenues to be received to a trustee, which shall be any trust company or bank having the powers of a trust company within or without the Commonwealth, which shall act as trustee of the funds, and hold and apply the same to the purposes of this act, subject to such regulations as this act and the Commission may provide. All such moneys shall be secured or shall be invested and reinvested, all as may be provided by the Commission.

*With respect to contracts concerning interest rates, currency, cash flow and other basis, the District may enter into any contract that the Commission determines to be necessary or appropriate to place any obligation or investment of the District, as represented by bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash*

*flow or other basis desired by the Commission. Such contracts may include, without limitation, contracts commonly known as interest rate swap agreements, rate locks, forward purchase agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. Such contracts or arrangements may be entered into by the District in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commission, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency.*

§ 35. Any substantial change in the method used by the Commission for treating and disposing of sewage and industrial wastes so as to prevent the pollution of any waters within the District, shall, before being finally adopted or used by the Commission, be approved by the ~~State Health Commissioner~~ *Virginia Department of Environmental Quality* as effective and satisfactory for the purpose intended.

§ 45. All construction contracts, except in cases of emergency, that the Commission may let for construction or materials in connection with such construction shall be let after public advertising and in accordance with the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq. of the Code of Virginia), *the Virginia Public-Private Education Facilities and Infrastructure Act of 2002* (§ [56-575.1](#) et seq. of the Code of Virginia), *as well as all subsequent amendments and additions to Virginia public procurement law.* ~~The Commission shall advertise for bids for the work or materials at least 10 days prior to the letting of any contracts therefor. The advertisement shall state the place where bidders may examine the plans and specifications and the time and place where bids for the work or materials will be opened. Each bidder shall accompany his bid with bid bond or other security payable to the Commission, for a reasonable sum to be fixed by the Commission, as a guarantee that if the contract is awarded to him, he will enter into a contract with the Commission for doing the work or furnishing the materials. The contract shall be let to the lowest responsible bidder, and the successful bidder shall give bond or other security for the faithful performance of the contract, in such form and amount as the Commission may require. The Commission is authorized to reject any and all bids. In the event that all bids are rejected, the Commission shall advertise for new bids as in the first instance. All bids and contracts shall be public records. The Commission is authorized, in its discretion, to do any and all such work by force account.~~

## **Chapter 594 Virginia Commonwealth University; management agreement with State.**

An Act providing a management agreement between the Commonwealth and Virginia Commonwealth University, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

[\[H 1124\]](#)

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1. That the following shall hereafter be known as the 2008 Management Agreement Between the Commonwealth of Virginia and Virginia Commonwealth University:

*MANAGEMENT AGREEMENT*

*BY AND BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2007, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and the Rector and Visitors of the Virginia Commonwealth University (hereafter, the University) provides as follows:*

*RECITALS*

*WHEREAS, the University has satisfied the conditions precedent set forth in sub-sections A and B of § [23-38.97](#) of the Code of Virginia, to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

1. *Board of Visitors Approval.* The minutes of a meeting of the Board of Visitors of the University held on February 22, 2007, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;

2. *Written Application to the Governor.* The University has submitted to the Governor a written Application, dated March 23, 2007, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and

3. *Finding by the Governor.* In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that the University has fulfilled the requirements of subdivision A 2 of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and

WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Rector and Board of Visitors of Virginia Commonwealth University.

"Covered Employee" means any person who is employed by the University on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Com-

monwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).

"Management Agreement" means this agreement between the Commonwealth of Virginia and the University as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the University.

"Public institution of higher education" means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.

"University" means Virginia Commonwealth University.

## ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.

### SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.

Subchapter 3 of the Act, provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act, that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act, and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.

SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors policies attached hereto as Exhibits A through F, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Tech-

nology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the University attached hereto as Exhibits A through F and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2) the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition, fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the University.*

*SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk*

*management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2 c of § [23-38.88](#) of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia), has consulted staff of the Plan and examined public documents which set forth the assumptions about tuition increases on which Plan prices are set. Tuition assumptions used by Plan officials to set prices for the future of the Plan are higher than those included by the University in its most recent six-year financial plan transmitted to the State Council of Higher Education for Virginia (SCHEV) pursuant to subdivision B 10 of § [23-38.88](#).*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act, and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its*

*procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act, and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from, the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to Chapter 3.2 (§ [23-30.24](#) et seq.) of Title 23 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as Exhibits A through F.*

*SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits A through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F.*

*The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the University shall assume full responsibility for management of the University, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the University as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

*SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Code of Virginia, prior to August 1, 2005, the Board of Visitors of the University adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the University commits to furthering these State goals by:*

*1. In addition to its six-year target of achieving about \$161.8 million in external research expenditures by 2011-12, the University commits to match from institutional funds, other*

*than general funds or tuition, on a dollar-for-dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2007-08.*

*2. Virginia Commonwealth University (VCU) is committed to improving retention and graduation rates, without changing its core mission of access. The University has a diverse student body, a large number of whom are first generation college students and many of whom work in addition to attending college.*

*Major investments have recently been made in initiatives like the University College, which provides intensive advising and academic support for all first year students, and the VCU Compact, a university-wide academic experience for first year students that provides the foundation for lifelong learning and success. The University has also approved a Core Curriculum, providing a common set of general education courses required for all University undergraduates. These efforts are designed to positively impact freshman retention rates, which have steadily improved from 73.5 percent for the fall 1998 freshmen to 82.3 percent for the fall 2006 cohort. As these efforts continue, VCU expects freshman retention rates to increase further, reaching about 85 percent by fall 2010.*

*These efforts are also designed to improve the University's six-year graduation rate, although the major impact of these fundamental improvements will not be seen immediately. Graduation rates are improving, from 40.8 percent for the cohort of first-time, full-time freshmen entering in the fall of 1998 to 45.2 percent for the cohort of freshmen entering in the fall 2000. As the first cohorts of freshmen benefiting from the University College and the VCU Compact progress, six-year graduation rates should reach 50 percent for the cohort of first-time, full-time freshman who entered in the fall of 2006.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2007, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2008-10 through 2013-14. Subsection A of § [23-9.2:3.02](#) requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the*

*University's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees.*

*Virginia Commonwealth University has made significant efforts to provide additional institutional funding for financial aid. The University has continued this pledge in its most recently submitted six-year financial plan, increasing the amount of undergraduate need-based financial aid available to Virginia students each year in response to unavoidable increases in undergraduate tuition and fees.*

*Rather than using this additional institutional funding to decrease unmet financial need across the board, the University will strategically invest these resources to further the state and university goals of ensuring access, serving more Virginia community college transfer students, and increasing retention and graduation rates.*

*The University has a firm commitment to its mission of access, and to serving a diverse student population, many of whom are first-generation college students. To further address access and affordability, the University will establish a new Access Grant Program. The program will provide a grant of about \$1,500 for resident freshmen and sophomores who come to the University from families at or below the federal poverty level (as measured against the federal guidelines associated with the tax year used for the federal aid application). The goal of this program will be to partially relieve the exceptional financial pressure, and correspondingly high risk of early attrition, experienced by this group of students.*

*To serve more transfer students from the Virginia Community College System, the University will also establish a new Transfer Achievement Scholarship. These \$1,000 scholarships will be targeted to students with demonstrated financial need who transfer to the University with an associate degree earned from a Virginia community college with a minimum GPA of 3.00. The goal of the program will be to partially address the financial needs of academically strong Virginia residents who have earned an associate degree from a Virginia community college.*

*To address retention and graduate rates, the University will also enhance two existing scholarship programs. At present, the University's Academic Performance Scholarships are available to high-performing, rising sophomore students with demonstrated need who did not receive scholarships as entering freshmen. These scholarships will be*

*expanded to include rising juniors. The goal of the expansion is to increase the sophomore to junior retention rate for academically capable students who have unmet financial need. The current Academic Achievement Scholarships, which combine merit and need-based grants targeted to highly qualified entering freshmen from Virginia not receiving a Dean's level scholarship, will be enhanced by increasing the award from the current \$1,000 to about \$1,500.*

*Because the University will strategically invest these resources to further the state and university goals of ensuring access, serving more Virginia community college transfer students, and increasing retention and graduation rates, the metrics used to measure progress in the area of financial aid will be the same as those to which the University will be held under existing Institutional Performance Standards.*

*While the additional institutional support for financial aid is vital, the University believes that the best way to ensure that all Virginia students can attend college is to keep tuition affordable. Keeping college affordable is especially important to the University, considering its mission to serve first-generation college students, many of whom come from families with limited income. For many years now, the University has had the lowest tuition and fees for in-state undergraduates among Virginia's public doctoral universities. The Commonwealth and the University agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the University shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.*

*SECTION 2.3.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2006-08 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.3.2. The University's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's Enabling Legislation, the Enabling Legislation shall control, except as provided in subdivision A 1 b of § [23-38.112](#) of the Act, regarding § [23-77.1](#).*

*SECTION 2.3.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act*

*and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the University as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.3.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the University shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the University shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 of the Code of Virginia, unless and until provided otherwise by law other than the Act.*

*SECTION 2.3.5. Public Access to Information. As provided in § [23-38.95](#) of the Act, the University shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, and may conduct business as a "state public body" for purposes of subsection B of § [2.2-3708](#).*

*SECTION 2.3.6. Conflicts of Interests. As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.*

*SECTION 2.3.7. Other Provisions of the Code of Virginia. Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections*

*of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits A through F.*

**ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.**

**SECTION 3.1. Amendments.** *Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.*

**SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.**

**SECTION 3.2.1. Governor.** *Pursuant to subdivision D 4 of § [23-38.88](#) and § [23-38.98](#), of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement.*

*Upon the Governor voiding this Management Agreement, the University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.*

**SECTION 3.2.2. General Assembly.** *As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by*

*the Governor. Pursuant to § [23-38.98](#) of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the University fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this Management Agreement.*

*ARTICLE 4. GENERAL PROVISIONS.*

*SECTION 4.1. No Third-Party Beneficiary Status. Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.*

*SECTION 4.2. Sovereign Immunity. Pursuant to subsection E of § [23-38.88](#) of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort Claims Act (§ [8.01-195.1](#) et seq.) of the Code of Virginia and its limitations on recoveries shall remain applicable with respect to the University.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2012.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15<sup>th</sup> day of November, 2007, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT A*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING CAPITAL PROJECTS*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING CAPITAL PROJECTS*

*I. PREAMBLE.*

*In 1996, § 4-5.08 of the Appropriation Act (Chapter 912), delegated limited autonomy to the University as a whole for non-general fund capital projects. This authority has since been continued through 2002-2004 by subsequent legislative action. That authority was extended to selected capital projects funded through state-supported bonds through § 4-5.08 of the 2003 Appropriation Act (Chapter 1042). Pursuant to this delegation, Virginia Commonwealth University developed a system of reviews and approvals for the university's state general fund and state-supported debt capital projects, which was adopted by the Board of Visitors on April 26, 2004. Subsequent to that adoption, Virginia Commonwealth University entered into a Memorandum of Understanding with the Secretary of Finance and Secretary of Administration, which was signed in February 2005. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.*

*This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities*

*granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Visitors of Virginia Commonwealth University.*

*"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in April 2004*

*"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006*

*Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means Virginia Commonwealth University.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

### *V. CAPITAL PROGRAM.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### **VI. AUTHORIZATION OF CAPITAL PROJECTS.**

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.*

*It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, for all other capital projects. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure strict adherence to this requirement.*

*Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Senior Vice President for Finance and Administration or other designee, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with*

*the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to: Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers. The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University.*

*The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000 pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

*VIII. DESIGN REVIEWS AND CODE APPROVALS.*

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that project and that such project has been inspected by the State Fire Marshal or his designee as required. The University Building Official shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects or engineers who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed*

*capital project. No individual licensed professional architect or engineer hired under the University's personnel system as a member of the review unit shall perform other building code-related design, construction, facilities-related project management or facilities management functions for the University.*

**IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to subdivision C 1 of § [23-38.109](#) of the Act, with a cost of \$300,000 or more.*

**X. BUILDING DEMOLITIONS.**

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the*

*President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

*A. Environmental and Land Use Considerations.*

*It is the policy of the University to cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a sig-*

*nificant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

*XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Senior Vice President for Finance and Administration or other designee, on the status of such projects during construction.*

*XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or*

*renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million, the decision to undertake such improvements or renovations shall be communicated as required by subdivision C 3 of § [23-38.109](#) of the Act. As a matter of routine, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT B*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*LEASES OF REAL PROPERTY*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, Virginia Commonwealth University may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

## *II. DEFINITIONS.*

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" means the Rector and Visitors of Virginia Commonwealth University.*

*"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*"Covered Institution" means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*"Expense Lease" means an Operating Lease of real property under the control of another entity to the University.*

*"Income Lease" means an Operating Lease of real property under the control of the University to another entity.*

*"Lease" or "Leases" means any type of lease involving real property.*

*"Operating Lease" means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

*"University" means Virginia Commonwealth University.*

## *III. SCOPE OF POLICY.*

*This Policy provides guidance for the implementation of all University Leases.*

## *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### **V. REQUIREMENTS FOR LEASES.**

##### **A. Factors to Be Considered When Entering into Leases.**

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need, compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

##### **B. Competition to Be Sought to Maximum Practicable Degree.**

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, it is impractical to procure Leases through competition.*

##### **C. Approval of Form of Lease Required.**

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

##### **D. Execution of Leases.**

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Senior Vice President for Finance and Administration or other designee, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects*

*adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

*EXHIBIT C*

*MANAGEMENT AGREEMENT BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
VIRGINIA COMMONWEALTH UNIVERSITY  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
OPERATIONS ACT OF 2005*

*POLICY GOVERNING INFORMATION TECHNOLOGY*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

## POLICY GOVERNING INFORMATION TECHNOLOGY

### I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management Agreement authorized by subsection D of § [23-38.88](#) and by § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of Virginia Commonwealth University is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

### II. DEFINITIONS.

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Information Technology" or "IT" shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Major information technology project" or "major IT project" shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Policy" means this Information Technology Policy adopted by the Board of Visitors.*

*"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the Commonwealth of Virginia.*

*"University" means Virginia Commonwealth University.*

### III. SCOPE OF POLICY.

*This Policy is intended to cover and implement the authority that may be granted to Virginia Commonwealth University pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act.*

*This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University's enabling legislation as that term is defined in § [23-38.89](#) of the Act.*

*This Policy shall govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § [23-38.88](#) and by § [23-38.111](#), therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### **IV. GENERAL PROVISIONS.**

##### **A. Board of Visitors Accountability and Delegation of Authority.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and*

*responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

*B. Strategic Planning.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the University's plan is to be incorporated.*

*C. Expenditure Reporting and Budgeting.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.*

*The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended;*

*§§ [2.2-2022](#), [2.2-2023](#), and [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based*

*upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended; §§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*  
*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a nationally recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security shall also be the responsibility of the University's Assurance Services Department and the Auditor of Public Accounts.*

#### *EXHIBIT D*

#### *MANAGEMENT AGREEMENT*

#### *BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

#### *AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

#### *PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*THE PROCUREMENT OF GOODS, SERVICES,*

*INSURANCE, AND CONSTRUCTION AND*

*THE DISPOSITION OF SURPLUS MATERIALS*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING THE PROCUREMENT OF*

*GOODS, SERVICES, INSURANCE, AND CONSTRUCTION*

*AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that Virginia Commonwealth University, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Agreement" means "Management Agreement."*

*"Board of Visitors" means the Rector and Visitors of Virginia Commonwealth University.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the Management Agreement.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia and Virginia Commonwealth University.*

*"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.*

*"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*"Surplus materials" means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*"University" means Virginia Commonwealth University.*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate*

*accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The University has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to enable the University to develop a procurement system, as well as a surplus materials disposition system for the University as a whole. Any University electronic procurement system shall integrate or interface with the Commonwealth's electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Senior Vice President for Finance and Administration or other designee.*

##### *B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

##### *C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

- 1. May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia, unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;*
- 2. Shall use directly or by integration or interface the Commonwealth's enterprise electronic procurement system, commonly known as "eVA", and comply with the Business Plan for the Commonwealth's enterprise electronic procurement system; and*
- 3. Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.*

*E. Implementation.*

*To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to subdivision D 4 of § [23-38.88](#) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2; and the Information*

*Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (DBVI) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).*

#### *V. UNIVERSITY PROCUREMENT POLICIES.*

##### *A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, construction, and professional services, the University is committed to:*

*Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

##### *B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act,*

*Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to subdivision 7 or 12 of § [2.2-3705.1](#) or subdivision 4 of § [2.2-3705.4](#), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee,*

*to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

*VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

*A. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the University, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*B. Any implementing policies and procedures adopted pursuant to subsection A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any imple-*

*menting policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*C. The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

#### *VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.*

##### *A. Protests, Appeals and Debarment.*

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

##### *B. Prompt Payment of Contractors and Subcontractors.*

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

##### *C. Types of Procurements.*

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and*

*shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

**ATTACHMENT 1**

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the  
Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered*

*into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution:*

*§ 1. Purpose.*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority.*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to subdivision D 4 of § [23-38.88](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority.*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection pro-*

*cess. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions.*

*As used in these Rules:*

*"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.*

*"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*"Competitive negotiation" is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis*

*on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is*

*necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror. "Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

*1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*

*2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*3. Public opening and announcement of all bids received.*

*4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis,*

*and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

*5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.*

*"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.*

*"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall still apply to professional services for such small construction projects.*

*"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*"Public contract" means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*"Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been pre-qualified, if required.*

*"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement.*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

#### *§ 6. Cooperative procurement.*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other*

*public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized.*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five*

*offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract.*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business.*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.*

*Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has*

*made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. The Institution shall include in every contract over \$10,000 the following provisions:*

*During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the*

*unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names.*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications.*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction.*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

- 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*
- 2. The contractor does not have appropriate experience to perform the construction project in question;*
- 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*
- 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*
- 5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of*

the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.) of the Code of Virginia, (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government;

7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.

§ 15. *Negotiation with lowest responsible bidder.*

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.

§ 16. *Cancellation, rejection of bids; waiver of informalities.*

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. The Institution may waive informalities in bids.

§ 17. *Exclusion of insurance bids prohibited.*

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.

§ 18. *Debarment.*

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.

§ 19. *Purchase programs for recycled goods; Institution responsibilities.*

*A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.*

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms.*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution.*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution.*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10 percent greater than the price of the lowest responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error.*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5 percent.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

#### *§ 24. Contract Pricing Arrangements.*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

#### *§ 25. Workers' compensation requirements for construction contractors and subcontractors.*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts.*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void.*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

- 1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;*
- 2. Requires notice of any delay by the party claiming the delay;*
- 3. Provides for liquidated damages for delay; or*
- 4. Provides for arbitration or any other procedure designed to settle contract disputes.*

*C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.*

*D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of*

*the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.*

*§ 28. Bid bonds.*

*A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5 percent of the amount bid.*

*B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.*

*C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.*

*§ 29. Performance and payment bonds.*

*A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:*

*1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.*

*2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.*

*"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.*

*B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.*

*C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.*

*D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.*

*E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.*

*F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.*

*§ 30. Alternative forms of security.*

*A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.*

*B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.*

*§ 31. Bonds on other than construction contracts.*

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond.*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue.*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records.*

*A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).*

*B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.*

*C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.*

*D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.*

*E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.*

*F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.*

*§ 35. Exemption for certain transactions.*

*A. The provisions of these Rules shall not apply to:*

*1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).*

*2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.*

*3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations.*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the*

*faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions.*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*

7. *Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*

8. *Royalties; or*

9. *The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

*§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

*§ 39. Definitions.*

*As used in §§ 39 through 46, unless the context requires a different meaning:*

*"Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions.*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid.*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution.*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received.*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made.*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts.*

*Any contract awarded by the Institution shall include:*

*1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:*

*a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract;*  
*or*

*b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.*

*2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.*

*3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1b.*

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1 percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to [§ 58.1-1812](#) of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act ([§ 2.2-4800](#) et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a

*payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.*

*§ 47. Ineligibility.*

*A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.*

*If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid.*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in*

*the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility.*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

*2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

*3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or*

*regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award.*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the*

*standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract.*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest.*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes.*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring*

*submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions.*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the*

*bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or § [33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.*

*F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.*

*G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.*

*§ 55. Administrative appeals procedure.*

*A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, and the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee*

*of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.*

*B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.*

*§ 56. Alternative dispute resolution.*

*The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.*

*§ 57. Ethics in public contracting.*

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

## EXHIBIT E

### MANAGEMENT AGREEMENT

### BETWEEN

### THE COMMONWEALTH OF VIRGINIA

### AND

### VIRGINIA COMMONWEALTH UNIVERSITY

### PURSUANT TO

### THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005

*POLICY GOVERNING  
HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY  
POLICY GOVERNING HUMAN RESOURCES FOR  
PARTICIPATING COVERED EMPLOYEES  
AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, Virginia Commonwealth University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act, "are state employees of" the University.*

*Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, for employees subject to the Virginia Personnel Act, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*"Covered Employee" means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the adoption of the University's Human Resource System.*

*"Employee" means Covered Employee unless the context clearly indicates otherwise.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10 of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.*

*"Governing Law" means the Act and the University's Enabling Legislation.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.*

*"Participating Covered Employee" means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University's*

*Human Resources System, and who elect pursuant to § [23-38.115](#) of the Act, to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by the University, (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the Human Resources System, (iii) all nonsalaried nonfaculty University employees without regard to when they were hired, and (iv) all faculty University employees without regard to when they were hired.*

*"Systems" means collectively the University Human Resources System that is in effect from time to time.*

*"University" means Virginia Commonwealth University.*

*"University employee" means a Covered Employee.*

*"University Human Resources System" means the human resources system for University employees as provided for herein.*

### *III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.*

*The University has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The University has had decentralization in most human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices. The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place a human resources system or systems for all University employees. Until the Effective Date of the Human Resources System, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

### *V. VIRGINIA COMMONWEALTH UNIVERSITY HUMAN RESOURCES SYSTEMS.*

*A. Adoption and Implementation of University Human Resources Systems.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, is hereby authorized to adopt and implement human resources systems for employees of the University that are consistent with the Governing Law, other applicable provisions of law, these University human resources policies for University employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless University employees are exempted from those other human resources policies by law or policy. The University Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the University Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University commits to regularly engage employees in appropriate discussions and to receive employee input as the new University Human Resources Systems are developed. The University will regularly communicate the details of new proposals to all employees who are eligible to participate in the University Human Resources System through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*On the Effective Date of the adoption of the University's Human Resources System, and unless amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current "Virginia Commonwealth University Faculty Handbook," as it is posted on the Provost's website, <http://www.provost.vcu.edu/faculty/handbook.html>, and periodically amended;*
- 2. The current human resources system for Classified Employees in the University as posted on the Virginia Department of Human Resources Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's website at <http://www.hr.vcu.edu/policies/index.htm>, as periodically amended; and*
- 3. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the University Human Resources website at <http://www.hr.vcu.edu/>, as periodically amended.*

*All the systems described above, except the system described in paragraph 2, may be amended by the President, acting through the Senior Vice President for Finance and*

*Administration or other designee, consistent with these human resources policies. The system described in paragraph 2 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall take all necessary and reasonable steps to ensure (i) that the University officials who develop, implement and administer the University Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, any other human resources policies adopted by the Virginia Department of Human Resource Management, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

#### *VI. HUMAN RESOURCES POLICIES.*

*The University Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, shall embody the following human resources policies and principles:*

*A. Election by Classified Salaried Nonfaculty Employees.*

*At least six months prior to the adoption of a University Human Resources System, the University shall notify the Secretary of Administration and the Department of Human Resource Management that the University intends to adopt a University Human Resources System, effective on a January 1. Upon the Effective Date of adoption by the University of a University Human Resources System, each salaried nonfaculty Classified employee who was in the employment of the University as of the day prior to the Effective Date of its University Human Resources System shall be permitted to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the University Human Resources System, as appropriate. A salaried nonfaculty Classified employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty Classified employee who elects in writing to participate in and be governed by the University Human Resources System, by that election, shall be deemed to have elected to participate in and to be governed by the*

*University human resources program, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that University Human Resources System.*

*Each nonfaculty Classified employee who was in the employment of the University as of the day prior to the Effective Date of the University's Human Resources System shall be given at least 90 days after the date on which the University Human Resources System becomes effective to make the election required by the prior paragraph. If such a salaried nonfaculty Classified employee does not make an election by the end of that specified election period, that Classified employee shall be deemed not to have elected to participate in the University Human Resources System. If such a salaried nonfaculty Classified employee elects to participate in the University Human Resources System, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty Classified employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ 2.2.-2800 et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to participate in the University Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty Classified employees, the University shall make available to each of its salaried nonfaculty Classified employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*1. General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*2. Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. Until the Effective Date of the University's Human Resources System, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*3. Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's Human Resources System, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the University shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On the Effective Date of the University's Human Resources System, the University may implement one or more compensation plans for Participating Covered Employees that are graded or non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*4. Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*5. Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*6. Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

*7. Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate.*

*C. Benefits.*

*The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.*

*Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On or after the Effective Date of the University's Human Resources System, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors,*

*including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees. Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

*1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*

*2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*

*3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*

*4. Employee Recognition. The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.*

*5. Counseling Services. The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.*

*6. Unemployment Compensation. The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.*

*7. Workers' Compensation. The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees Workers' Compensation Program administered by the Department of Human Resource Management.*

*8. Performance Planning and Evaluation. The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning*

*their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's Human Resources System, the existing merit-based performance management system for faculty shall continue, until amended by the University. On or after that Effective Date, University nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.*

*9. Standards of Conduct and Performance. In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i) establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried nonfaculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's Human Resources System. On that Effective*

*Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services. All Covered Employees and applicants for employment after the Effective Date of the University's Human Resources System shall file a complaint with the appropriate University office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a lay-off, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (a) were employed prior to the Effective Date of the University's Human Resources System, (b) would otherwise be eligible for severance benefits under the Workforce Transition Act, (c) were covered by the Virginia Personnel Act prior to that Effective Date, and (d) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's Human Resources System and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's Human Resources System, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.*

13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's Human Resources System shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the Virginia Commonwealth University alcohol and other drugs policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.

15. *Background Checks.* The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations

*where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its Human Resources System, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its Human Resources System, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law. In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures*

*governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the University's Human Resources System, all employees hired from other state agencies shall be Participating Covered Employees. University Classified Employees who change jobs within the University through a competitive employment process i.e., promotion or transfer shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 2, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resource Management.*

*VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.*

*On and after the Effective Date of its Human Resources System, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management. In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

ATTACHMENT 2

*Memorandum of Understanding*

*Between Virginia Commonwealth University and the  
Department of Human Resource Management Regarding  
The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005, and is hereby entered into between Virginia Commonwealth University and the Department of Human Resource Management (DHRM).*

*This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

*1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.*

*a. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*b. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*c. In the event that the University and DHRM cannot agree on a format that prevents the need for modification to the University's current personnel system, the University will continue to enter data directly into PMIS or any successor system.*

*2. In lieu of the University's participation in the state's Equal Employment Opportunity Compliance Assessment process, DHRM will accept the University's federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.*

*3. The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).*

*4. Other reports to be provided by the University include the following:*

*a. Monthly Employment Position Report.*

*b. Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

**APPROVALS:**

*Virginia Commonwealth University*

*By: .....Date.....*

*Senior Vice President for Finance and Administration*

*Department of Human Resource Management:*

*By: .....Date.....*

*Director, Department of Human Resource Management*

**EXHIBIT F**

**MANAGEMENT AGREEMENT**

**BETWEEN**

**THE COMMONWEALTH OF VIRGINIA**

**AND**

**VIRGINIA COMMONWEALTH UNIVERSITY**

**PURSUANT TO**

**THE RESTRUCTURED HIGHER EDUCATION**

**FINANCIAL AND ADMINISTRATIVE OPERATIONS**

ACT OF 2005

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY

POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Commonwealth University's financial operations and management. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

II. DEFINITIONS.

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means Virginia Commonwealth University.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.*

### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

### *V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the*

*allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Senior Vice President for Finance and Administration or other designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) monthly summary reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

**VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under subsection A of § [23-38.104](#) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 12 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal*

*year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education. Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the investment income thereon) subject to the following requirements:*

- 1. The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.*
- 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.*
- 3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*
- 4. If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current*

*Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*

*5. Beginning on the effective date of its initial management agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a management agreement with the Commonwealth.*

*6. On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*

*7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd-numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even-numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the*

*Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Assurance Services Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

#### **VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

#### **IX. DISBURSEMENT MANAGEMENT.**

*The President, through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The drawing down of funds may be initiated in accordance with the following schedule:*

- 1. The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;*
- 2. The University may draw down the sum of all tuition and E&G fees and all other non-general fund revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- 3. The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a time frame agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Senior Vice President for Finance and Administration or other designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide summary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act. The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial management agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### **X. DEBT MANAGEMENT.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to subsection B of § [23-38.108](#) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with the University's debt-management policy established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those*

*bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University. The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Senior Vice President for Finance and Administration or other designee, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt. The University currently has established policy relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt management policy. Any change in the current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.*

#### *XI. INVESTMENT POLICY.*

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#) and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

*XII. INSURANCE AND RISK MANAGEMENT.*

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

2. That the first enactment of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008. Any such management agreement entered into prior to January 1, 2008, shall be deemed incorporated into this Act.

3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012. The expiration of such enactment shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008, and incorporated into this Act.

**Chapter 604 Higher Educational Institutions Bond Act of 2008; created.**

An Act to authorize the issuance of bonds, in an amount up to \$350,565,000 plus financing costs, pursuant to Article X, Section 9(c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 31\]](#)

Approved March 12, 2008

Whereas, Article X, Section 9(c), Constitution of Virginia, provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9(c), Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9(c), Constitution of Virginia.

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2008."*

§ 2. *Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds,*

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*with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>
<i>Amount</i>		
<i>George Mason University</i>	<i>President's Park</i>	<i>17540</i>
	<i>Phase II</i>	
<i>Renovation</i>	<i>15,633,000</i>	
<i>George Mason University</i>	<i>Smithsonian CRC Hous-</i>	<i>17572</i>
<i>ing</i>	<i>17,804,000</i>	
<i>George Mason</i>		
<i>University</i>	<i>Housing VIII</i>	<i>17570 102,460,000</i>
<i>Old Dominion University</i>	<i>Construct Residence</i>	<i>17342</i>
	<i>Hall, Phase</i>	
<i>II</i>	<i>34,779,000</i>	
<i>Radford University</i>	<i>Construct Residence</i>	<i>17565</i>
<i>Halls</i>	<i>36,000,000</i>	
<i>The College of William</i>	<i>Renovate Graduate</i>	<i>17555</i>
<i>and Mary In Virginia</i>		
<i>Student Dormitories</i>	<i>2,500,000</i>	
<i>The College of William</i>	<i>Renovate Campus</i>	<i>17554</i>

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<i>and Mary In Virginia</i>	<i>Center and Trinkle</i>	
<i>Hall</i>		<i>35,000,000</i>
<i>Virginia Polytechnic</i>	<i>Renovate Owens and</i>	<i>17558</i>
<i>Institute and State</i>	<i>West End Market Food</i>	
<i>University</i>		
	<i>Courts</i>	<i>5,000,000</i>
<i>Virginia Polytechnic</i>	<i>Renovate Ambler</i>	<i>17557</i>
<i>Institute and State</i>	<i>Johnson Hall</i>	
<i>University</i>		<i>55,000,000</i>
<i>Virginia Polytechnic</i>	<i>New Residence Hall</i>	<i>16682</i>
<i>Institute and State</i>		
<i>University</i>		<i>8,047,000</i>
<i>Virginia State University</i>	<i>Demolish Student</i>	<i>17531</i>
	<i>Village and Construct</i>	
	<i>Gateway 500,</i>	
<i>Phase II</i>	<i>38,342,000</i>	

*Total*

*\$350,565,000*

**§ 3. Application of Proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters*

*as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a)(3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds/Bond Anticipation Notes, Series. . . ."*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

**§ 6. Sources for payment of expenses.**

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof, or from any other available funds as the Treasury Board shall determine.*

**§ 7. Revenues.**

*Each institution of higher learning mentioned above is hereby authorized (i) to fix, revise, charge and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. Each such institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other*

*reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and Contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of*

*the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9(c), Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9(c) or (b), as the case may be, of the Constitution of Virginia.*

§ 13. *Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 122 Appointment of counsel; indigent defendants.**

An Act to amend and reenact § [19.2-159](#) of the Code of Virginia, as it is currently effective, and to repeal the second enactments of Chapter 680 and Chapter 708 of the Acts of Assembly of 2006, relating to determination of indigency; appointment of counsel.

[\[H 410\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-159](#) of the Code of Virginia, as it is currently effective, is amended and reenacted as follows:

§ [19.2-159](#). (Effective until July 1, 2008) Determination of indigency; guidelines; statement of indigence; appointment of counsel.

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense which may be punishable by death or confinement in the state correctional facility or jail, subject to the provisions of § [19.2-160](#), the court shall determine from oral examination of the accused or other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

C. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this . . . . day of . . . . ., 20 -  
. ., by the  
(name of court)  
court of my right to representation by counsel in the  
trial of the charge pending against me; I certify that I am-  
without  
means to employ counsel and I hereby request the court to a-  
ppoint counsel  
for me. "  
.....  
(signature of accused)

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

D. Except in jurisdictions having a public defender, *or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice*, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § [19.2-163.01](#). If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and

experience. The court shall provide notice to the Commission of the appointment of the attorney.

2. That the second enactments of Chapter 680 and Chapter 708 of the Acts of Assembly of 2006 are repealed.

## **Chapter 145 Virginia Birth-Related Neurological Injury Compensation Act; right to confront witnesses.**

An Act to amend the Code of Virginia by adding a section numbered [38.2-5008.1](#) and to amend the second enactment of Chapter 919 of the Acts of Assembly of 2006 by adding a section numbered 2, relating to the Virginia Birth-Related Neurological Injury Compensation Act; right to confront and cross-examine witnesses.

[\[S 212\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [38.2-5008.1](#) as follows:

*§ [38.2-5008.1](#). Right to confront and cross-examine witnesses.*

*Upon a timely motion, all parties to a claim under this chapter shall have the right to confront and cross-examine witnesses. In pursuing that right, a party shall not be precluded from conducting depositions by oral examination or cross-examination at a hearing of any witnesses from whom evidence is elicited.*

2. That the second enactment of Chapter 919 of the Acts of Assembly of 2006 is amended by adding a section numbered 2 as follows:

*§ 2. Right to confront and cross-examine witnesses; right to de novo review.*

*Notwithstanding any other provision of law, any claimant who timely filed a claim and after timely seeking and being denied an opportunity to conduct depositions by oral examination or otherwise being denied the opportunity to confront or cross-examine witnesses and was denied an award of benefits, shall have the right to have the determination against that claim vacated and the claim redetermined de novo by filing a petition with the Commission seeking to have the determination against that claim vacated. Such petition shall be filed on or before July 1, 2009, and may be filed regardless of whether or not the party has filed for review of the denied claim. Upon receipt of such a petition,*

*the Commission shall vacate the order denying benefits previously entered, place the matter on the hearing docket, administer the claim and make a determination on the merits of the claim de novo, as if no previous filing, hearing, determination, review or dismissal of that claim had occurred, except that the Commission shall not be required to request the panel of physicians set forth in subsection B of § [38.2-5008](#) to issue a new report.*

## **Chapter 199 Trooper Charles Mark Cosslett Memorial Highway; designating as portion of Fairfax County Parkway.**

An Act to designate a portion of Virginia Route 7100 the "Trooper Charles Mark Cosslett Memorial Highway."

[\[H 1507\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 7100 (Fairfax County Parkway) between Interstate Route 95 and Rolling Road in Fairfax County is hereby designated the "Trooper Charles Mark Cosslett Memorial Highway." The Department of Transportation shall place and maintain signs indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway.*

## **Chapter 200 Lance Corporal Daniel Todd Morris Bridge; designating as bridge over I-81 at Steeles Tavern.**

An Act to designate the Virginia Route 620 bridge over Interstate Route 81 at Steeles Tavern the "Lance Corporal Daniel Todd Morris Bridge."

[\[H 1555\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 620 bridge over Interstate Route 81 at Steeles Tavern is hereby*

*designated the "Lance Corporal Daniel Todd Morris Bridge." The Department of Transportation shall place and maintain signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 240 Virginia's Future, Council on; extends sunset provision.**

An Act to amend and reenact the third enactment of Chapter 900 of the Acts of Assembly of 2003, relating to the Council on Virginia's Future; extension of sunset provision.

[\[S 574\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 900 of the Acts of Assembly of 2003 is amended and reenacted as follows:
3. That the provisions of this act shall expire on July 1, ~~2008~~ 2013.

## **Chapter 261 Pruitt, William A.; awarded handgun for noteworthy service to Marine Resources Commission.**

An Act to award a service pistol to William A. Pruitt.

[\[H 1576\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1.  
*§ 1. That William A. Pruitt be, and hereby is, vested with title to, and authorized to possess and retain as his own, his service handgun, which he used as Commissioner of the Virginia Marine Resources Commission, for payment of \$1.00. This transfer is made as a visible and express token of the appreciation of the General Assembly for the professionalism, devotion, and dedication of William A. Pruitt in his 23 years of service at the Virginia Marine Resources Commission.*

## Chapter 154 Appointment of counsel; indigent defendants.

An Act to amend and reenact § [19.2-159](#) of the Code of Virginia, as it is currently effective, and to repeal the second enactments of Chapter 680 and Chapter 708 of the Acts of Assembly of 2006, relating to determination of indigency; appointment of counsel.

[\[S 553\]](#)

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That § [19.2-159](#) of the Code of Virginia, as it is currently effective, is amended and reenacted as follows:

§ [19.2-159](#). (Effective until July 1, 2008) Determination of indigency; guidelines; statement of indigence; appointment of counsel.

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense which may be punishable by death or confinement in the state correctional facility or jail, subject to the provisions of § [19.2-160](#), the court shall determine from oral examination of the accused or other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

C. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this . . . . day of . . . . ., 20 -  
. ., by the  
    (name of court)  
court of my right to representation by counsel in the  
    trial of the charge pending against me; I certify that I am-  
without  
    means to employ counsel and I hereby request the court to a-  
ppoint  
    counsel for me. "  
    .....  
(signature of accused)

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

D. Except in jurisdictions having a public defender, *or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice*, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § [19.2-163.01](#). If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of the appointment of the attorney.

2. That the second enactments of Chapter 680 and Chapter 708 of the Acts of Assembly of 2006 are repealed.

## **Chapter 223 VPI & SU; Board of Visitors to convey certain property to Virginia Tech Foundation, Inc.**

An Act to authorize the board of visitors of Virginia Polytechnic Institute and State University to convey certain real property to the Virginia Tech Foundation, Inc., to allow the expansion of the Virginia Tech Corporate Research Center.

[\[H 978\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any law to the contrary, the board of visitors of Virginia Polytechnic Institute and State University, with the approval of the Governor pursuant to [§ 2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the Virginia Tech Foundation, Inc. all that certain piece or parcel of land located in the County of Montgomery, Virginia, consisting of 95 acres, more or less, adjacent to the Virginia Tech Corporate Research Center, and more specifically identified as a part of Parcel ID 070853 as shown on Map Number 316-1-37 and part of Parcel ID 070905 as shown on Map Number 256-A-1, the precise boundaries and acreage to be determined by a physical survey to be conducted prior to closing on the property. The conveyance shall be on such terms and conditions as the board of visitors deems appropriate.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 228 Income tax, state; repeals provisions allowing additional withholding exemptions.**

An Act to repeal Chapter 289 of the Acts of Assembly of 1989, as amended and reenacted by Chapter 888 of the Acts of Assembly of 1990, Chapters 385 and 401 of the Acts

of Assembly of 1992, Chapters 139 and 147 of the Acts of Assembly of 1994, Chapters 375 and 458 of the Acts of Assembly of 1996, Chapter 464 of the Acts of Assembly of 1998, Chapters 501 and 553 of the Acts of Assembly of 2000, and repealed by § 3-5.05 of Chapter 899 of the Acts of Assembly of 2002, as amended by Chapter 1042 of the Acts of Assembly of 2003, which expired June 30, 2004, Chapter 4 of the Acts of Assembly of 2004, Special Session I, which expired June 30, 2006, and Chapter 3 of the Acts of Assembly of 2006, Special Session I, relating to individual income tax withholding.

[\[H 1261\]](#)

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That Chapter 289 of the Acts of Assembly of 1989, as amended and reenacted by Chapter 888 of the Acts of Assembly of 1990, Chapters 385 and 401 of the Acts of Assembly of 1992, Chapters 139 and 147 of the Acts of Assembly of 1994, Chapters 375 and 458 of the Acts of Assembly of 1996, Chapter 464 of the Acts of Assembly of 1998, Chapters 501 and 553 of the Acts of Assembly of 2000, and repealed by § 3-5.05 of Chapter 899 of the Acts of Assembly of 2002, as amended by Chapter 1042 of the Acts of Assembly of 2003, which expired June 30, 2004, Chapter 4 of the Acts of Assembly of 2004, Special Session I, which expired June 30, 2006, and Chapter 3 of the Acts of Assembly of 2006, Special Session I, which will expire June 30, 2008, is repealed, effective January 1, 2003.

### **Chapter 270 Staunton River State Park; authorizes 20-foot wide easement across portion.**

An Act authorizing the Department of Conservation and Recreation to grant an easement across a portion of the Staunton River State Park in exchange for the extinguishment of an existing right-of-way easement.

[\[S 254\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1

. § 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to William MacCarty, his successors and assigns (the Grantee), upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General, all as required by § [10.1-109](#) of the Code of Virginia, a perpetual non-exclusive right-of-way easement across a portion of Staunton River State Park, identified as tax map parcel 01-1MM-19-5040 in Halifax County, so that the Grantee may access his property, identified as tax map parcel 01-1MM-[21-5112B](#) in Halifax County. Such easement shall be 20 feet in width and in the location described on a plat of survey made by Precision Measurements, Inc. and signed by Brian M. Long entitled "Plat of 20' Access Easement for the benefit of MacCarty," dated March 22, 2007, or of a width and in such location as the Department deems proper and as evidenced by a physical survey.

§ 2. The purpose of this conveyance is to allow the Grantee to access his property in a manner advantageous to the Department and the Grantee. In consideration for such conveyance, the Department shall require the extinguishment of an existing right-of-way easement currently held by the Grantee across Staunton River State Park. The conveyance shall also comply with the requirements of the federal Land and Water Conservation Fund Act (16 U.S.C. § 4601-4 et seq.).

## **Chapter 442 Newman Road; designating as State byway in Fairfax County.**

An Act to designate the entire length of Newman Road in Fairfax County a Virginia byway.

[\[H 1013\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, the entire length of Newman Road in Fairfax County is hereby designated a Virginia byway.

## Chapter 252 Ford and Pullman grants; ratifies conveyance of certain lands in County of Fairfax.

An Act to ratify the conveyance of certain lands in the County of Fairfax known as the Ford and Pullman grants.

[\[H 972\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, the conveyance of certain property located in the County of Fairfax, Virginia, by the Commonwealth on May 1, 1951, to George A. Ford and his successors and assigns, known as the "Ford Grant," shall be deemed a valid and proper conveyance by the Commonwealth of any rights, title, and interest as the Commonwealth may have had in such property, being more particularly described as follows:*

*Beginning at the easterly corner of George A. Ford's Land Grant of 5.838 acres in 1944 and at an angle in George A. Ford's Smoot tract, on the northeast side of Temple View Drive, the said corner being N. 41°05' E. 134.38 ft. from the corner between the John H. Johnson tract and the H. H. Blunt tract on the shore of Hunting Creek Marsh; thence with the lines of the Smoot tract S. 52°11' E. 675.72 ft., N. 57°14' E. 228.01 ft., N. 15°16' W. 177.0 ft., N. 31°54'20" W. 497.11 ft. and N. 9°37' W. 53.6 ft. to the southwest side of Bay Vista Drive; thence with the said side of the drive as proposed, S. 52°11' E. 195.99 ft. and S. 43°22'40" E. 1947.77 ft. to the northwesterly side of the Washington-Richmond Highway, State Rt. No. 1; thence with the said side of the highway, curving to the right, 147.54 ft., measured on the arc of a circle having a radius of 523.0 ft. (the chord being S. 65°55' W. 147.06 ft.); thence S. 74°00' W. 164.15 ft.; thence departing from the highway and running through the marsh, N. 65°53'20" W. 723.81 ft. to the northeast side of Temple View Drive, extended; thence with the said side of the drive, extended, N. 43°42'32" W. 1370.64 ft. to the beginning, containing 18.375 acres; and recorded in Deed Book 924, page 5 in the Clerk's Office of the Circuit Court for the County of Fairfax, Virginia.*

*§ 2. That, notwithstanding any other provision of law, the conveyance of certain property located in the County of Fairfax, Virginia, by the Commonwealth on May 25, 1962, to*

*Catherine Pullman, James F. Pullman, Catherine C. Pullman, Mary Hilda Pullman and Nellie Pullman Martyn, and their successors and assigns, known as the "Pullman Grant," shall be deemed a valid and proper conveyance by the Commonwealth of any rights, title, and interest as the Commonwealth may have had in such property, being more particularly described as follows:*

*Beginning at a point on the southerly line of the parcel to be described, said point being a corner to the property of Pullman and the property now or formerly Blunt, said point being S. 36°53' W. 116.56' from a pipe set in the line of Pullman and formerly Blunt on the easterly side of the road known as Hunting Creek Road and said pipe being N. 36°53' E. 1184.84' from an old pipe on said side of said road a corner to Pullman and the property now or formerly Blunt on the northeasterly side of Blunt's Lane; thence with the line of Blunt N. 41°53'10" W. 487.55' to a point a corner to Ford's Grant; thence with said grant N. 41°05' E. 134.38' to a point in the line of Inez Willis; thence with Inez Willis S. 43°42'32" E. 1370.64' to a point S. 65°53'20" E 625.74' to a point in the line of property acquired by the Virginia Department of Highways for the Route 1, Route 413 Interchange; thence with said line S. 23°34'22" W. 38.11' to a point S. 45°37'40" W. 120.05' to a point said point being on the northerly side of Route 1 according to the aforementioned acquisition by the Virginia Department of Highways and also being on the northerly side of the old Washington-Richmond Highway; thence with the old Washington-Richmond Highway S. 74°00' W. 130.11' to a point S. 79°41' W. 197.20' to a pipe a corner to Pullman; thence with Pullman N. 38°08' W. 194.30' N. 55°54' W. 173.00' N. 39°50' W. 185.00' N. 27°26' W. 150.00' N. 19°12' W. 269.75' N. 47°41' W. 56.70' N. 61°06' 319.20' to the beginning, containing 7.990 acres; and recorded in Deed Book 2143, page 509 in the Clerk's Office of the Circuit Court for the County of Fairfax, Virginia.*

*§ 3. The affirmation of the conveyances in this act shall be less and except all previous takings and conveyances from the foregoing property descriptions by and to the Commonwealth Transportation Commissioner or his predecessors recorded in the Clerk's Office of the Circuit Court of Fairfax County, Virginia, as of January 1, 2008.*

## **Chapter 271 Lake Anna State Park; authorizes right-of-way easement.**

An Act authorizing the Department of Conservation and Recreation to grant an easement across a portion of Lake Anna State Park in exchange for the extinguishment of an existing right-of-way easement.

[\[S 303\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Clemens Meyer, Terrill Meyer, Gary Voelker, and Janet Voelker, their successors and assigns (the Grantees), upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General, all as required by § [10.1-109](#) of the Code of Virginia, a perpetual, non-exclusive right-of-way easement across a portion of Lake Anna State Park, identified as tax map parcels 55(10)-2 and 55(A)-93 in Spotsylvania County, so that the aforesaid Grantees may access their property, identified as tax map parcel 55(A)-93A in Spotsylvania County. Such easement shall be 30 feet in width and in the location described on a plat of survey entitled "Plan of Proposed 30' Wide Right of Way through the Lands Standing in the Name of Commonwealth of Virginia, Department Conservation and Recreation" made by Bell Surveys, Inc. and signed by Joseph E. DiMeglio, dated March 20, 2007, and revised March 30, 2007, or of a width and in such location as the Department deems proper and as further evidenced by a physical survey.*

*§ 2. The purpose of this conveyance is to allow the Grantees to access their property in a manner advantageous to the Department and the Grantees. In consideration for such conveyance, the Department shall require the extinguishment of existing right-of-way easements currently held by the Grantees across Lake Anna State Park by those certain deeds recorded in Deed Book 481, Page 544 and Deed Book 366, Page 211 in the office of the Clerk of the Circuit Court of Spotsylvania County. The conveyance shall also comply with the requirements of the federal Land and Water Conservation Fund Act (16 U.S.C. § 4601-4 et seq.).*

## **Chapter 321 Administrative Process Act; public participation guidelines for executive branch agencies.**

An Act to standardize public participation guidelines for executive branch agencies.

[\[H 1167\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That on or before July 1, 2008, the Department of Planning and Budget, in consultation with the Office of the Attorney General, shall (i) develop model public participation guidelines meeting the requirements of § [2.2-4007.02](#) of the Code of Virginia and (ii) provide these model public participation guidelines to each agency that has the authority to promulgate regulations. By December 1, 2008, each agency shall either (a) adopt the model public participation guidelines or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to § [2.2-4012.1](#) of the Code of Virginia. Agency action in adopting the model public participation guidelines in accordance with clause (a) shall be exempt from the operation of Article 2 (§ [2.2-4006](#) et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. The repeal of any existing public participation guidelines shall occur in the same regulatory action as the promulgation of the model public participation guidelines required by this section.*

*§ 2. The model public participation guidelines adopted pursuant to this act shall apply to the promulgation and adoption of regulations for which a notice of intended regulatory action is filed in accordance with § [2.2-4007.01](#) of the Code of Virginia on or after January 1, 2009.*

*§ 3. However, any amendments made after January 1, 2009, to an agency's public participation guidelines adopted as required by this act shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia).*

*§ 4. For the purposes of this act, the terms "agency" and "regulations" mean the same as those terms are defined in § [2.2-4001](#) of the Code of Virginia.*

## **Chapter 274 Comprehensive highway access management standards; Commissioner to promulgate in phases.**

An Act to authorize promulgation of the comprehensive highway access management standards in phases and to amend and reenact the second, third, and fourth enactments of Chapter 863 and Chapter 928 of the Acts of Assembly of 2007, relating to comprehensive highway access management standards; implementation.

[\[S 370\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1. That the second, third, and fourth enactments of Chapter 863 of the Acts of Assembly of 2007 are amended and reenacted as follows:

2. That the *provisions of the first enactment of this act shall be done in phases and that the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards not later than December 31, 2007. Such standards as they relate to principal arterial roads shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009.*

3. That the *full provisions of the first enactment of this act shall become effective July 1, 2008. However, the standards required by this act for minor arterial roads and collector roads shall become effective on October 1, 2009.*

4. That, until July 1, 2008, the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia as may be necessary to carry out the provisions of this act *as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.*

2. That the second, third, and fourth enactments of Chapter 928 of the Acts of Assembly of 2007 are amended and reenacted as follows:

2. That *the provisions of the first enactment of this act shall be done in phases and that the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards no later than December 31, 2007. Such standards shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009.*

3. That the *full provisions of the first enactment of this act shall become effective on July 1, 2008. However, the standards required by this act for minor arterial roads and collector roads shall become effective on October 1, 2009.*

4. That, until July 1, 2008, the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#); et seq.) *of the Code of Virginia* as may be necessary to carry out the provisions of this act *as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.*

3. That publication of the General Notice concerning proposed Access Management Regulations in The Virginia Register on October 15, 2007, shall be considered a Notice of Intended Regulatory Action under the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia for promulgation of comprehensive access management regulations for minor arterial roads and collector roads. The proposed standards for minor arterial roads and collector roads shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations to begin the comment period under the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.

4. That the standards for the principal arterial roads developed during the first phase of the comprehensive access management regulations shall be filed with the Registrar of Regulations within 30 days of the effective date of this act for publication in the Virginia Register of Regulations as a final regulation.

5. That an emergency exists and this act is in force from its passage.

## **Chapter 311 Affordable housing; permitting certain densities in plan in City of Charlottesville.**

An Act to grant certain authority related to affordable housing to the City of Charlottesville.

[\[H 883\]](#)

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1.

§ 1. A. *The governing body of the City of Charlottesville may provide in its comprehensive plan for the physical development within the city, adopted pursuant to § [15.2-](#)*

[2223](#) of the Code of Virginia, for densities of development ranging between a floor area ratio (FAR) of 1.0 FAR and 10.0 FAR, or greater, and as such, the governing body may adopt as part of its zoning ordinance requirements for the provision of (i) on-site or off-site "Affordable Dwelling Units," as defined herein, or (ii) a cash contribution to the city's affordable housing fund, in lieu of such units, in such amounts as set out herein, as a condition of the governing body's approval of a rezoning or special use application for residential or the residential portion of mixed-use projects with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre. Residential or the residential portion of mixed-use projects with a density less than 1.0 FAR, or an equivalent density based on units per acre, shall be exempt from the requirements of this section and the city's zoning ordinance adopted pursuant to this section. The city's zoning ordinance requirements shall provide as follows:

1. Upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant shall provide on-site Affordable Dwelling Units as part of the project, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that exceeds 1.0 FAR or an equivalent density based on units per acre. For purposes of this section, "applicant" shall mean the person or entity submitting a rezoning or special use application for approval of a residential or mixed-use project that contains residential dwelling units in the city and shall include the successors or assigns of the applicant.
2. As an alternative, upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant may elect to provide any one of the following:
  - a. Affordable Dwelling Units at an off-site location in the city, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that is over 1.0 FAR, or an equivalent density based on units per acre; or
  - b. A cash contribution to the city's affordable housing fund, which contribution shall be calculated as follows for each of the density tiers described below:
    - (1) Two dollars per square foot of gross floor area for residential projects greater than 1.0 FAR or an equivalent density based on units per acre.
    - (2) For mixed-use projects, cash contributions shall be calculated by applying the proportionate amount of residential gross floor area at two dollars per square foot.

*The cash contribution shall be indexed to the Consumer Price Index for Housing in the Charlottesville MSA as published by the Bureau of Labor Statistics and shall be adjusted annually based upon the changes made in January to such index.*

*3. For purposes of this section, "Affordable Dwelling Units" mean units committed for a 30-year term as affordable to households with incomes at 60 percent or less of the area median income.*

*B. With the exception of the authority under § [15.2-2305](#) of the Code of Virginia, this section establishes the legislative authority for the city to obtain Affordable Dwelling Units in exchange for the approval of a rezoning or special use application for a residential, or mixed-use project that contains residential dwelling units in the city, and may not be used in combination with any other provision of law in this chapter to obtain Affordable Dwelling Units from an applicant. Nothing in this section shall be construed to repeal the city's authority under any other provision of law.*

## **Chapter 395 Congressional, Senate, & House of Delegates districts; makes technical adjustment between districts.**

An Act to make technical adjustments to certain Congressional, Senatorial, and House of Delegates District boundaries.

[\[H 1494\]](#)

Approved March 5, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any provision of Chapter 3 (§ [24.2-300](#) et seq.) of Title 24.2 of the Code of Virginia to the contrary, all references in said Chapter 3 shall be interpreted to refer to the boundaries of York County and the City of Newport News in existence on January 1, 2008. That territory transferred from the City of Newport News to York County by boundary adjustment effective July 1, 2007, shall be included in the First Congressional District, Third Senatorial District, and Ninety-sixth House of Delegates District. Of that territory transferred from York County to the City of Newport News by boundary adjustment effective July 1, 2007, the part bounded by the previous York County-City of Newport News boundary line, Fort Eustis Boulevard, and Richneck Road shall be included in the Third Congressional District, Third Senatorial District, and*

*Ninety-third House of Delegates District. Said territory is comprised of the 2000 census blocks 511990503012010, 511990503012011, 511990503012012, and 511990503012013. All other territory transferred to the City of Newport News by said boundary adjustment shall be included in the First Congressional District, First Senatorial District, and Ninety-third House of Delegates District.*

## **Chapter 432 License plates, special; issuance for supporters of Lake Taylor Transitional Care Hospital Foundatn.**

An Act to authorize the issuance of special license plates to supporters of the Lake Taylor Transitional Care Hospital Foundation; fees.

[\[H 269\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of Lake Taylor Transitional Care Hospital Foundation; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Lake Taylor Transitional Care Hospital Foundation.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Lake Taylor Transitional Care Hospital Foundation Fund established within the Department of Accounts. These funds shall be paid annually to the Lake Taylor Transitional Care Hospital Foundation and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 427 License plates, special; eliminates fee to family of persons who have died in military service.**

An Act to amend and reenact § 2 of the second enactment of Chapter 852 and § 6 of the first enactment of Chapter 918 of the Acts of Assembly of 2006, relating to the fee charged for issuance of special license plates for immediate family members of persons who have died in military service to their country.

[\[H 2\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the second enactment of Chapter 852 and § 6 of the first enactment of Chapter 918 of the Acts of Assembly of 2006 are amended and reenacted as follows:

§ 2. Special license plates for immediate family members of persons who have died in military service to their country; fees.

The Commissioner of the Department of Motor Vehicles shall issue special license plates, as prescribed herein, on receipt of an application and written evidence that the applicant is the owner of a motor vehicle and is a member of the immediate family of a member of the armed forces of the United States who lost his or her life under any of the following conditions:

1. During World War I, World War II, or any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;
2. Anytime after June 30, 1958:
  - a. While engaged in an action against an enemy of the United States;
  - b. While engaged in military operations involving conflict with an opposing foreign force;
  - c. While serving with friendly forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or
3. Anytime after March 28, 1973, as a result of:
  - a. An international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the United States Secretary of Defense; or
  - b. Military operations while serving outside the United States, including commonwealths, territories, and possessions of the United States, as part of a peacekeeping force.

For the purposes of this section, a member of the immediate family shall include (i) a widow or widower, remarried or not; (ii) a mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis; (iii) each child, stepchild, and adopted child; and (iv) each brother, half-brother, sister, and half-sister.

For each set of license plates issued under this section, the Commissioner shall charge, ~~in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.~~

The provisions of subdivisions B 1 and B 2 of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued under this section.

§ 6. Special license plates for immediate family members of persons who have died in military service to their country; fees.

The Commissioner of the Department of Motor Vehicles shall issue special license plates, as prescribed herein, on receipt of an application and written evidence that the applicant is the owner of a motor vehicle and is a member of the immediate family of a member of the armed forces of the United States who lost his or her life under any of the following conditions:

1. During World War I, World War II, or any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;
2. Anytime after June 30, 1958:
  - a. While engaged in an action against an enemy of the United States;
  - b. While engaged in military operations involving conflict with an opposing foreign force;
  - c. While serving with friendly forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or
3. Anytime after March 28, 1973, as a result of:
  - a. An international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the U.S. Secretary of Defense; or
  - b. Military operations while serving outside the United States, including commonwealths, territories, and possessions of the United States, as part of a peacekeeping force.

For the purposes of this section, a member of the immediate family shall include (i) a widow or widower, remarried or not; (ii) a mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis; (iii) each child, stepchild, and adopted child; and (iv) each brother, half-brother, sister, and half-sister.

For each set of license plates issued under this section, the Commissioner shall charge, ~~in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.~~

The provisions of subdivisions B 1 and B 2 of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued under this section.

## **Chapter 436 Special license plates; sesquicentennial of the American Civil War.**

An Act to authorize the issuance of special license plates marking the sesquicentennial of the American Civil War; fees.

[\[H 631\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates marking the sesquicentennial of the American Civil War; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates marking the sesquicentennial of the American Civil War.*

*B. For each set of license plates issued pursuant to this act, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$15 at the time the plates are issued. For each such \$15 fee collected, \$5 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Sesquicentennial of the American Civil War Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Sesquicentennial of the American Civil War Commission and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*C. The provisions of subdivisions 1 and 2 of subsection B of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued pursuant to this act.*

*D. The provisions of this act shall expire on July 1, 2015.*

## Chapter 448 Child support enforcement; establishing Intensive Case Monitoring pilot programs.

An Act authorizing the Department of Social Services to establish Intensive Case Monitoring pilot programs for child support enforcement in order to reduce jail overcrowding, provide less costly child support enforcement alternatives, and maximize the potential for child support payment.

[\[H 1257\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services is authorized to establish pilot programs in four judicial districts within the Commonwealth to provide Intensive Case Monitoring Programs for noncustodial parents who are referred to the program upon failure to pay child support following an administrative determination or an order of the court. Such programs shall provide referrals to (i) employment services, to include employment assessment, employment search, and employment training; (ii) family services, including parenting skills, co-parenting skills, and relationship-building activities for parents and children; (iii) educational services, including GED preparation and GED testing; (iv) housing services, including referrals to organizations that operate shelters and provide subsidies; (v) document assistance, including referrals to organizations and assistance in securing vital records, driver's licenses, commercial driver's licenses, or other documents; and (vi) social services, health and mental health services, substance abuse services, or other services that may be necessary to enable the person to pay child support owed in the future. Programs authorized pursuant to this section shall also offer case management services, to include (a) assistance in developing a plan identifying services and programs necessary to comply with the requirements of any administrative or court order referring the person to the program, (b) assistance in making contacts and appointments with organizations offering those services and programs, (c) appointment reminders and follow-up to determine any next steps that may be required, (d) tracking of compliance with any administrative or court order referring the person to the program, and (e) regular reporting to the court regarding compliance with the order referring the*

*person to the program.*

2. That the provisions of this act shall not become effective unless general funds effectuating the purposes of this act are included in the general appropriation act passed by the 2008 Session of the General Assembly, which becomes law.

## **Chapter 454 Comprehensive highway access management standards; Commissioner to promulgate in phases.**

An Act to authorize promulgation of the comprehensive highway access management standards in phases and to amend and reenact the second, third, and fourth enactments of Chapter 863 and Chapter 928 of the Acts of Assembly of 2007, relating to comprehensive highway access management standards; implementation.

[\[H 1572\]](#)

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1. That the second, third, and fourth enactments of Chapter 863 of the Acts of Assembly of 2007 are amended and reenacted as follows:
2. That the *provisions of the first enactment of this act shall be done in phases and that the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards not later than December 31, 2007. Such standards as they relate to principal arterial roads shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009.*
3. That the *full provisions of the first enactment of this act shall become effective July 1, 2008. However, the standards required by this act for minor arterial roads and collector roads shall become effective on October 1, 2009.*
4. That, until July 1, 2008, the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia as may be necessary to carry out the provisions of this act *as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.*

2. That the second, third, and fourth enactments of Chapter 928 of the Acts of Assembly of 2007 are amended and reenacted as follows:

2. That *the provisions of the first enactment of this act shall be done in phases and that the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards no later than December 31, 2007. Such standards shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009.*

3. That the *full provisions of the first enactment of this act shall become effective on July 1, 2008. However, the standards required by this act for minor arterial roads and collector roads shall become effective on October 1, 2009.*

4. That, until July 1, 2008, the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#); et seq.) of the Code of Virginia as may be necessary to carry out the provisions of this act *as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.*

3. That publication of the General Notice concerning proposed Access Management Regulations in The Virginia Register on October 15, 2007, shall be considered a Notice of Intended Regulatory Action under the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia for promulgation of comprehensive access management regulations for minor arterial roads and collector roads. The proposed standards for minor arterial roads and collector roads shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations to begin the comment period under the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.

4. That the standards for the principal arterial roads developed during the first phase of the comprehensive access management regulations shall be filed with the Registrar of Regulations within 30 days of the effective date of this act for publication in the Virginia Register of Regulations as a final regulation.

5. That an emergency exists and this act is in force from its passage.

## **Chapter 505 Claims; Anthony Fields.**

An Act for the relief of Anthony Fields.

[\[H 688\]](#)

Approved March 10, 2008

Whereas, Anthony Fields (Mr. Fields) was convicted on December 20, 1993, of possession of cocaine; and

Whereas, Mr. Fields was given credit for time previously served, and was paroled on March 11, 1999; and

Whereas, Mr. Fields was arrested for a parole violation and returned to incarceration on May 17, 1999; and

Whereas, the date recorded on official records as his return to incarceration was erroneously listed as May 17, 2000, not May 17, 1999; and

Whereas, the error in the records was not discovered until September of 2003; and

Whereas, Mr. Fields was released from incarceration on September 12, 2003; and

Whereas, Mr. Fields should have been released from incarceration on September 25, 2002, but for the erroneously recorded return date; and

Whereas, due to the error, Mr. Fields served 12 more months than his sentence required him to serve; and

Whereas, Mr. Fields has not been arrested or incarcerated since his release in September 2003; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there shall be paid for the relief of Anthony Fields from the State Insurance Reserve Trust Fund of the state treasury, upon execution of a release and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia, and (iii) all other parties of interest from any present or future claims he may have against such enumerated parties in connection with the aforesaid occurrence, the sum of \$32,544 on or before August 1, 2008, by check issued by the State Treasurer on warrant of the Comptroller.*

## **Chapter 546 Health insurance; State Corporation Commission to develop uniform group application form.**

An Act to direct the State Corporation Commission to develop a uniform group health insurance application form.

[\[H 728\]](#)

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission, acting through its Bureau of Insurance, by July 1, 2009, shall develop a uniform group health insurance application form. The Bureau of Insurance shall convene a work group, comprised of representatives of insurers, insurance agent organizations, employer organizations, and the Virginia Association of Health Plans, to assist it in its development of the uniform group health insurance application form.*

*A uniform group health insurance application form shall allow employers that are required to provide information regarding their employees to an insurer when applying for a group health insurance policy to use a standardized form that group insurers may elect to accept. The development of the uniform group health insurance application form is intended to relieve employers of the burden of completing separate application forms for each insurer with which the employer applies for insurance or from which the employer seeks information regarding such matters as rates, coverage, and availability. The use of the uniform group health insurance application form by insurers and employers shall be voluntary.*

*The Bureau of Insurance, with the assistance of the work group, shall determine (i) the preprinted information, including the title, heading, backing, or other indication of contents, to be stated on the form and (ii) appropriate limitations on the use of the form, including, but not limited to, its use in obtaining rate or premium quotes, whether its use should be limited to online applications, and whether insurers that agree to use the application form be identified on the form.*

*Upon completion of its development of the uniform group health insurance application form, the Bureau of Insurance shall provide a copy to all insurers, along with instructions for its use.*

*The Bureau of Insurance shall revise, as appropriate, the uniform group health insurance application form to ensure its ongoing compliance with all applicable statutory and regulatory requirements and shall communicate to insurers any necessary changes to the uniform group health insurance application form.*

*For purposes of this section, "insurers" means all companies licensed in the Commonwealth to write accident and sickness insurance, all health maintenance*

*organizations licensed in the Commonwealth, and all health services plans licensed in the Commonwealth issuing policies or contracts of accident and sickness insurance on a group basis.*

## **Chapter 560 VPI & SU; board of visitors to convey certain property to Virginia Tech Foundation, Inc.**

An Act to authorize the board of visitors of Virginia Polytechnic Institute and State University to convey certain real property to the Virginia Tech Foundation, Inc. to allow the expansion of the Virginia Tech Corporate Research Center.

[\[S 119\]](#)

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any law to the contrary, the board of visitors of Virginia Polytechnic Institute and State University, with the approval of the Governor pursuant to [§ 2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the Virginia Tech Foundation, Inc. all that certain piece or parcel of land located in the County of Montgomery, Virginia, consisting of 95 acres, more or less, adjacent to the Virginia Tech Corporate Research Center, and more specifically identified as a part of Parcel ID 070853 as shown on Map Number 316-1-37 and part of Parcel ID 070905 as shown on Map Number 256-A-1, the precise boundaries and acreage to be determined by a physical survey to be conducted prior to closing on the property. The conveyance shall be on such terms and conditions as the board of visitors deems appropriate.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 575 Administrative Process Act; public participation guidelines for executive branch agencies.**

An Act to standardize public participation guidelines for executive branch agencies.

[\[S 734\]](#)

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That on or before July 1, 2008, the Department of Planning and Budget, in consultation with the Office of the Attorney General, shall (i) develop model public participation guidelines meeting the requirements of § [2.2-4007.02](#) of the Code of Virginia and (ii) provide these model public participation guidelines to each agency that has the authority to promulgate regulations. By December 1, 2008, each agency shall either (a) adopt the model public participation guidelines or (b) if significant additions or changes are proposed, promulgate the model public participation guidelines with the proposed changes as fast-track regulations pursuant to § [2.2-4012.1](#) of the Code of Virginia. Agency action in adopting the model public participation guidelines in accordance with clause (a) shall be exempt from the operation of Article 2 (§ [2.2-4006](#) et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia. The repeal of any existing public participation guidelines shall occur in the same regulatory action as the promulgation of the model public participation guidelines required by this section.*

*§ 2. The model public participation guidelines adopted pursuant to this act shall apply to the promulgation and adoption of regulations for which a notice of intended regulatory action is filed in accordance with § [2.2-4007.01](#) of the Code of Virginia on or after January 1, 2009.*

*§ 3. However, any amendments made after January 1, 2009, to an agency's public participation guidelines adopted as required by this act shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.*

*§ 4. For the purposes of this act, the terms "agency" and "regulations" mean the same as those terms are defined in § [2.2-4001](#) of the Code of Virginia.*

## **Chapter 606 License plates, special; issuance marking sesquicentennial of Civil War.**

An Act to authorize the issuance of special license plates marking the sesquicentennial of the American Civil War; fees.

[\[S 73\]](#)

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates marking the sesquicentennial of the American Civil War; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates marking the sesquicentennial of the American Civil War.*

*B. For each set of license plates issued pursuant to this act, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$15 at the time the plates are issued. For each such \$15 fee collected, \$5 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Sesquicentennial of the American Civil War Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Sesquicentennial of the American Civil War Commission and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*C. The provisions of subdivisions 1 and 2 of subsection B of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued pursuant to this act.*

*D. The provisions of this act shall expire on July 1, 2015.*

## **Chapter 616 Virginia Commonwealth University; management agreement with State.**

An Act providing a management agreement between the Commonwealth and Virginia Commonwealth University, pursuant to the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

[\[S 358\]](#)

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1. That the following shall hereafter be known as the 2008 Management Agreement Between the Commonwealth of Virginia and Virginia Commonwealth University:

*MANAGEMENT AGREEMENT*

*BY AND BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*This MANAGEMENT AGREEMENT, executed this 15th day of November, 2007, by and between the Commonwealth of Virginia (hereafter, the Commonwealth) and the Rector and Visitors of the Virginia Commonwealth University (hereafter, the University) provides as follows:*

*RECITALS*

*WHEREAS, the University has satisfied the conditions precedent set forth in subsections A and B of § [23-38.97](#) of the Code of Virginia, to become a public institution of higher education of the Commonwealth governed by Subchapter 3 (§ [23-38.91](#) et seq.) of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia (Subchapter 3 and the Act, respectively), as evidenced by:*

- 1. Board of Visitors Approval. The minutes of a meeting of the Board of Visitors of the University held on February 22, 2007, and the accompanying certification of the Secretary of the Board, indicate that an absolute two-thirds or more of the members voted to approve the resolution required by subdivision A 1 of § [23-38.97](#) of the Act;*
- 2. Written Application to the Governor. The University has submitted to the Governor a written Application, dated March 23, 2007, with copies to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health, expressing the sense of its Board of Visitors that the University is qualified to be, and should be, governed by Subchapter 3 of the Act, and substantiating that the University has fulfilled the requirements of paragraph 2 of subsection A of § [23-38.97](#) of the Act; and*
- 3. Finding by the Governor. In accordance with subsection B of § [23-38.97](#) of the Act, the Governor has found that the University has fulfilled the requirements of subdivision A 2*

of § [23-38.97](#), and therefore has authorized Cabinet Secretaries to enter into this Management Agreement on behalf of the Commonwealth with the University; and WHEREAS, the University is therefore authorized to enter into this Management Agreement as provided in subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

AGREEMENT

NOW, THEREFORE, in accordance with the provisions of the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in consideration of the foregoing premises, the Commonwealth and the University do now agree as follows:

ARTICLE 1. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings, unless the context requires otherwise:

"Act" means the Restructured Higher Education Administrative and Financial Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.

"Agreement" means "Management Agreement."

"Board of Visitors" means the Rector and Board of Visitors of Virginia Commonwealth University.

"Covered Employee" means any person who is employed by the University on either a salaried or wage basis.

"Covered Institution" means, on and after the effective date of its initial management agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by and in accordance with the provisions of subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Enabling legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).

"Management Agreement" means this agreement between the Commonwealth of Virginia and the University as required by subsection D of § [23-38.88](#) and Subchapter 3 of the Act.

"Parties" means the parties to this Management Agreement, the Commonwealth of Virginia and the University.

"Public institution of higher education" means those two-year and four-year institutions enumerated in § [23-14](#) of the Code of Virginia.

"University" means Virginia Commonwealth University.

*ARTICLE 2. SCOPE OF MANAGEMENT AGREEMENT.*

*SECTION 2.1. Enhanced Authority Granted and Accompanying Accountability.*

*Subchapter 3 of the Act, provides that, upon the execution of, and as of the effective date for, this Management Agreement, the University shall become a Covered Institution entitled to be granted by the Commonwealth and to exercise the powers and authority provided in Subchapter 3 of the Act, that are expressly contained in this Management Agreement. In general, subject to its management agreement with the Commonwealth, status as a Covered Institution governed by Subchapter 3 of the Act, and this Management Agreement is intended to replace (i) the post-General Assembly authorization prior-approval system of reviews, approvals, policies and procedures carried out and implemented by a variety of central State agencies with (ii) a post-audit system of reviews and accountability under which a Covered Institution is fully responsible and fully accountable for managing itself pursuant to Subchapter 3 of the Act and its management agreement with the Commonwealth.*

*SECTION 2.1.1. Assessments and Accountability. The University and its implementation of the enhanced authority granted by Subchapter 3 of the Act and this Management Agreement, and the Board of Visitors policies attached hereto as Exhibits A through F, shall be subject to the reviews, assessments, and audits (i) set forth in the Act that are to be conducted by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, or (ii) as may be conducted periodically by the Secretaries of Finance, Administration, Education, or Technology, or by some combination of these four Secretaries, or (iii) as otherwise may be required by law other than the Act.*

*SECTION 2.1.2. Express Grant of Powers and Authority. Subject to the specific conditions and limitations contained in Article 4 (Institutional Management), Article 5 (Capital Projects; Procurement; Property Generally), and Article 6 (Human Resources) of Subchapter 3 of the Act, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University by this Management Agreement all the powers and authority contained in certain policies adopted by the Board of Visitors of the University attached hereto as Exhibits A through F and governing (1) the undertaking and implementation of capital projects, and other acquisition and disposition of property (Exhibit A), (2) the leasing of property, including capital leases (Exhibit B), (3) information technology (Exhibit C), (4) the procurement of goods, services, including certain professional services, insurance, and construction (Exhibit D), (5) human resources (Exhibit E), and (6) its system of financial management (Exhibit F), including, as provided in subsection B of § [23-38.104](#) of the Act, the sole authority to establish tuition,*

*fees, room, board, and other charges consistent with sum sufficient appropriation authority for non-general funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. Subject to the specific conditions and limitations contained in Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act, in this Management Agreement, and in one or more of the Board of Visitors policies attached hereto as Exhibits A through F, the Commonwealth and the University agree that the Commonwealth has expressly granted to the University all the powers and authority permitted by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Management Agreement and the policies adopted by it and attached hereto as Exhibits A through F. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate the duties and responsibilities set forth in this Management Agreement to its officers, committees, and subcommittees, and, as set forth in the policies adopted by the Board and attached hereto as Exhibits A through F, to a person or persons within the University.*

*SECTION 2.1.3. Reimbursement by the University of Certain Costs. By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any health or other group insurance or risk management program made available to the University through any agency, body corporate, political subdivision, authority, or other entity of the Commonwealth, and in which the University is then participating, to enable the Commonwealth's actuaries to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from such health or other group insurance or risk management program, the University shall, pursuant to subdivision D 2 c of § [23-38.88](#), reimburse the Commonwealth for all such additional costs attributable to such withdrawal as determined by the Commonwealth's actuaries.*

*SECTION 2.1.4. Potential Impact on Virginia College Savings Plan. As required by subdivision D 2 c of § [23-38.88](#) of the Act, the University has given consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ [23-38.75](#) of the Code of Virginia), has consulted staff of the Plan and examined public documents which set forth the assumptions about tuition increases on which Plan prices are set.*

*Tuition assumptions used by Plan officials to set prices for the future of the Plan are higher than those included by the University in its most recent six-year financial plan transmitted to the State Council of Higher Education for Virginia (SCHEV) pursuant to subdivision B 10 of § [23-38.88](#).*

*SECTION 2.1.5. Justification for Deviations from the Virginia Public Procurement Act. Pursuant to § [23-38.110](#) of the Act, and subject to the provisions of this Management Agreement, the University may be exempt from the provisions of the Virginia Public Procurement Act (VPPA), Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2 of the Code of Virginia. Any procurement policies or rules that deviate from the VPPA must be uniform across all institutions governed by Subchapter 3 of the Act, and the Board of Visitors shall adopt and comply with procurement policies that are based upon competitive principles and seek competition to the maximum practical degree. The Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials and the Rules Governing Procurement of Goods, Services, Insurance, and Construction (the Procurement Rules) attached to that Policy as Attachment 1 constitute the policies and uniform deviations from the VPPA required by subsections A and B of § [23-38.110](#) of the Act.*

*Subsection D of § [23-38.110](#) of the Act requires that the University identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the VPPA. The adopted Board of Visitors policy on procurement and the Procurement Rules provide the University with the autonomy to administer its procurement process while fully adhering to the principle that competition should be sought to the maximum extent feasible. This autonomy will better position the University to support the requirements of its growing teaching, research and outreach missions. Greater autonomy in procurement will improve internal capacity to respond quickly to emergent material and service issues and, therefore, enable the University to be more efficient and effective in meeting the Commonwealth's goals for institutions of higher education. In some instances, costs will be reduced. Taken collectively, the University's procurement policies and rules that differ from those required by the VPPA will enhance procurement "best practices" as they currently are being observed within the higher education community nationally. Further, these changes will provide efficiencies to both the University and public sector suppliers.*

*SECTION 2.1.6. Quantification of Cost Savings. Subsection C of § [23-38.104](#) of the Act requires that a Covered Institution include in its management agreement with the Commonwealth the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to Subchapter 3 of the Act. Since this initial*

*Management Agreement with the Commonwealth has not yet been implemented by the University, the parties agree that the University is not in a position to quantify any such cost savings at this time, although the University expects that there will be cost savings resulting from the additional authority granted to the University pursuant to Subchapter 3 of the Act, and that such cost savings will be part of the determinations made during the reviews, assessments, and audits to be conducted pursuant to Subchapter 3 of the Act by the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and the State Council of Higher Education for Virginia, and as otherwise described in Section 2.1.1 above.*

*SECTION 2.1.7. Participation in State Programs. The Commonwealth intends that the University shall continue to fully participate in, and receive funding support from, the many and varied programs established now or in the future by the Commonwealth to provide support for Virginia's public institutions of higher education and for Virginians attending such institutions, including but not limited to: the state capital outlay and bond financing initiatives undertaken from time to time by the Commonwealth; the Higher Education Equipment Trust Fund established pursuant to Chapter 3.2 (§ [23-30.24](#) et seq.) of Title 23 of the Code of Virginia; the Maintenance Reserve Fund as provided in the Appropriation Act; the Eminent Scholars program as provided in the Appropriation Act; the Commonwealth's various student financial assistance programs; and other statewide programs or initiatives that exist, or may be established, in support of the Commonwealth's higher education institutions, programs, or activities.*

*SECTION 2.1.8. Implied Authority. Pursuant to subdivision D 1 of § [23-38.88](#) of the Act, the only implied authority granted to the University by this Management Agreement is that implied authority that is actually necessary to carry out the expressed grant of financial or operational authority contained in this Agreement or in the policies adopted by the University's Board of Visitors and attached hereto as Exhibits A through F.*

*SECTION 2.1.9. Exercise of Authority. The University and the Commonwealth acknowledge and agree that the execution of this Management Agreement constitutes the conclusion of a process that, as of the effective date of this Agreement, confers upon the University the enhanced authority and operating flexibility described above, all of which is in furtherance of the purposes of Subchapter 3 of the Act. Therefore, without any further conditions or requirements, the University shall, on and after the effective date of this Management Agreement, be authorized to exercise the authority conferred upon it by this Management Agreement and the policies adopted by its Board of Visitors attached hereto as Exhibits A through F, and by Article 3 (Powers and Authority Generally) of Subchapter 3 of the Act except to the extent that the powers and authority contained in*

*Article 3 of Subchapter 3 of the Act have been limited by this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F.*

*The University and the Commonwealth also acknowledge and agree that, pursuant to subsection A of § [23-38.91](#) of the Act and consistent with the terms of this Management Agreement, the Board of Visitors of the University shall assume full responsibility for management of the University, subject to the requirements and conditions set forth in Subchapter 3 of the Act, the general requirements for this Management Agreement as provided in § [23-38.88](#) of the Act, and this Management Agreement. The Board of Visitors shall be fully accountable for (a) the management of the University as provided in the Act, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.02](#), and [23-9.6:1.01](#) of the Code of Virginia, and (c) meeting such other provisions as are set forth in this Management Agreement.*

#### *SECTION 2.2. State Goals.*

*SECTION 2.2.1. Furthering State Goals. As required for all public institutions of higher education of the Commonwealth by subsection B of § [23-38.88](#) of the Code of Virginia, prior to August 1, 2005, the Board of Visitors of the University adopted the resolution setting forth its commitment to the Governor and the General Assembly to meet the State goals specified in that subsection B. In addition to the above commitments, the University commits to furthering these State goals by:*

*1. In addition to its six-year target of achieving about \$161.8 million in external research expenditures by 2011-12, the University commits to match from institutional funds, other than general funds or tuition, on a dollar-for-dollar basis, any additional research funds provided by the State in the Appropriation Act above the amount provided from institutional funds for research in 2007-08.*

*2. Virginia Commonwealth University (VCU) is committed to improving retention and graduation rates, without changing its core mission of access. The University has a diverse student body, a large number of whom are first generation college students and many of whom work in addition to attending college.*

*Major investments have recently been made in initiatives like the University College, which provides intensive advising and academic support for all first year students, and the VCU Compact, a university-wide academic experience for first year students that provides the foundation for lifelong learning and success. The University has also approved a Core Curriculum, providing a common set of general education courses required for all University undergraduates. These efforts are designed to positively impact freshman retention rates, which have steadily improved from 73.5 percent for the fall 1998 freshmen to 82.3 percent for the fall 2006 cohort. As these efforts continue,*

*VCU expects freshman retention rates to increase further, reaching about 85 percent by fall 2010.*

*These efforts are also designed to improve the University's six-year graduation rate, although the major impact of these fundamental improvements will not be seen immediately. Graduation rates are improving, from 40.8 percent for the cohort of first-time, full-time freshmen entering in the fall of 1998 to 45.2 percent for the cohort of freshmen entering in the fall 2000. As the first cohorts of freshmen benefiting from the University College and the VCU Compact progress, six-year graduation rates should reach 50 percent for the cohort of first-time, full-time freshman who entered in the fall of 2006.*

*SECTION 2.2.2. Student Enrollment, Tuition, and Financial Aid. As required by § [23-9.2:3.02](#) of the Code of Virginia, the University, along with all other public institutions of higher education of the Commonwealth, has developed and submitted to the State Council of Higher Education for Virginia (SCHEV) by October 1, 2007, an institution-specific Six-Year Plan addressing the University's academic, financial, and enrollment plans for the six-year period of fiscal years 2008-10 through 2013-14. Subsection A of § [23-9.2:3.02](#) requires the University to update this Six-Year Plan by October 1 of each odd-numbered year. Subsection B of § [23-38.97](#) of the Act requires that a management agreement address, among other issues, such matters as the University's in-state undergraduate student enrollment, its financial aid requirements and capabilities, and its tuition policy for in-state undergraduate students. These matters are addressed in the University's Six-Year Plan submitted to SCHEV, and the parties therefore agree that the University's Six-Year Plan and the description below meet the requirement of subsection B of § [23-38.97](#) of the Act.*

*Subsection B of § [23-38.104](#) of the Act requires the Board of Visitors of the University to include in this Management Agreement the University's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees.*

*Virginia Commonwealth University has made significant efforts to provide additional institutional funding for financial aid. The University has continued this pledge in its most recently submitted six-year financial plan, increasing the amount of undergraduate need-based financial aid available to Virginia students each year in response to unavoidable increases in undergraduate tuition and fees.*

*Rather than using this additional institutional funding to decrease unmet financial need across the board, the University will strategically invest these resources to further the*

*state and university goals of ensuring access, serving more Virginia community college transfer students, and increasing retention and graduation rates.*

*The University has a firm commitment to its mission of access, and to serving a diverse student population, many of whom are first-generation college students. To further address access and affordability, the University will establish a new Access Grant Program. The program will provide a grant of about \$1,500 for resident freshmen and sophomores who come to the University from families at or below the federal poverty level (as measured against the federal guidelines associated with the tax year used for the federal aid application). The goal of this program will be to partially relieve the exceptional financial pressure, and correspondingly high risk of early attrition, experienced by this group of students.*

*To serve more transfer students from the Virginia Community College System, the University will also establish a new Transfer Achievement Scholarship. These \$1,000 scholarships will be targeted to students with demonstrated financial need who transfer to the University with an associate degree earned from a Virginia community college with a minimum GPA of 3.00. The goal of the program will be to partially address the financial needs of academically strong Virginia residents who have earned an associate degree from a Virginia community college.*

*To address retention and graduate rates, the University will also enhance two existing scholarship programs. At present, the University's Academic Performance Scholarships are available to high-performing, rising sophomore students with demonstrated need who did not receive scholarships as entering freshmen. These scholarships will be expanded to include rising juniors. The goal of the expansion is to increase the sophomore to junior retention rate for academically capable students who have unmet financial need. The current Academic Achievement Scholarships, which combine merit and need-based grants targeted to highly qualified entering freshmen from Virginia not receiving a Dean's level scholarship, will be enhanced by increasing the award from the current \$1,000 to about \$1,500.*

*Because the University will strategically invest these resources to further the state and university goals of ensuring access, serving more Virginia community college transfer students, and increasing retention and graduation rates, the metrics used to measure progress in the area of financial aid will be the same as those to which the University will be held under existing Institutional Performance Standards.*

*While the additional institutional support for financial aid is vital, the University believes that the best way to ensure that all Virginia students can attend college is to keep tuition affordable. Keeping college affordable is especially important to the University,*

*considering its mission to serve first-generation college students, many of whom come from families with limited income. For many years now, the University has had the lowest tuition and fees for in-state undergraduates among Virginia's public doctoral universities. The Commonwealth and the University agree that this commitment meets the requirements of subsection B of § [23-38.104](#) of the Act.*

*SECTION 2.3. Other Law. As provided in subsection B of § [23-38.91](#) of the Act, the University shall be governed and administered in the manner provided not only in this Management Agreement, but also as provided in the Appropriation Act then in effect and the University's Enabling Legislation.*

*SECTION 2.3.1. The Appropriation Act. The Commonwealth and the University agree that, pursuant to the current terms of the Act and the terms of § 4-11.00 of the 2006-08 Appropriation Act, if there is a conflict between the provisions of the Appropriation Act and the provisions of Subchapter 3 of the Act, or this Management Agreement, or the Board of Visitors policies attached to this Management Agreement as Exhibits A through F, the provisions of the Appropriation Act shall control, and shall continue to control unless provided otherwise by law.*

*SECTION 2.3.2. The University's Enabling Legislation. As provided in subsection C of § [23-38.91](#) of the Act, in the event of a conflict between any provision of Subchapter 3 of this Act and the University's Enabling Legislation, the Enabling Legislation shall control, except as provided in subdivision A 1 b of § [23-38.112](#) of the Act, regarding § [23-77.1](#).*

*SECTION 2.3.3. Title 2.2 of the Code of Virginia. As provided in subsection B of § [23-38.92](#) of the Act, except as specifically made inapplicable under Subchapter 3 of the Act and the express terms of this Management Agreement, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to the University as provided by the express terms of this Management Agreement. As further provided in subsection C of § [23-38.92](#) of the Act, in the event of conflict between any provision of Title 2.2 and any provision of Subchapter 3 of the Act as expressed in this Management Agreement, the provisions of this Management Agreement shall control.*

*SECTION 2.3.4. Educational Policies of the Commonwealth. As provided in subsection A of § [23-38.93](#) of the Act, for purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.02](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.) of the Code of Virginia, the University shall remain a public institution of higher education of the Commonwealth following the effective date of this Management Agreement, and shall retain the authority granted and any*

*obligations required by such provisions, unless and until provided otherwise by law other than the Act. In addition, the University shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.), Chapter 3 (§ [23-14](#) et seq.), Chapter 3.2 (§ [23-30.23](#) et seq.), Chapter 3.3 (§ [23-30.39](#) et seq.), Chapter 4 (§ [23-31](#) et seq.), Chapter 4.01 (§ [23-38.10:2](#) et seq.), Chapter 4.1 (§ [23-38.11](#) et seq.), Chapter 4.4 (§ [23-38.45](#) et seq.), Chapter 4.4:2 (§ [23-38.53:4](#) et seq.), Chapter 4.4:3 (§ [23-38.53:11](#)), Chapter 4.4:4 (§ [23-38.53:12](#) et seq.), Chapter 4.5 (§ [23-38.54](#) et seq.), Chapter 4.8 (§ [23-38.72](#) et seq.), and Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 of the Code of Virginia, unless and until provided otherwise by law other than the Act.*

*SECTION 2.3.5. Public Access to Information. As provided in § [23-38.95](#) of the Act, the University shall continue to be subject to § [2.2-4342](#) and to the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, and may conduct business as a "state public body" for purposes of subsection B of § [2.2-3708](#).*

*SECTION 2.3.6. Conflicts of Interests. As provided in § [23-38.96](#) of the Act, the provisions of the State and Local Government Conflict of Interests Act, Chapter 32 (§ [2.2-3100](#) et seq.) that are applicable to officers and employees of a state governmental agency shall continue to apply to the members of the Board of Visitors of the University and to its Covered Employees.*

*SECTION 2.3.7. Other Provisions of the Code of Virginia. Other than as specified above, any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, are not affected by this Management Agreement or the Board policies attached hereto as Exhibits A through F.*

#### **ARTICLE 3. AMENDMENTS TO, AND RIGHT AND POWER TO VOID OR REVOKE, MANAGEMENT AGREEMENT.**

*SECTION 3.1. Amendments. Any change to or deviation from this Management Agreement or the Board of Visitors policies attached hereto as Exhibits A through F shall be reported to the Secretaries of Finance, Administration, Education, and Technology and to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and shall be posted on the University's website. The change or deviation shall become effective unless one of the above persons notifies the University in writing within 60 days that the change or deviation is substantial and material. Any substantial and material change or deviation shall require the execution by the parties of an amendment to this Management Agreement or a new Management Agreement pursuant to the*

provisions of subsection D of § [23-38.88](#) and may lead to the Governor declaring this Management Agreement to be void pursuant to subdivision D 4 of § [23-38.88](#) of the Act.

**SECTION 3.2. Right and Power to Void, Revoke, or Reinstate Management Agreement.**

**SECTION 3.2.1. Governor.** Pursuant to subdivision D 4 of § [23-38.88](#) and § [23-38.98](#), of the Act, if the Governor makes a written determination that the University is not in substantial compliance with the terms of this Management Agreement or with the requirements of the Act in general, (i) the Governor shall provide a copy of that written determination to the Rector of the Board of Visitors of the University and to the members of the General Assembly, and (ii) the University shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of this Management Agreement and with the requirements of the Act, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the University, the Governor determines that the institution is not yet in substantial compliance with this Management Agreement or the requirements of the Act, the Governor may void this Management Agreement.

Upon the Governor voiding this Management Agreement, the University shall no longer be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 of the Act unless and until the University has entered into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the voided Management Agreement is reinstated by the General Assembly.

**SECTION 3.2.2. General Assembly.** As provided in subdivision D 4 of § [23-38.88](#) of the Act, the General Assembly may reinstate a Management Agreement declared void by the Governor. Pursuant to § [23-38.98](#) of the Act, the University's status as a Covered Institution governed by Subchapter 3 of the Act may be revoked by an act of the General Assembly (i) if the University fails to meet the requirements of Subchapter 3 of the Act, or (ii) if the University fails to meet the requirements of this Management Agreement.

**ARTICLE 4. GENERAL PROVISIONS.**

**SECTION 4.1. No Third-Party Beneficiary Status.** Nothing in this Agreement, express or implied, shall be construed as conferring any third-party beneficiary status on any person or entity.

**SECTION 4.2. Sovereign Immunity.** Pursuant to subsection E of § [23-38.88](#) of the Act, the University and the members of its Board of Visitors, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the University were not governed by the Act; provided that the Virginia Tort

*Claims Act (§ [8.01-195.1](#) et seq.) of the Code of Virginia and its limitations on recoveries shall remain applicable with respect to the University.*

*SECTION 4.3. Term of Agreement. This Management Agreement shall expire at midnight on June 30, 2012.*

*WHEREFORE, the foregoing Management Agreement has been executed as of this 15<sup>th</sup> day of November, 2007, and shall become effective on the effective date of legislation enacted into law providing for the terms of such Agreement.*

*EXHIBIT A*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING CAPITAL PROJECTS*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING CAPITAL PROJECTS*

*I. PREAMBLE.*

*In 1996, § 4-5.08 of the Appropriation Act (Chapter 912), delegated limited autonomy to the University as a whole for non-general fund capital projects. This authority has since been continued through 2002-2004 by subsequent legislative action. That authority was extended to selected capital projects funded through state-supported bonds through § 4-5.08 of the 2003 Appropriation Act (Chapter 1042). Pursuant to this delegation, Virginia*

*Commonwealth University developed a system of reviews and approvals for the university's state general fund and state-supported debt capital projects, which was adopted by the Board of Visitors on April 26, 2004. Subsequent to that adoption, Virginia Commonwealth University entered into a Memorandum of Understanding with the Secretary of Finance and Secretary of Administration, which was signed in February 2005. The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the University may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The University's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the University's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.*

*This Policy is intended to encompass and implement the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Visitors of Virginia Commonwealth University.*

*"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*"Capital Professional Services" means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.*

*"Capital project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Existing Policy Statement" means the Policy Statement Governing Exercise of Post-Appropriation Autonomy for Certain Non-General Fund Capital Projects adopted by the Board of Visitors in April 2004*

*"Major Capital Project(s)" means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means Virginia Commonwealth University.*

### *III. SCOPE OF POLICY.*

*This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.*

*This Policy provides guidance for 1) the process for developing one or more capital project programs for the University, 2) authorization of new capital projects, 3) procurement*

*of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *V. CAPITAL PROGRAM.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the University for a given period of time consistent with the University's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.*

*It shall be University policy that each capital project program shall meet the University's mission and institutional objectives, and be appropriately authorized by the University. Moreover, it shall be University policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the University's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.*

#### *VI. AUTHORIZATION OF CAPITAL PROJECTS.*

*The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt procedures*

*for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.*

*It shall be the policy of the University that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, for all other capital projects. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure strict adherence to this requirement.*

*Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through the Senior Vice President for Finance and Administration or other designee, to be justified. Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.*

#### **VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.**

*It shall be the policy of the University that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the University is committed to:*

- Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

- Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or University policy;*

- Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations; and*

*Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers. The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the University.*

*The procedures shall implement this Policy and provide for:*

*A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000 pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;*

*A prequalification procedure for contractors or products;*

*A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and*

*A prompt payment procedure.*

*The University also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the University, the purposes of this Policy will be furthered.*

#### **VIII. DESIGN REVIEWS AND CODE APPROVALS.**

*The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt procedures for design review*

*and project authorization based on the size, scope and cost estimate provided with the design. It shall be the University's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall designate a Building Official responsible for building code compliance by either (i) hiring an individual to be the University Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the University Building Official shall be a full-time employee, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The University Building Official shall issue building permits for each project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that project and that such project has been inspected by the State Fire Marshal or his designee as required. The University Building Official shall organizationally report directly and exclusively to the Board of Visitors. If the University hires its own University Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects or engineers who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia, for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired under the University's personnel system as a member of the review unit shall perform other building code-related design, construction, facilities-related project management or facilities management functions for the University.*

#### **IX. ENVIRONMENTAL IMPACT REPORTS.**

*It shall be the policy of the University to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The University shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major*

*Capital Projects but, pursuant to subdivision C 1 of § [23-38.109](#) of the Act, with a cost of \$300,000 or more.*

**X. BUILDING DEMOLITIONS.**

*It shall be the policy of the University to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The University shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.*

**XI. BUILDING OR LAND ACQUISITIONS.**

*It is the policy of the University that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the University shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the University and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.*

**A. Environmental and Land Use Considerations.**

*It is the policy of the University to cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The University shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant*

*areas on the land. Nothing herein shall be construed as requiring the University to comply with local zoning laws and ordinances.*

*B. Infrastructure and Site Condition.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the University to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.*

*C. Title and Survey.*

*A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the University in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the University's ability to own, occupy, convey or develop the real property.*

*D. Appraisal.*

*An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the University.*

*XII. BUILDING OR LAND DISPOSITIONS.*

*The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in*

*accordance with general law applicable to State-owned property and with the University's Enabling Legislation.*

#### *XIII. PROJECT MANAGEMENT SYSTEMS.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall implement one or more systems for the management of capital projects for the University. The systems may include the delegation of project management authority to appropriate University officials, including a grant of authority to such officials to engage in further delegation of authority as the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate.*

*The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to University buildings and grounds.*

*The project management systems may include one or more reporting systems applicable to capital projects whereby University officials responsible for the management of such projects provide appropriate and timely reports to the President, acting through the Senior Vice President for Finance and Administration or other designee, on the status of such projects during construction.*

#### *XIV. REPORTING REQUIREMENTS.*

*In addition to complying with any internal reporting systems contained in the University's project management systems, as described in Section XIII above, the University shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million, the decision to undertake such improvements or renovations shall be communicated as required by subdivision C 3 of § [23-38.109](#) of the Act. As a matter of routine, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.*

*EXHIBIT B*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*LEASES OF REAL PROPERTY*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING LEASES OF REAL PROPERTY*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, Virginia Commonwealth University may have the authority to establish its own system for the leasing of real property. The University's system for implementing this authority is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Leases of real property entered into by the University.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, as defined in § [23-38.89](#) of the Act, are not affected by this Policy.*

## II. DEFINITIONS.

*The following words and terms, when used in this Policy, shall have the following meaning unless the context clearly indicates otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" means the Rector and Visitors of Virginia Commonwealth University.*

*"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.*

*"Covered Institution" means a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by Subchapter 3 of the Act.*

*"Expense Lease" means an Operating Lease of real property under the control of another entity to the University.*

*"Income Lease" means an Operating Lease of real property under the control of the University to another entity.*

*"Lease" or "Leases" means any type of lease involving real property.*

*"Operating Lease" means any lease involving real property, or improvements thereon, that is not a Capital Lease.*

*"University" means Virginia Commonwealth University.*

## III. SCOPE OF POLICY.

*This Policy provides guidance for the implementation of all University Leases.*

## IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

## V. REQUIREMENTS FOR LEASES.

### A. Factors to Be Considered When Entering into Leases.

*All Leases shall be for a purpose consistent with the mission of the University. The decision to enter into a Lease shall be further based upon cost, demonstrated need,*

*compliance with this Policy, consideration of all costs of occupancy, and a determination that the use of the property to be leased is necessary and is efficiently planned. Leases shall also conform to the space planning procedures that may be adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, to ensure that the plan for the space to be leased is consistent with the purpose for which the space is intended.*

*B. Competition to Be Sought to Maximum Practicable Degree.*

*Competition shall be sought to the maximum practicable degree for all Leases. The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to ensure that Leases are procured through competition to the maximum degree practicable and to determine when, under guidelines that may be developed and adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, it is impractical to procure Leases through competition.*

*C. Approval of Form of Lease Required.*

*The form of Leases entered into by the University shall be approved by the University's legal counsel.*

*D. Execution of Leases.*

*All Leases entered into by the University shall be executed only by those University officers or persons authorized by the President or the Senior Vice President for Finance and Administration or other designee, or as may subsequently be authorized by the Board of Visitors, and subject to any such limits or conditions as may be prescribed in the delegation of authority. Subject to the University's Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University, no other University approval shall be required for leases or leasing, nor state approval required except in the case of leases of real property as may be governed by general state law in accordance with §§ [23-38.109](#) and [23-38.112](#) of the Act.*

*E. Capital Leases.*

*The Board of Visitors shall authorize the initiation of Capital Leases pursuant to the authorization process included in the Policy Governing Capital Projects adopted by the Board as part of the Management Agreement between the Commonwealth and the University.*

*F. Compliance with Applicable Law.*

*All Leases of real property by the University shall be consistent with any requirements of law that are contained in the Act or are otherwise applicable.*

*G. Certification of Occupancy.*

*All real property covered by an Expense Lease or leased by the University under a Capital Lease shall be certified for occupancy by the appropriate public body or building official.*

EXHIBIT C

MANAGEMENT AGREEMENT BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

VIRGINIA COMMONWEALTH UNIVERSITY

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE  
OPERATIONS ACT OF 2005

POLICY GOVERNING INFORMATION TECHNOLOGY

THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY

POLICY GOVERNING INFORMATION TECHNOLOGY

I. PREAMBLE.

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides, inter alia, that public institutions of higher education in the Commonwealth of Virginia that have entered into a Management Agreement with the Commonwealth "may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies [sic] Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2 of the Code of Virginia; provided, however, that the governing body of . . . [such] institution shall adopt, and . . . [such] institution shall comply with, policies" that govern the exempted provisions. See § [23-38.111](#) of the Code of Virginia. This Information Technology Policy shall become effective upon the effective date of a Management*

*Agreement authorized by subsection D of § [23-38.88](#) and by § [23-38.97](#) of the Act between the Commonwealth and the University that incorporates this Policy.*

*The Board of Visitors of Virginia Commonwealth University is authorized to adopt this Information Technology Policy pursuant to § [23-38.111](#) of the Code of Virginia.*

## *II. DEFINITIONS.*

*As used in this Information Technology Policy, the following terms have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Information Technology" or "IT" shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Major information technology project" or "major IT project" shall have the same meaning as set forth in § [2.2-2006](#) of the Code of Virginia as it currently exists and from time to time may be amended.*

*"Policy" means this Information Technology Policy adopted by the Board of Visitors.*

*"State Chief Information Officer" or "State CIO" means the Chief Information Officer of the Commonwealth of Virginia.*

*"University" means Virginia Commonwealth University.*

## *III. SCOPE OF POLICY.*

*This Policy is intended to cover and implement the authority that may be granted to Virginia Commonwealth University pursuant to Subchapter 3 (§ [23-38.91](#) et seq.) of the Act. This Policy is not intended to affect any other powers and authorities granted to the University pursuant to the Appropriation Act and the Code of Virginia, including other provisions of the Act or the University's enabling legislation as that term is defined in § [23-38.89](#) of the Act.*

*This Policy shall govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University. Upon the effective date of a Management Agreement between the Commonwealth and the University, as authorized by subsection D of § [23-38.88](#) and by § [23-38.111](#), therefore, the University shall be exempt from those provisions of the Code of Virginia, including those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia, that otherwise would*

*govern the University's information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits conducted within, by, or on behalf of the University; provided, however, that the University still shall be subject to those provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) (Virginia Information Technologies Agency) and of Article 20 (§ [2.2-2457](#) et seq.) (Information Technology Investment Board) of Chapter 24 of Title 2.2 of the Code of Virginia that are applicable to public institutions of higher education of the Commonwealth and that do not govern information technology strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, security, and audits within, by, or on behalf of the University.*

*The procurement of information technology and telecommunications goods and services, including automated data processing hardware and software, shall be governed by the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials approved by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction that are incorporated in and attached to that Policy.*

#### *IV. GENERAL PROVISIONS.*

##### *A. Board of Visitors Accountability and Delegation of Authority.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

##### *B. Strategic Planning.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for overall IT strategic planning at the University, which shall be linked to and in support of the University's overall strategic plan.*

*At least 45 days prior to each fiscal year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available the University's IT strategic plan covering the next fiscal year to the State CIO for his review and comment with regard to the consistency of the University's plan with the intent of the currently published overall five-year IT strategic plan for the Commonwealth developed*

by the State CIO pursuant to § [2.2-2007](#) of the Code of Virginia, and into which the University's plan is to be incorporated.

*C. Expenditure Reporting and Budgeting.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall approve and be responsible for overall IT budgeting and investments at the University. The University's IT budget and investments shall be linked to and in support of the University's IT strategic plan, and shall be consistent with general University policies, the Board-approved annual operating budget, and other Board approvals for certain procurements.*

*By October 1 of each year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available to the State CIO and the Information Technology Investment Board a report on the previous fiscal year's IT expenditures.*

*The University shall be specifically exempt from:*

*Subdivision A 4 of § [2.2-2007](#) of the Code of Virginia (review by the State CIO of IT budget requests), as it currently exists and from time to time may be amended;*

*§§ [2.2-2022](#), [2.2-2023](#), and [2.2-2024](#) of the Code of Virginia (Virginia Technology Infrastructure Fund), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT expenditure reporting and budgeting, as it currently exists and from time to time may be amended.*

*D. Project Management.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the project management policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project management as defined by leading IT consulting firms, leading software development firms, or a nationally-recognized project management association, appropriately tailored to the specific circumstances of the University. Copies of the Board's policies, standards, and guidelines shall be made available to the Information Technology Investment Board.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall oversee the management of all University IT projects. IT projects may include, but are not limited to, upgrades to network infrastructure, provision of technology to support research, database development, implementation of new applications, and development of IT services for students, faculty, staff, and patients. Day-to-day management of projects shall be the responsibility of appointed project directors and shall be in accord with the project management policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*On a quarterly basis, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall report to the Information Technology Investment Board on the budget, schedule, and overall status of the University's major IT projects. This requirement shall not apply to research projects, research initiatives, or instructional programs.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for decisions to substantially alter a project's scope, budget, or schedule after initial approval.*

*The University shall be specifically exempt from:*

*§ [2.2-2008](#) of Title 2.2 of the Code of Virginia (additional duties of the State CIO relating to project management), as it currently exists and from time to time may be amended;*

*§§ [2.2-2016](#) through [2.2-2021](#) of Title 2.2 of the Code of Virginia (Division of Project Management), as they currently exist and from time to time may be amended; and*

*Any other substantially similar provision of the Code of Virginia governing IT project management, as it currently exists or from time to time may be amended.*

*The State CIO and the Information Technology Investment Board shall continue to have the authority regarding project suspension and termination as provided in § [2.2-2015](#) and in subdivision A 3 of § [2.2-2458](#), respectively, and the State CIO and the Information Technology Investment Board shall continue to provide the University with reasonable notice of, and a reasonable opportunity to correct, any identified problems before a project is terminated.*

*E. Infrastructure, Architecture, Ongoing Operations, and Security.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines related to IT infrastructure, architecture, ongoing operations, and security developed by the Commonwealth or those of nationally-recognized associations, appropriately tailored to the specific circumstances of the University. Copies of the policies shall be made available to the Information Technology Investment Board.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall be responsible for implementing such policies, standards, and guidelines adopted by the Board, as amended and revised from time to time.*

*For purposes of implementing this Policy, the President shall appoint an existing University employee to serve as a liaison between the University and the State CIO.*

*F. Audits.*

*Pursuant to § [23-38.111](#) of the Act, the Board shall adopt the policies, standards, and guidelines developed by the Commonwealth or those based upon industry best practices for project auditing as defined by leading IT experts, including consulting firms, or a*

*nationally recognized project auditing association, appropriately tailored to the specific circumstances of the University, which provide for Independent Validation and Verification (IV&V) of the University's major IT projects. Copies of the policies, standards, and guidelines, as amended and revised from time to time, shall be made available to the Information Technology Investment Board.*

*Audits of IT strategic planning, expenditure reporting, budgeting, project management, infrastructure, architecture, ongoing operations, and security shall also be the responsibility of the University's Assurance Services Department and the Auditor of Public Accounts.*

*EXHIBIT D*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING*

*THE PROCUREMENT OF GOODS, SERVICES,*

*INSURANCE, AND CONSTRUCTION AND*

*THE DISPOSITION OF SURPLUS MATERIALS*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING THE PROCUREMENT OF*

*GOODS, SERVICES, INSURANCE, AND CONSTRUCTION  
AND THE DISPOSITION OF SURPLUS MATERIALS*

*I. PREAMBLE.*

*A. Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, provides that Virginia Commonwealth University, upon becoming a Covered Institution, shall be authorized to establish its own system for the procurement of goods, services, insurance, and construction, and for the independent disposition of surplus materials by public or private transaction.*

*B. The Act provides that a Covered Institution shall comply with policies adopted by its Board of Visitors for the procurement of goods, services, insurance, and construction, and the disposition of surplus materials. The provisions of this Policy set forth below, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, constitute the adopted Board of Visitors policies required by the Act regarding procurement of goods, services, insurance, and construction, and the disposition of surplus materials by the University.*

*C. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to any other sections of the Code of Virginia, including other provisions of the Act, the Appropriation Act, and the University's Enabling Legislation are not affected by this Policy.*

*II. DEFINITIONS.*

*As used in this Policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Agreement" means "Management Agreement."*

*"Board of Visitors" means the Rector and Visitors of Virginia Commonwealth University.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth, a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the Management Agreement.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the*

*powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) between the Commonwealth of Virginia and Virginia Commonwealth University.*

*"Rules" means the "Rules Governing Procurement of Goods, Services, Insurance, and Construction" attached to this Policy as Attachment 1.*

*"Services" as used in this Policy means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies, and shall include both professional services, which include the practice of accounting, actuarial services, law, dentistry, medicine, optometry, and pharmacy, and nonprofessional services, which include any service not specifically identified as professional services.*

*"Surplus materials" means personal property including, but not limited to, materials, supplies, equipment and recyclable items, that are determined to be surplus by the University.*

*"University" means Virginia Commonwealth University.*

### *III. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

### *IV. GENERAL PROVISIONS.*

#### *A. Adoption of This Policy and Continued Applicability of Other Board of Visitors' Procurement Policies.*

*The University has had decentralization and pilot program autonomy in many procurement functions and activities since the Appropriation Act of 1994. The Act extends and reinforces the autonomy previously granted to the University in Item 330 E of the 1994 Appropriation Act. This Policy therefore is adopted by the Board of Visitors to*

*enable the University to develop a procurement system, as well as a surplus materials disposition system for the University as a whole. Any University electronic procurement system shall integrate or interface with the Commonwealth's electronic procurement system.*

*This Policy shall be effective on the Effective Date of the University's initial Management Agreement with the Commonwealth. The implementing policies and procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, to implement this Policy shall continue to be subject to any other policies adopted by the Board of Visitors affecting procurements at the University, including policies regarding the nature and amounts of procurements that may be undertaken without the approval of the Board of Visitors, or of the President, acting through the Senior Vice President for Finance and Administration or other designee.*

*B. Scope and Purpose of University Procurement Policies.*

*This Policy shall apply to procurements of goods, services, insurance, and construction. It shall be the policy of the University that procurements conducted by the University result in the purchase of high quality goods and services at reasonable prices, and that the University be free, to the maximum extent permitted by law and this Policy, from constraining policies that hinder the ability of the University to do business in a competitive environment. This Policy, together with the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, shall apply to all procurements undertaken by the University, regardless of the source of funds.*

*C. Collaboration, Communication, and Cooperation with the Commonwealth.*

*The University is committed to developing, maintaining, and sustaining collaboration, communication, and cooperation with the Commonwealth regarding the matters addressed in this Policy, particularly with the Offices of the Secretaries of Administration and Technology, the Department of General Services, and the Virginia Information Technologies Agency. Identifying business objectives and goals common to both the University and the Commonwealth and the mechanisms by which such objectives and goals may be jointly pursued and achieved are among the desired outcomes of such collaboration, communication, and cooperation.*

*D. Commitment to Statewide Contracts, Electronic Procurement, and SWAM Participation and Use.*

*The University is committed to maximizing its internal operational efficiencies, economies of scale among institutions of higher education, and the leveraged buying power of the Commonwealth as a whole.*

*Consistent with this commitment, the University:*

1. May purchase from and participate in all statewide contracts for goods and services, including information technology goods and services, except that the University shall purchase from and participate in contracts for communications services and telecommunications facilities entered into by the Virginia Information Technologies Agency pursuant to § [2.2-2011](#) of the Code of Virginia, unless an exception is provided in the Appropriation Act or by other law, and provided that orders not placed through statewide contracts shall be processed directly or by integration or interface through the Commonwealth's electronic procurement system;
2. Shall use directly or by integration or interface the Commonwealth's enterprise electronic procurement system, commonly known as "eVA", and comply with the Business Plan for the Commonwealth's enterprise electronic procurement system; and
3. Shall adopt a small, woman-owned, and minority-owned (SWAM) business program that is consistent with the Commonwealth's SWAM program.

*E. Implementation.*

To effect its implementation under the Act, and if the University remains in continued substantial compliance with the terms and conditions of this Management Agreement with the Commonwealth pursuant to subdivision D 4 of § [23-38.88](#) and the requirements of Chapter 4.10 of the Act, the University's procurement of goods, services, insurance, and construction, and the disposition of surplus materials shall be exempt from the Virginia Public Procurement Act, Chapter 43 (§ [2.2-4300](#) et seq.) of Title 2.2, except § [2.2-4342](#) and §§ [2.2-4367](#) through [2.2-4377](#); the oversight of the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2; and the Information Technology Investment Board, Article 20 (§ [2.2-2457](#) et seq.) of Chapter 24 of Title 2.2; the state agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials in §§ [2.2-1124](#) and [2.2-1125](#); the requirement to purchase from the Department for the Blind and Vision Impaired (DBVI) (§ [2.2-1117](#)); and any other state statutes, rules, regulations or requirements relating to the procurement of goods, services, insurance, and construction, including but not limited to Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2 of the Code of Virginia, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of University capital projects and construction-related professional services (§ [2.2-1132](#)).

*V. UNIVERSITY PROCUREMENT POLICIES.*

*A. General Competitive Principles.*

*In connection with University procurements and the processes leading to award of contracts for goods, services, insurance, construction, and professional services, the University is committed to:*

*Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;*

*Conducting all procurements in an open, fair and impartial manner and avoiding any impropriety or the appearance of any impropriety;*

*Making procurement rules clear in advance of any competition;*

*Providing access to the University's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the University;*

*Ensuring that specifications for purchases are fairly drawn so as not to favor unduly a particular vendor; and*

*Providing for the free exchange of information between the University, vendors, firms or contractors concerning the goods or services sought and offered while preserving the confidentiality of proprietary information.*

*B. Access to Records.*

*Procurement records shall be available to citizens or to interested persons, firms or corporations in accordance with the provisions of the Virginia Freedom of Information Act, Chapter 37 (§ [2.2-3700](#) et seq.) of Title 2.2 of the Code of Virginia, except those records exempt from disclosure pursuant to subdivision 7 or 12 of § [2.2-3705.1](#) or subdivision 4 of § [2.2-3705.4](#), or other applicable exemptions of the Virginia Freedom of Information Act, and § [2.2-4342](#) of the Virginia Public Procurement Act.*

*C. Cooperative Procurements and Alliances.*

*In circumstances where the University determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the University that meet its business goals and objectives, the University is authorized to participate in cooperative procurements with other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations, so long as the resulting contracts are procured competitively pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction*

*attached to this Policy as Attachment 1 and the purposes of this Policy will be furthered. In the event the University engages in a cooperative contract with a private organization or public-private partnership and the contract was not competitively procured pursuant to subsections A through J of § 5 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction attached to this Policy as Attachment 1, use of the contract by other state agencies, institutions and public bodies shall be prohibited. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement system, including the requirement for payment of applicable fees. By October 1 of each year, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall make available to the Secretaries of Administration and Technology, the Joint Legislative Audit and Review Commission, and the Auditor of Public Accounts a list of all cooperative contracts and alliances entered into or used during the prior fiscal year.*

*D. Training; Ethics in Contracting.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall take all necessary and reasonable steps to assure (i) that all University officials responsible for and engaged in procurements authorized by the Act and this Policy are knowledgeable regarding the requirements of the Act, this Policy, and the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) that only officials authorized by this Policy and any procedures adopted by the President, acting through the Senior Vice President for Finance and Administration or other designee, to implement this Policy are responsible for and engaged in such procurements, and (iii) that compliance with the Act and this Policy are achieved.*

*The University shall maintain an ongoing program to provide professional development opportunities to its buying staff and to provide methods training to internal staff who are engaged in placing decentralized small purchase transactions.*

*E. Ethics and University Procurements.*

*In implementing the authority conferred by this Policy, the personnel administering any procurement shall adhere to the following provisions of the Code of Virginia: the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2, the State and Local Government Conflict of Interests Act, Chapter 31 (§ [2.2-3100](#) et seq.) of Title 2.2, and the Virginia Governmental Frauds Act, Article 1.1 (§ [18.2-498.1](#) et seq.) of Chapter 12 of Title 18.2 of the Code of Virginia.*

*VI. UNIVERSITY SURPLUS MATERIALS POLICY AND PROCEDURES.*

*The policy and procedures for disposal for surplus materials shall provide for the sale, environmentally appropriate disposal, or recycling of surplus materials by the University and the retention of the resulting proceeds by the University.*

**VII. ADOPTION AND EFFECTIVE DATES OF RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

*A. The President, acting through the Senior Vice President for Finance and Administration or other designee, shall adopt one or more comprehensive sets of specific procurement policies and procedures for the University, which, in addition to the Rules, implement applicable provisions of law and this Policy. University procurements shall be carried out in accordance with this Policy, the Rules, and any implementing policies and procedures adopted by the University. The implementing policies and procedures (i) shall include the delegation of procurement authority by the Board to appropriate University officials who shall oversee University procurements of goods, services, insurance, and construction, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate, and (ii) shall remain consistent with the competitive principles set forth in Part V above.*

*B. Any implementing policies and procedures adopted pursuant to subsection A above and the Rules shall become effective on the Effective Date of the University's initial Management Agreement with the Commonwealth, and, as of their effective date, shall be applicable to all procurements undertaken by the University on behalf of the University for goods, services, insurance, and construction. This Policy, the Rules, and any implementing policies and procedures adopted by the University shall not affect existing contracts already in effect.*

*C. The Rules and University implementing policies and procedures for all University procurements of goods, services, insurance, and construction, and the disposition of surplus property shall be substantially consistent with the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors in their form as of the effective date of this Policy and as amended or changed in the future, and with University procedures specific to the Acquisition of Goods and Services. The Rules and University implementing policies and procedures shall implement a system of competitive negotiation, and competitive sealed bidding when appropriate, for goods, services, including professional services as defined in the Rules, insurance, and construction.*

**VIII. REQUIREMENTS FOR RULES AND IMPLEMENTING POLICIES AND PROCEDURES.**

*A. Protests, Appeals and Debarment.*

*The Rules and University implementing policies and procedures for procurements other than capital outlay shall include a process or processes for an administrative appeal by vendors, firms or contractors. Protests and appeals may challenge determinations of vendor, firm or contractor non-responsibility or ineligibility, or the award of contracts, provided that such protests and appeals are filed within the times specified by the Rules. Remedies available shall be limited to reversal of the action challenged or, where a contract already being performed is declared void, compensation for the cost of performance up to the time of such declaration. The Rules and University implementing policies and procedures also may establish the basis and process for debarment of any vendor, firm or contractor.*

*B. Prompt Payment of Contractors and Subcontractors.*

*The Rules and University implementing policies and procedures shall include provisions related to prompt payment of outstanding invoices, which shall include payment of interest on properly-presented invoices outstanding more than seven (7) days beyond the payment date, at a rate no higher than the lowest prime rate charged by any commercial bank as published in the Wall Street Journal. The payment date shall be the later of thirty (30) days from the date of the receipt of goods or invoice, or the date established by the contract. All contracts also shall require prompt payment of subcontractors by the general contractor, upon receipt of payment by the University.*

*C. Types of Procurements.*

*The Rules and University implementing policies and procedures shall implement a system of competitive negotiation for professional services, as defined in the Rules, and shall implement purchasing procedures developed to maximize competition given the size and duration of the contract, and the needs of the University. Such policies and procedures may include special provisions for procurements such as emergency procurements, sole source procurements, brand name procurements, small purchases, procurements in which only one qualified vendor responds, and others.*

*D. Approval and Public Notice of Procurements.*

*The Rules and University implementing policies and procedures shall provide for approval of solicitation documents by an authorized individual and for reasonable public notice of procurements, given the size and nature of the need and the applicability of any Virginia Freedom of Information Act exemption.*

*E. Administration of Contracts.*

*The Rules and University implementing policies and procedures shall contain provisions related to the administration of contracts, including contract claims, modifications, extensions and assignments.*

*F. Non-Discrimination.*

*The Rules and University implementing policies and procedures shall provide for a non-discriminatory procurement process that prohibits discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation and award of contracts; and shall include appropriate provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.*

ATTACHMENT 1

*Rules Governing Procurement of Goods, Services, Insurance, and Construction  
by a Public Institution of Higher Education of the Commonwealth of Virginia  
Governed by Subchapter 3 of the  
Restructured Higher Education Financial and Administrative Operations Act,  
Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia*

*In accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, and in particular § [23-38.110](#) of the Act, the governing body of a public institution of higher education of the Commonwealth of Virginia that has entered into a Management Agreement with the Commonwealth pursuant to Subchapter 3 of the Act has adopted the following Rules Governing Procurement of Goods, Services, Insurance, and Construction to govern the procurement of goods, services, insurance, and construction by the Institution:*

*§ 1. Purpose.*

*The purpose of these Rules is to enunciate the public policies pertaining to procurement of goods, services, insurance, and construction by the Institution from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. These Rules shall apply whether the consideration is monetary or nonmonetary and regardless of whether the Institution, the contractor, or some third party is providing the consideration.*

*§ 2. Scope of Procurement Authority.*

*Subject to these Rules, and the Institution's continued substantial compliance with the terms and conditions of its Management Agreement with the Commonwealth pursuant to*

*subdivision D 4 of § [23-38.88](#) and the requirements of Chapter 4.10 of the Act, the Institution shall have and shall be authorized to have and exercise all of the authority relating to procurement of goods, services, insurance, and construction, including but not limited to capital outlay-related procurement and information technology-related procurement, that Institutions are authorized to exercise pursuant to Subchapter 3 of the Restructuring Act.*

*§ 3. Competition is the Priority.*

*To the end that the Institution shall obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in an open, fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to the Institution's business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the governing body of the Institution that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. The Institution may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. Professional services will be procured using a qualification-based selection process. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.*

*§ 4. Definitions.*

*As used in these Rules:*

*"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.*

*"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the Institution's needs.*

*"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.*

*"Competitive negotiation" is a method of contractor selection that includes the following elements:*

- 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.*
- 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice also shall be published on the Department of General Services' central electronic procurement website and may be published on other appropriate websites. In addition, proposals may be solicited directly from potential contractors.*
- 3. a. Procurement of professional services. The procurement of professional services for capital projects shall be conducted using a qualification-based selection process. The Institution shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or costs for services. At the discussion stage, the Institution may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Institution shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Institution can be negotiated at a price considered fair and reasonable, the award shall be made to*

*that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Institution determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.*

*A contract for architectural or professional engineering services relating to construction projects may be negotiated by the Institution for multiple projects provided (i) the projects require similar experience and expertise, and (ii) the nature of the projects is clearly identified in the Request for Proposal. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall be as set in the Request for Proposal; and (c) the project fee of any single project shall not exceed the term limit as set in the Request for Proposal. Any unused amounts from any contract term may be carried forward. Competitive negotiations for such contracts may result in awards to more than one offeror provided the Request for Proposal stated the potential for a multi-vendor award.*

*Multiphase professional services contracts satisfactory and advantageous to the Institution for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the Institution shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such Institution require awarding the contract.*

*b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Institution shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror.*

*Should the Institution determine in writing and in its sole discretion that only one offeror has made the best proposal, a contract may be negotiated and awarded to that offeror.*

*"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:*

*1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Institution has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.*

*2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by publication on the Department of General Services' central electronic procurement website. Public notice also may be published in a newspaper of general circulation or on other appropriate websites, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*3. Public opening and announcement of all bids received.*

*4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.*

*5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.*

*"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.*

*"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.*

*"Covered Institution" or "Institution" means, on and after the effective date of the initial management agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a management agreement*

*with the Commonwealth to be governed by the provisions of Subchapter 3 of the Restructuring Act.*

*"Design-build contract" means a contract between the Institution and another party in which the party contracting with the Institution agrees to both design and build the structure, roadway or other item specified in the contract.*

*"Goods" means all material, equipment, supplies, and printing, including information technology and telecommunications goods such as automated data processing hardware and software.*

*"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.*

*"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.*

*"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services and includes small construction projects valued not over \$1 million; provided that subdivision 3 a of the definition of "competitive negotiation" in this section shall still apply to professional services for such small construction projects.*

*"Potential bidder or offeror" for the purposes of §§ 50 and 54 of these Rules means a person who, at the time the Institution negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.*

*"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.*

*"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in these Rules.*

*"Public contract" means an agreement between the Institution and a nongovernmental source that is enforceable in a court of law.*

*"Responsible bidder" or "responsible offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been pre-qualified, if required.*

*"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.*

*"Restructuring Act" or "Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.*

*"Rules" means these Rules Governing Procurement of Goods, Services, Insurance, and Construction adopted by the governing body of the Covered Institution.*

*"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.*

*"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.*

*§ 5. Methods of procurement.*

*A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.*

*B. Professional services shall be procured by competitive negotiation. Qualification-based selection shall be used for design services.*

*C. Goods, services, or insurance may be procured by competitive negotiation.*

*D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Institution and set forth in writing that competitive sealed bidding is*

*either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:*

*1. By the Institution on a fixed price design-build basis or construction management basis under § 7;*

*2. By the Institution for the construction, alteration, repair, renovation or demolition of buildings; or*

*3. By the Institution for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.*

*E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Institution shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first. Public notice shall also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and may be published on other appropriate websites.*

*F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Institution shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area, which may be the Department of General Services' website for the Commonwealth's central electronic procurement system, or published in a newspaper of general circulation on the day the Institution awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' website for the Commonwealth's central electronic procurement system and other appropriate websites.*

*G. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.*

*H. The Institution may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.*

*I. Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination.*

*J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.*

*§ 6. Cooperative procurement.*

*A. In circumstances where the Institution determines and documents that statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to the Institution that meet its business goals and objectives, the Institution is authorized to participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, public or private health or educational institutions, other public or private organizations or entities, including public-private partnerships, charitable organizations, health care provider alliances or purchasing organizations or entities, or with public agencies or institutions or group purchasing organizations of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. The Institution may purchase from any authority, department, agency, institution, city, county, town, or other political subdivision of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in these Rules and the administrative policies and procedures established to implement these Rules shall be permitted. Notwithstanding all of the above, use of cooperative contracts shall conform to the business requirements of the Commonwealth's electronic procurement*

*system, including the requirement for payment of applicable fees. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.*

*B. In circumstances where statewide contracts for goods and services, including information technology and telecommunications goods and services, do not provide goods and services to meet the Institution's business goals and objectives, and as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:*

- 1. The Institution may purchase goods and nonprofessional services, from a United States General Services Administration contract or a contract awarded by any other agency of the United States government; and*
- 2. The Institution may purchase telecommunications and information technology goods and nonprofessional services from a United States General Services Administration contract or a contract awarded by any other agency of the United States government.*

*§ 7. Design-build or construction management contracts authorized.*

*A. Notwithstanding any other provisions of law, the Institution may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section.*

*B. Procurement of construction by the design-build or construction management method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.*

*§ 8. Modification of the contract.*

*A. A contract awarded by the Institution may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Institution's president or his designee. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.*

*B. The Institution may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.*

*C. Nothing in this section shall prevent the Institution from placing greater restrictions on contract modifications.*

*§ 9. Discrimination prohibited; participation of small, women- and minority-owned business.*

*A. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.*

*Whenever solicitations are made, the Institution shall include businesses selected from a list made available by the Department of Minority Business Enterprise.*

*B. The Institution shall establish programs consistent with this section to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. The Institution shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.*

*C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is by law authorized and encouraged to require the Institution to implement appropriate enhancement or remedial measures consistent with prevailing law.*

*D. In the solicitation or awarding of contracts, the Institution shall not discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless it has made a written determination that employing ex-offenders on the specific contract is not in its best interest.*

*§ 10. Employment discrimination by contractor prohibited; required contract provisions. The Institution shall include in every contract of more than \$10,000 the following provisions:*

*1. During the performance of this contract, the contractor agrees as follows:*

*a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.*

*b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.*

*c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.*

*2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*§ 11. Drug-free workplace to be maintained by contractor; required contract provisions. The Institution shall include in every contract over \$10,000 the following provisions: During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.*

*For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with these Rules, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.*

*§ 12. Use of brand names.*

*Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the Institution in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.*

*§ 13. Comments concerning specifications.*

*The Institution shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.*

*§ 14. Prequalification generally; prequalification for construction.*

*A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.*

*B. Any prequalification of prospective contractors for construction by the Institution shall be pursuant to a prequalification process for construction projects adopted by the Institution. The process shall be consistent with the provisions of this section.*

*The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 34 of these Rules.*

*In all instances in which the Institution requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.*

*At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Institution shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.*

*A decision by the Institution denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 54 of these Rules.*

*C. The Institution may deny prequalification to any contractor only if the Institution finds one of the following:*

*1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and*

*type required by the Institution shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;*

*2. The contractor does not have appropriate experience to perform the construction project in question;*

*3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past 10 years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management;*

*4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the Institution without good cause. If the Institution has not contracted with a contractor in any prior construction contracts, the Institution may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The Institution may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;*

*5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past 10 years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia, (ii) the Virginia Governmental Frauds Act (§ [18.2-498.1](#) et seq.) of the Code of Virginia, (iii) Chapter 4.2 (§ [59.1-68.6](#) et seq.) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;*

*6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government;*

*7. The contractor failed to provide to the Institution in a timely manner any information requested by the Institution relevant to subdivisions 1 through 6 of this subsection.*

*§ 15. Negotiation with lowest responsible bidder.*

*Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Institution may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the Institution prior to issuance of the Invitation to Bid and summarized therein.*

*§ 16. Cancellation, rejection of bids; waiver of informalities.*

*A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. The Institution shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.*

*B. The Institution may waive informalities in bids.*

*§ 17. Exclusion of insurance bids prohibited.*

*Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to the Institution in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude the Institution from debarring a prospective insurer pursuant to § 18.*

*§ 18. Debarment.*

*Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the Institution. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for the Institution.*

*§ 19. Purchase programs for recycled goods; Institution responsibilities.*

*A. The Institution may implement a purchase program for recycled goods and may coordinate its efforts so as to achieve the goals and objectives set forth in §§ [10.1-1425.6](#), [10.1-1425.7](#), and [10.1-1425.8](#) of the Code of Virginia, and §§ 20 and 22 of these Rules.*

*B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Institution concerning the designation of recycled goods.*

*§ 20. Preference for Virginia products with recycled content and for Virginia firms.*

*A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.*

*B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed by the Institution to the lowest responsive and responsible bidder who is a resident of Virginia.*

*C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.*

*§ 21. Preference for Virginia coal used in the Institution.*

*In determining the award of any contract for coal to be purchased for use in the Institution with state funds, the Institution shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than 4 percent greater than the bid price of the lowest responsive and responsible bidder offering coal mined elsewhere.*

*§ 22. Preference for recycled paper and paper products used by the Institution.*

*A. In determining the award of any contract for paper and paper products to be purchased for use by the Institution, it shall competitively procure recycled paper and paper products of a quality suitable for the purpose intended, so long as the price is not more than 10 percent greater than the price of the lowest responsive and responsible bidder or offeror offering a product that does not qualify under subsection B.*

*B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.*

*§ 23. Withdrawal of bid due to error.*

*A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.*

*One of the following procedures for withdrawal of a bid shall be selected by the Institution and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the Institution or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 34 of these Rules. The bids shall be opened one day following the time fixed by the Institution for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Institution until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.*

*B. The Institution may establish procedures for the withdrawal of bids for other than construction contracts.*

*C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than 5 percent.*

*D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.*

*E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.*

*F. If the Institution denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.*

#### *§ 24. Contract Pricing Arrangements.*

*A. Public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited by these Rules.*

*B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.*

*C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.*

*§ 25. Workers' compensation requirements for construction contractors and sub-contractors.*

*A. No contractor shall perform any work on a construction project of the Institution unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia, and (ii) provides prior to the award of contract, on a form furnished by the Institution, evidence of such coverage.*

*B. The Department of General Services shall provide the form to the Institution. Failure of the Institution to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.*

*C. No subcontractor shall perform any work on a construction project of the Institution unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ [65.2-800](#) et seq.) of Title 65.2 of the Code of Virginia.*

*§ 26. Retainage on construction contracts.*

*A. In any contract issued by the Institution for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with no more than 5 percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.*

*B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.*

*§ 27. Public construction contract provisions barring damages for unreasonable delays declared void.*

*A. Any provision contained in any public construction contract of the Institution that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the Institution, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.*

*B. Subsection A shall not be construed to render void any provision of a public construction contract awarded by the Institution that:*

1. Allows the recovery of that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against the Institution for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract of the Institution shall be liable to the Institution and shall pay it for a percentage of all costs incurred by the Institution in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. If the Institution denies a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract for the Institution, it shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the Institution shall be equal to the percentage of the contractor's total delay claim for which the Institution's denial is determined through litigation or arbitration to have been made in bad faith.

#### § 28. Bid bonds.

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$1 million shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed 5 percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude the Institution from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$1 million.

#### § 29. Performance and payment bonds.

A. Upon the award by the Institution of any (i) public construction contract exceeding \$1 million awarded to any prime contractor or (ii) public construction contract exceeding \$1 million awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by the Institution, the contractor shall furnish to the Institution the following bonds:

1. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the Institution.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. The bonds shall be payable to the Commonwealth of Virginia naming also the Institution.

D. Each of the bonds shall be filed with the Institution, or a designated office or official thereof.

E. Nothing in this section shall preclude the Institution from requiring payment or performance bonds for construction contracts below \$1 million.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 30. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Institution's General Counsel or his equivalent, a bidder may furnish to the Institution a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Institution equivalent to a corporate surety's bond.

§ 31. Bonds on other than construction contracts.

*The Institution may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.*

*§ 32. Action on performance bond.*

*No action against the surety on a performance bond shall be brought by the Institution unless brought within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.*

*§ 33. Actions on payment bonds; waiver of right to sue.*

*A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.*

*B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.*

*C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.*

*D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.*

*§ 34. Public inspection of certain records.*

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for the Institution shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Institution decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the Institution decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 14 shall not be subject to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

#### § 35. Exemption for certain transactions.

A. The provisions of these Rules shall not apply to:

1. The selection of services related to the management and investment of the Institution's endowment funds, endowment income, or gifts pursuant to § [23-76.1](#). However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ [55-268.1](#) et seq.) as required by § [23-76.1](#).

2. The purchase of items for resale at retail bookstores and similar retail outlets operated by the Institution. However, such purchase procedures shall provide for competition where practicable.

3. Procurement of any construction or planning and design services for construction by the Institution when (i) the planning, design or construction is \$50,000 or less or (ii) the

*Institution is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of these Rules.*

*4. The purchase of goods and services by the Institution when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 9 of these Rules.*

*B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of these Rules, the Institution may comply with such federal requirements, notwithstanding the provisions of these Rules, only upon the written determination of the Institution's President or his designee that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of these Rules in conflict with the conditions of the grant or contract.*

*§ 36. Permitted contracts with certain religious organizations; purpose; limitations.*

*A. The Opportunity Reconciliation Act of 1996, P.L. 104-193, authorizes public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.*

*B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.*

*C. The Institution, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.*

*D. The Institution shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that it does not discriminate against faith-based organizations.*

*E. A faith-based organization contracting with the Institution (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal*

*to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the Institution. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.*

*F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.*

*G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.*

*H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the Institution shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.*

*The Institution shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between the Institution and a faith-based organization a notice in bold face type that states: "Neither the Institution's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."*

*§ 37. Exemptions from competition for certain transactions.*

*The Institution may enter into contracts without competition, as that term is described in subsections A through J of § 5 (Methods of procurement) of these Rules, for:*

- 1. The purchase of goods or services that are produced or performed by or related to:
  - a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;*
  - b. Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;*
  - c. Private educational institutions; or*
  - d. Other public educational institutions.**
- 2. Speakers and performing artists;*
- 3. Memberships and Association dues;*
- 4. Sponsored research grant sub-awards and contract sub-awards, not to include the purchase of goods or services by the Institution;*
- 5. Group travel in foreign countries;*
- 6. Conference facilities and services;*
- 7. Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;*
- 8. Royalties; or*
- 9. The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.*

*§ 38. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.*

*The Institution may enter into contracts for insurance or electric utility service without competitive sealed bidding or competitive negotiation if purchased through an association of which the Institution is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the Institution has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.*

*§ 39. Definitions.*

*As used in §§ 39 through 46, unless the context requires a different meaning: "Contractor" means the entity that has a direct contract with the Institution.*

*"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.*

*"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 30 days after receipt of a proper invoice by the Institution or its agent or (b) 30 days after receipt of the goods or services by the Institution.*

*"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.*

*§ 40. Exemptions.*

*The provisions of §§ 39 through 46 shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.*

*§ 41. Retainage to remain valid.*

*Notwithstanding the provisions of §§ 39 through 46, the provisions of § 26 relating to retainage shall remain valid.*

*§ 42. Prompt payment of bills by the Institution.*

*A. The Institution shall promptly pay for the completely delivered goods or services by the required payment date.*

*Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).*

*B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.*

*§ 43. Defect or impropriety in the invoice or goods and/or services received.*

*In instances where there is a defect or impropriety in an invoice or in the goods or services received, the Institution shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.*

*§ 44. Date of postmark deemed to be date payment is made.*

*In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.*

*§ 45. Payment clauses to be included in contracts.*

*Any contract awarded by the Institution shall include:*

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the Institution for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the Institution attributable to the work performed by the subcontractor under that contract; or

b. Notify the Institution and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the Institution for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1b.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 1 percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the Institution. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 46. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by the Institution to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged the Institution pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled *The Wall Street Journal*. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no

event shall the rate of interest charged exceed the rate of interest established pursuant to § [58.1-1812](#) of the Code of Virginia.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between the Institution and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 26 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

#### § 47. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts to be issued by the Institution shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the Institution shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of disqualification or ineligibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the Institution shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused

*permission to participate, or disqualified from participation, in the public contract, the Institution shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.*

*§ 48. Appeal of denial of withdrawal of bid.*

*A. A decision denying withdrawal of bid under the provisions of § 23 of these Rules shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking administrative procedures meeting the standards of § 55, if available, or in the alternative by instituting legal action as provided in § 54.*

*B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 23, prior to appealing, shall deliver to the Institution a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.*

*C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.*

*§ 49. Determination of nonresponsibility.*

*A. Following public opening and announcement of bids received on an Invitation to Bid, the Institution shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in § 4 of these Rules. At the same time, the Institution shall determine whether the apparent low bidder is responsible. If the Institution so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in § 4. If the Institution determines that the apparent low bidder is not responsible, it shall proceed as follows:*

*1. Prior to the issuance of a written determination of nonresponsibility, the Institution shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.*

2. *Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Institution shall issue its written determination of responsibility based on all information in the possession of the Institution, including any rebuttal information, within five business days of the date the Institution received the rebuttal information. At the same time, the Institution shall notify, with return receipt requested, the bidder in writing of its determination.*

3. *Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*The provisions of this subsection shall not apply to procurements involving the pre-qualification of bidders and the rights of any potential bidders under such pre-qualification to appeal a decision that such bidders are not responsible.*

*B. If, upon appeal pursuant to § 54 or 55 of these Rules, it is determined that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 54, or both.*

*If it is determined that the decision of the Institution was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 54 of these Rules.*

*C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 50 of these Rules.*

*D. Nothing contained in this section shall be construed to require the Institution, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.*

*§ 50. Protest of award or decision to award.*

*A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the Institution, or an official designated by the Institution, no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the*

*decision to award shall be given by the Institution in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than 10 days after posting or publication of the notice of such contract as provided in § 5 of these Rules. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 34 of these Rules, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror under § 34, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Institution or designated official shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of receipt of the written decision by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal. The use of Alternative Dispute Resolution (ADR) shall constitute an administrative appeal procedure meeting the standards of § 55 of these Rules.*

*B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Institution shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.*

*Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Institution may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.*

*C. Where the Institution, an official designated by it, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act*

*in violation of these Rules, the Institution, designated official or appeals board may enjoin the award of the contract to a particular bidder.*

*§ 51. Effect of appeal upon contract.*

*Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with these Rules shall not be affected by the fact that a protest or appeal has been filed.*

*§ 52. Stay of award during protest.*

*An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 50 of these Rules, or the filing of a timely legal action as provided in § 54, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.*

*§ 53. Contractual disputes.*

*A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.*

*B. The Institution shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the Institution. If the Institution has established administrative procedures meeting the standards of § 55 of these Rules, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor. The Institution may require the submission of contractual claims pursuant to any contract to Alternative Dispute Resolution (ADR) as an administrative procedure.*

*C. A contractor may not invoke administrative procedures meeting the standards of § 55 of these Rules, if available, or institute legal action as provided in § 54, prior to receipt of the Institution's decision on the claim, unless the Institution fails to render such decision within the time specified in the contract.*

*D. The decision of the Institution shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the Institution*

*by invoking administrative procedures meeting the standards of § 55 of these Rules, if available, or in the alternative by instituting legal action as provided in § 54.*

*§ 54. Legal actions.*

*A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. In the event the apparent low bidder, having been previously determined by the Institution to be not responsible in accordance with § 4, is found by the court to be a responsible bidder, the court may direct the Institution to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.*

*B. A bidder denied withdrawal of a bid under § 23 of these Rules may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the Institution was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.*

*C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 5 of these Rules, whose protest of an award or decision to award under § 50 of these Rules is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.*

*D. If injunctive relief is granted, the court, upon request of the Institution, shall require the posting of reasonable security to protect the Institution.*

*E. A contractor may bring an action involving a contract dispute with the Institution in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to these Rules or §*

[33.1-387](#) of the Code of Virginia, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 55 of these Rules, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the Institution agrees otherwise.

G. Nothing herein shall be construed to prevent the Institution from instituting legal action against a contractor.

§ 55. Administrative appeals procedure.

A. The Institution may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure may include the use of Alternative Dispute Resolution (ADR) or shall provide for a hearing before a disinterested person or panel, and the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 14 of these Rules. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner. The Institution may seek advice and input from the Alternative Dispute Resolution Council in establishing an Alternative Dispute Resolution (ADR) procedure.

B. Any party to the administrative procedure, including the Institution, shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 56. Alternative dispute resolution.

The Institution may enter into agreements to submit disputes arising from contracts entered into pursuant to these Rules to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures shall be nonbinding and subject to § [2.2-514](#) of the Code of Virginia, as applicable.

§ 57. Ethics in public contracting.

*The Institution and its governing body, officers and employees shall be governed by the Ethics in Public Contracting provisions of the Virginia Public Procurement Act, Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of Title 2.2 of the Code of Virginia.*

*EXHIBIT E*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT OF 2005*

*POLICY GOVERNING*

*HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING HUMAN RESOURCES FOR*

*PARTICIPATING COVERED EMPLOYEES*

*AND OTHER UNIVERSITY EMPLOYEES*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes a process for the restructuring of institutions of higher education of the Commonwealth of Virginia and provides that upon becoming a Covered Institution, Virginia Commonwealth*

*University shall have responsibility and accountability for human resources management for all University employees, defined in the Act as "Covered Employees," who pursuant to subsection A of § [23-38.114](#) of the Act, "are state employees of" the University.*

*Specifically, the Act provides that, as of the Effective Date of its initial Management Agreement with the Commonwealth, all Classified Employees shall continue to be covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and shall be subject to the policies and procedures prescribed by the Virginia Department of Human Resource Management, provided that they may subsequently elect to become Participating Covered Employees. All Participating Covered Employees shall: (i) be exempt from the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2; (ii) remain subject to the state grievance procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2, for employees subject to the Virginia Personnel Act, provided they were subject to the state grievance procedure prior to that Effective Date; (iii) participate in a compensation plan that is subject to the review and approval of the Board of Visitors; (iv) be hired pursuant to procedures that are based on merit and fitness; and (v) may, subject to certain specified conditions, continue to participate in either state- or University-sponsored benefit plans as described by the Management Agreement.*

*The provisions of this Policy are adopted by the Board of Visitors to implement the Governing Law and constitute the human resources policies to be included in any human resources system adopted by the University for its employees.*

*This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Classified Employees" means employees who are covered by the Virginia Personnel Act, Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and the policies*

*and procedures established by the Virginia Department of Human Resource Management and who are not Participating Covered Employees.*

*"Covered Employee" means any person who is employed by the University on either a salaried or nonsalaried (wage) basis.*

*"Covered Institution" means, on and after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the adoption of the University's Human Resource System.*

*"Employee" means Covered Employee unless the context clearly indicates otherwise.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10 of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University.*

*"Governing Law" means the Act and the University's Enabling Legislation.*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth.*

*"Participating Covered Employee" means (i) all salaried nonfaculty University employees who were employed as of the day prior to the Effective Date of the University's Human Resources System, and who elect pursuant to § [23-38.115](#) of the Act, to participate in and be governed by such human resources program or programs, plans, policies, and procedures established by the University, (ii) all salaried nonfaculty University employees who are employed by the University on or after the Effective Date of the Human Resources System, (iii) all nonsalaried nonfaculty University employees without regard to when they were hired, and (iv) all faculty University employees without regard to when they were hired.*

*"Systems" means collectively the University Human Resources System that is in effect from time to time.*

*"University" means Virginia Commonwealth University.*

*"University employee" means a Covered Employee.*

*"University Human Resources System" means the human resources system for University employees as provided for herein.*

### *III. SCOPE AND PURPOSE OF UNIVERSITY HUMAN RESOURCES POLICIES.*

*The University has had human resources system autonomy through decentralization for its employees for some time. For example, general faculty at the University are expressly exempt from the Virginia Personnel Act. The University has had decentralization in most*

*human resources functions and activities since the late 1980s and early 1990s, including, but not limited to, the running of payrolls; the administration of hiring, classification, and promotion practices. The Act extends and reinforces the human resources autonomy previously granted to the University. This Policy therefore is adopted by the Board of Visitors to enable the University to develop, adopt, and have in place a human resources system or systems for all University employees. Until the Effective Date of the Human Resources System, the systems for University employees shall be the same systems applicable to those employees in effect immediately prior to that Effective Date.*

#### *IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.*

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

#### *V. VIRGINIA COMMONWEALTH UNIVERSITY HUMAN RESOURCES SYSTEMS.*

##### *A. Adoption and Implementation of University Human Resources Systems.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, is hereby authorized to adopt and implement human resources systems for employees of the University that are consistent with the Governing Law, other applicable provisions of law, these University human resources policies for University employees, and any other human resources policies adopted by the Department of Human Resource Management or the Board of Visitors for University personnel, unless University employees are exempted from those other human resources policies by law or policy. The University Human Resources Systems shall include a delegation of personnel authority to appropriate University officials responsible for overseeing and implementing the University Human Resources Systems, including a grant of authority to such officials to engage in further delegation of authority as the President or his designee deems appropriate.*

*The University commits to regularly engage employees in appropriate discussions and to receive employee input as the new University Human Resources Systems are developed. The University will regularly communicate the details of new proposals to all employees who are eligible to participate in the University Human Resources System*

*through written communication, open meetings, and website postings as appropriate, so that employees will have full information that will help them evaluate the merits of the new human resource system compared to the then-current State human resource system.*

*On the Effective Date of the adoption of the University's Human Resources System, and unless amended as described below, the University's human resources systems shall consist of the following:*

- 1. The current "Virginia Commonwealth University Faculty Handbook," as it is posted on the Provost's website, <http://www.provost.vcu.edu/faculty/handbook.html>, and periodically amended;*
- 2. The current human resources system for Classified Employees in the University as posted on the Virginia Department of Human Resource Management website at <http://www.dhrm.state.va.us/hrpolicy/policy.html>, and the University's website at <http://www.hr.vcu.edu/policies/index.htm>, as periodically amended; and*
- 3. The human resources system for Participating Covered Employees, which shall include nonsalaried (wage) employees, as posted on the University Human Resources website at <http://www.hr.vcu.edu/>, as periodically amended.*

*All the systems described above, except the system described in paragraph 2, may be amended by the President, acting through the Senior Vice President for Finance and Administration or other designee, consistent with these human resources policies. The system described in paragraph 2 may be amended only by the State.*

*B. Training in and Compliance with Applicable Provisions of Law and Board of Visitors' Human Resources Policies.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall take all necessary and reasonable steps to ensure (i) that the University officials who develop, implement and administer the University Human Resources Systems authorized by Governing Law and these human resources policies are knowledgeable regarding the requirements of the Governing Law, other applicable provisions of law, these University human resources policies, any other human resources policies adopted by the Virginia Department of Human Resource Management, and other applicable Board of Visitors' human resources policies affecting University employees, and (ii) that compliance with such laws and human resources policies is achieved.*

*VI. HUMAN RESOURCES POLICIES.*

*The University Human Resources Systems adopted by the University pursuant to Governing Law and this Policy, as set forth in Section V above, shall embody the following human resources policies and principles:*

*A. Election by Classified Salaried Nonfaculty Employees.*

*At least six months prior to the adoption of a University Human Resources System, the University shall notify the Secretary of Administration and the Department of Human Resource Management that the University intends to adopt a University Human Resources System, effective on a January 1. Upon the Effective Date of adoption by the University of a University Human Resources System, each salaried nonfaculty Classified employee who was in the employment of the University as of the day prior to the Effective Date of its University Human Resources System shall be permitted to elect to participate in and be governed by either (i) the State human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, and administered by the Department of Human Resource Management, or (ii) the University Human Resources System, as appropriate. A salaried nonfaculty Classified employee who elects to continue to be governed by the State human resources program described above shall continue to be governed by all State human resources and benefit plans, programs, policies and procedures that apply to and govern State employees. A salaried nonfaculty Classified employee who elects in writing to participate in and be governed by the University Human Resources System, by that election, shall be deemed to have elected to participate in and to be governed by the University human resources program, authorized alternative insurance, and severance plans, programs, policies and procedures that are or may be adopted by the University as part of that University Human Resources System.*

*Each nonfaculty Classified employee who was in the employment of the University as of the day prior to the Effective Date of the University's Human Resources System shall be given at least 90 days after the date on which the University Human Resources System becomes effective to make the election required by the prior paragraph. If such a salaried nonfaculty Classified employee does not make an election by the end of that specified election period, that Classified employee shall be deemed not to have elected to participate in the University Human Resources System. If such a salaried nonfaculty Classified employee elects to participate in the University Human Resources System, that election shall be irrevocable. At least every two years, the University shall offer to salaried nonfaculty Classified employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 of the Code of Virginia, an opportunity to elect to*

*participate in the University Human Resources System, provided that, each time prior to offering such opportunity to such salaried nonfaculty Classified employees, the University shall make available to each of its salaried nonfaculty Classified employees a comparison of its human resources program for that classification of salaried nonfaculty University employee with the State human resources program for comparable State employees, including but not limited to a comparability assessment of compensation and benefits. A copy of the human resources program comparison shall be provided to the Department of Human Resource Management.*

*B. Classification and Compensation.*

*1. General. The Systems shall include classification and compensation plans that are fair and reasonable, and are based on the availability of University financial resources. The plans adopted by the University for Participating Covered Employees shall be independent of, and need not be based on, the classification and compensation plans of the Commonwealth, do not require the approval of any State agency or officer, and shall be subject to the review and approval by the Board of Visitors as set forth in paragraph 3 below. The University shall provide information on its classification and compensation plans to all University employees. The plans applicable to Participating Covered Employees may or may not include changes in classification or compensation announced by the Commonwealth depending on such factors as the availability of necessary financial resources to fund any such changes, and subject to the review and approval by the Board of Visitors of any major changes in the University's compensation plans.*

*2. Classification Plan. The Systems shall include one or more classification plans for University employees that classify positions according to job responsibilities and qualifications. Until the Effective Date of the University's Human Resources System, the classification plans shall be the same plans that are in effect for each group of employees immediately prior to that Effective Date.*

*3. Compensation Plan. The Systems shall include one or more compensation plans for each University employee classification or group. On the Effective Date of the University's Human Resources System, and until changed by the Department of Human Resource Management, the compensation plan for Classified Employees in the University shall be the compensation plan in effect immediately prior to that Effective Date, known as the Commonwealth's Classified Compensation Plan. On the Effective Date of the University's Human Resources System, the University may implement one or more compensation plans for Participating Covered Employees that are graded or non-graded plan(s) based on internal and external market data and other relevant factors to be determined annually. Any major change in compensation plans for Participating*

*Covered Employees shall be reviewed and approved by the Board of Visitors before that change becomes effective. Any change recommended in the compensation plans may take into account the prevailing rates in the labor market for the jobs in question, or for similar positions, the relative value of jobs, the competency and skills of the individual employee, internal equity, and the availability of necessary financial resources to fund the proposed change. The compensation payable to University employees shall be authorized and approved only by designated University officers delegated such authority by the University, and shall be consistent with the approved compensation plan for the relevant position or classification. Further approval by any other State Agency, governmental body or officer is not required for setting, adjusting or approving the compensation payable to individual Participating Covered Employees.*

*4. Wages. The Systems shall include policies and procedures for the authorization, computation and payment of wages, where appropriate, for such premium pays as overtime, shift differential, on call, and call back, and for the payment of hourly employees.*

*5. Payment of Compensation. The Systems shall include policies and procedures for paying compensation to employees, including the establishment of one or more payday schedules.*

*6. Work Schedule and Workweek. The Systems shall include policies and procedures for the establishment of, and modifications to, work schedules and workweeks for all University employees, including alternative work schedules and sites, and telecommuting policies and procedures.*

*7. Other Classification and Compensation Policies and Procedures. The Systems may include any other reasonable classification and compensation policies and procedures the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate.*

*C. Benefits.*

*The Systems shall provide fringe benefits to all benefits eligible employees, including retirement benefits, health care insurance, life, disability, and accidental death and dismemberment insurance. The benefits provided shall include a basic plan of benefits for each benefits eligible employee, and may include an optional benefits plan for benefits eligible employees, including additional insurance coverage, long-term care, tax deferred annuities, flexible reimbursement accounts, employee assistance programs, employee intramural and recreational passes, and other wellness programs. As provided in subsections B and C of § [23-38.119](#) of the Act, the University may require Participating Covered Employees to pay all or a portion of the cost of group life, disability and accidental death and dismemberment insurance, which may be collected through a*

*payroll deduction program. Participating Covered Employees shall not be required to present evidence of insurability for basic group life insurance coverage. The Board of Visitors may elect to provide benefits through Virginia Retirement System group insurance programs under the terms of and to the extent allowed by subsections B and D of § [23-38.119](#) of the Act or any other provision of law.*

*Notwithstanding the above, pursuant to subsection A of § [23-38.114](#) of the Act, and unless and until that section is amended, the state retirement system, state health insurance program, and state workers' compensation coverage program as they may be amended from time to time, shall continue to apply to and govern all eligible University employees. The Systems may provide different benefits plans for reasonably different groups or classifications of employees, and may provide benefits to part-time employees. On or after the Effective Date of the University's Human Resources System, alternative University group life, accidental death and dismemberment, and short- and long-term disability plans may be provided to eligible Participating Covered Employees, or at the election of the Board of Visitors and subject to the execution of participation agreements as provided in subsections B and C of § [23-38.119](#) of the Act, they may be provided by the appropriate State programs, but no contributions to the state programs by the University shall be required for Participating Covered Employees who do not participate in the programs. Subject to the provisions of the Act, any new plans, programs and material changes permitted under current law in University employee benefit plans, other than Classified Employee benefit plans, shall be approved by the Board of Visitors, including the authority to increase the Cash Match Contribution rate up to the limit permitted by the Code of Virginia based on available resources, and the authority to implement cafeteria-style benefits for University employees other than Classified Employees. Insurance and all proceeds therefrom provided pursuant to § [23-38.119](#) of the Act shall be exempt from legal process and may be subject to voluntary assignment as provided in subsection A of § [23-38.119](#).*

*D. Employee Relations.*

- 1. General. The Systems shall contain provisions that protect the rights and privileges of University employees consistent with sound management principles and fair employment practice law.*
- 2. Employee Safety and Health. The Systems shall contain provisions that promote workplace safety compliance with applicable law and regulations.*
- 3. Employee Work Environment. The Systems shall promote a work environment that is conducive to the performance of job duties, and free from intimidation or coercion in violation of State or federal law, including sexual harassment or other discrimination.*

4. *Employee Recognition.* The Systems may provide for the use of leave awards and bonuses specific to policies and procedures for awarding, honoring, or otherwise recognizing University employees, including but not limited to those who have performed particularly meritorious service for the University, have been employed by the University for specified periods of time, or have retired from the University after lengthy service.

5. *Counseling Services.* The Systems shall provide counseling services through the State's Employee Assistance Program or a University Employee Assistance Program to any eligible University employee experiencing job-related difficulties and seeking counseling for those difficulties, and shall establish the circumstances under which the time necessary to participate in such counseling may be granted.

6. *Unemployment Compensation.* The Systems shall ensure that University employees receive the full unemployment compensation benefits to which they are legally entitled, and that the University's liability is limited to legitimate claims for such benefits.

7. *Workers' Compensation.* The Systems shall ensure that University employees have workers' compensation benefits to which they are legally entitled pursuant to the State Employees Workers' Compensation Program administered by the Department of Human Resource Management.

8. *Performance Planning and Evaluation.* The Systems shall include one or more performance planning and evaluation processes for University employees that (i) establish and communicate the University's performance expectations, (ii) help develop productive working relationships, (iii) allow employees to present their views concerning their performance, (iv) identify areas for training or professional development, (v) establish the process by which evaluations shall be conducted, (vi) clarify how superlative or inadequate performance shall be addressed, and (vii) ensure that all University employees are provided relevant information on the evaluation process. The Systems may include separate performance and evaluation processes for reasonably distinguishable groups of University employees. On the Effective Date of the University's Human Resources System, the existing merit-based performance management system for faculty shall continue, until amended by the University. On or after that Effective Date, University nonfaculty salaried Participating Covered Employees may be subject to a variable merit-based performance management system.

9. *Standards of Conduct and Performance.* In order to protect the well-being and rights of all employees and to ensure safe, efficient University operations and compliance with the law, the Systems shall establish rules of personal conduct and standards of acceptable work performance for University salaried nonfaculty employees and policies for corrective discipline. In general, the policies for corrective discipline shall serve to (i)

*establish a uniform and objective process for correcting or disciplining unacceptable conduct or work performance, (ii) distinguish between less serious and more serious actions of misconduct and provide corrective action accordingly, and (iii) limit corrective action to employee conduct occurring only when employees are at work or are otherwise representing the University in an official or work-related capacity, unless otherwise specifically provided by the policies of the Systems or other applicable law. The Systems may provide for a probationary period for new and re-employed University salaried non-faculty employees, during which period the policies for corrective discipline shall not be applicable and the employee may not use the grievance procedure set forth in the next paragraph. The Systems may include separate rules of personal conduct and standards of acceptable work performance and policies for corrective discipline for reasonably distinguishable groups of University employees.*

*10. Grievance Procedure. As provided in the Governing Law, employees shall be encouraged to resolve employment-related problems and complaints informally, and shall be permitted to discuss their concerns freely and without fear of retaliation with immediate supervisors and management. In the event that such problems cannot be resolved informally, all salaried nonfaculty University employees, regardless of their date of hire, shall have access, as provided in subsection A of § [23-38.114](#) and in § [23-38.117](#) of the Act, to the State Grievance Procedure, Chapter 30 (§ [2.2-3000](#) et seq.) of Title 2.2 of the Code of Virginia, to the extent it was applicable to their classification of employees prior to the Effective Date of the University's Human Resources System. On that Effective Date, and until changed by the University, the faculty grievance procedures in effect immediately prior to the Effective Date shall continue.*

*11. Discrimination Complaints. If a Classified Employee believes discrimination has occurred, the Classified Employee may file a complaint with the Department of Human Resource Management Office of Equal Employment Services. All Covered Employees and applicants for employment after the Effective Date of the University's Human Resources System shall file a complaint with the appropriate University office or with the appropriate federal agencies.*

*12. Layoff Policy. The Systems shall include one or more layoff policies for salaried University employees who lose their jobs for reasons other than their job performance or conduct, such as a reduction in force or reorganization at the University. These University layoff policies shall govern such issues as (i) whether there is a need to effect a layoff, (ii) actions to be taken prior to a layoff, (iii) notice to employees affected by a layoff, (iv) placement options within the University or its respective major divisions and within other parts of the University, (v) the preferential employment rights, if any, of*

various University employees, (vi) the effect of layoff on leave and service, and (vii) the policy for recalling employees. In accordance with the terms of the Act, University employees who: (a) were employed prior to the Effective Date of the University's Human Resources System, (b) would otherwise be eligible for severance benefits under the Workforce Transition Act, (c) were covered by the Virginia Personnel Act prior to that Effective Date, and (d) are separated because of a reduction in force shall have the same preferential hiring rights with State agencies and other executive branch institutions as Classified Employees have under § [2.2-3201](#) of the Code of Virginia. Conversely, the University shall recognize the hiring preference conferred by § [2.2-3201](#) on State employees who were hired by a State agency or executive branch institution before the Effective Date of the University's Human Resources System and who were separated after that date by that State agency or executive branch institution because of a reduction in workforce. If the University has adopted a classification system pursuant to § [23-38.116](#) of the Act that differs from the classification system administered by the Department of Human Resource Management, the University shall classify the separated employee according to its classification system and shall place the separated employee appropriately. The University may include separate policies for reasonably distinguishable groups of University employees. On or after the Effective Date of the University's Human Resources System, all employees from other State agencies and executive branch institutions who are placed by the University under the provisions of the State Layoff Policy shall be Participating Covered Employees.

13. *Severance Benefits.* In accordance with the terms of the Act, the University shall adopt severance policies for salaried Participating Covered Employees who are involuntarily separated for reasons unrelated to performance or conduct. The terms and conditions of such policies shall be determined by the Board of Visitors. Classified Employees who otherwise would be eligible and were employed prior to the Effective Date of the University's Human Resources System shall be covered by the Workforce Transition Act, Chapter 32 (§ [2.2-3200](#) et seq.) of Title 2.2 of the Code of Virginia. The University and the Board of the Virginia Retirement System may negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Participating Covered Employees who participate in the Virginia Retirement System. An employee's becoming, on the Effective Date, a Covered Employee shall not constitute a severance or reduction in force to which severance or Workforce Transition Act policies would apply.

14. *Use of Alcohol and Other Drugs.* The Systems shall include policies and procedures that (i) establish and maintain a work environment at the University that is free from the

*adverse effect of alcohol and other drugs, (ii) are consistent with the federal Drug-Free Workplace Act of 1988 and with the Virginia Commonwealth University alcohol and other drugs policy, (iii) describe the range of authorized disciplinary action, including termination where appropriate, for violations of such policies and procedures, and the process to be followed in taking such disciplinary action, (iv) provide University employees access to assistance and treatment for problems involving alcohol and other drugs, (v) provide for the circumstances under which employees are required to report certain violations of the policies and procedures to their supervisor, and the University is required to report those violations to a federal contracting or granting agency, (vi) describe the circumstances under which personnel records of actions taken under the University's alcohol and other drugs policy shall not be kept confidential, and (vii) provide notice to University employees of the scope and content of the University alcohol and other drugs policy. As part of this alcohol and other drugs policy, and in compliance with the federal Omnibus Transportation Employee Testing Act of 1991, the Systems may provide for pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up alcohol and other drug testing for University positions that are particularly safety sensitive, such as those requiring a Commercial Driver's License.*

*15. Background Checks. The Systems shall include a process for conducting background checks, which may include but is not limited to reference checks, educational/professional credentialing checks, and conviction and driver's records checks on applicants for full-time or part-time positions at the University, and for addressing situations where employees do not disclose a conviction on their application or otherwise falsify their application with regard to information concerning their education/professional credential and/or prior convictions.*

*16. Other Employee Relations Policies and Procedures. The Systems shall include any other reasonable employee relations policies or procedures that the President, acting through the Senior Vice President for Finance and Administration or other designee, deems appropriate, which may include, but are not limited to, policies or procedures relating to orientation programs for new or re-employed University employees, an employee suggestion program, the responsibility of University employees for property placed in their charge, work breaks, inclement weather and emergencies, and employment outside the University.*

*E. Leave and Release Time.*

*The Systems shall include policies and procedures regarding leave for eligible employees. The Systems shall provide reasonable paid leave for purposes such as holidays, vacation, or other personal uses. The Systems may provide for release time for such*

*matters as the donation of blood, participation in an employee assistance program and other appropriate employment-related matters. On or after the Effective Date of its Human Resources System, the University may provide an alternative leave and release time system for salaried nonfaculty Participating Covered Employees.*

*F. Equal Employment Opportunity, Nondiscrimination, Employment, and Separation.*

*1. Equal Employment Opportunity and Nondiscrimination. The Systems shall contain policies and procedures to ensure that all aspects of human resources management, including the employment of University employees, meet all requirements of federal and state law, and of the relevant policies of the Board of Visitors, with regard to equal employment opportunity and nondiscrimination.*

*2. Employment. The Systems shall include policies and procedures for the recruitment, selection and hiring of University employees that are based on merit and fitness, including where appropriate a requirement for job posting, interviews, pre-employment testing, pre-employment drug testing, reference checks and conviction record checks. On and after the Effective Date of its Human Resources System, the University shall post all salaried nonfaculty position vacancies through the University's job posting system, the Commonwealth's job posting system, and other external media as appropriate. The Systems shall establish designated veterans' re-employment rights in accordance with applicable law. In order to encourage employees to attain the highest level positions for which they are qualified, and to compensate employees for accepting positions of increased value and responsibility, the Systems shall include policies and procedures governing the promotion of employees, including the effect of promotion on an employee's compensation. On or after the Effective Date of the University's Human Resources System, all employees hired from other state agencies shall be Participating Covered Employees. University Classified Employees who change jobs within the University through a competitive employment process i.e., promotion or transfer shall have the choice of remaining a Classified Employee or becoming a Participating Covered Employee. If a Classified Employee elects to become a Participating Covered Employee, that decision shall be irrevocable.*

*3. Notice of Separation. The Systems shall include policies and procedures requiring reasonable notice, where appropriate, of a decision either by the employee or by the University to separate the employee from the University in accordance with policies governing performance, conduct, or layoff.*

*G. Information Systems.*

*The University shall provide an electronic file transfer of information on all salaried University employees and shall continue to provide the Employee Position Reports to*

*meet the human resources reporting requirements specified by law or by request of the Governor or the General Assembly, unless the University is specifically exempted from those requirements. The University shall conduct assessments to demonstrate its accountability for human resources practices that comply with laws and regulations. The Department of Human Resource Management and the University have entered into a Memorandum of Understanding, attached hereto as Attachment 2, which may be amended from time to time by agreement of the parties, regarding the specific data and reporting requirements. The University shall be accountable for ensuring the timeliness and integrity of the data transmitted to the Department of Human Resources Management.*

**VII. CONTINUED APPLICABILITY OF OTHER PROVISIONS OF THE CODE OF VIRGINIA AND OTHER BOARD OF VISITORS' POLICIES AFFECTING UNIVERSITY PERSONNEL.**

*On and after the Effective Date of its Human Resources System, University employees shall be subject to the terms and conditions of the Act and the Management Agreement between the Commonwealth and the University. Classified Employees shall continue to be subject to the human resources policies and exceptions to those policies adopted or approved by the Department of Human Resource Management. In addition, all University employees also shall remain subject to any other human resources policies adopted by the Board of Visitors applicable to University personnel unless University employees or a subset thereof are specifically exempted from those other human resources policies either by those other policies or by this Policy.*

**ATTACHMENT 2**

*Memorandum of Understanding*

*Between Virginia Commonwealth University and the*

*Department of Human Resource Management Regarding*

*The Reporting of Human Resources Management Data*

*This Memorandum of Understanding, which may be amended from time to time by the agreement of all parties, is an attachment to the Policy Governing Human Resources for Participating Covered Employees and Other University Employees pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005,*

*and is hereby entered into between Virginia Commonwealth University and the Department of Human Resource Management (DHRM).*

*This document outlines the provisions for information management pertaining to human resources data, consistent with the objectives to enable DHRM to meet the Commonwealth's reporting requirements, to ensure compliance with relevant federal and state laws and regulations, and to do so through efficient and cost-effective methods.*

*1. In lieu of data entry into the state's Personnel Management Information System (PMIS), data will be transmitted through an electronic file transfer to update DHRM's warehouse.*

*a. The University will provide a flat file of designated personnel data. For "Classified Employees," the data provided will match DHRM's data values for the designated fields. For salaried "Participating Covered Employees," the data provided will include the University's data values for the designated fields. The University will provide a data dictionary to DHRM. The file of designated data will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*b. The University will provide a second flat file of salaried personnel actions for "Classified Employees" and salaried "Participating Covered Employees," such as promotions, separations, and salary adjustments. The file of relevant personnel actions and designated data to be provided for each action will be specifically described by an addendum to this Memorandum upon the agreement of the University and DHRM.*

*c. In the event that the University and DHRM cannot agree on a format that prevents the need for modification to the University's current personnel system, the University will continue to enter data directly into PMIS or any successor system.*

*2. In lieu of the University's participation in the state's Equal Employment Opportunity Compliance Assessment process, DHRM will accept the University's federal Affirmative Action Plan (AAP), including the adverse impact analyses of employment and compensation actions that are part of the AAP, as demonstration of the University's compliance with relevant federal and state employment laws and regulations.*

*3. The University may key data into the Benefits Enrollment System or provide a batch file, or employees may use Employee Direct (employee self-service).*

*4. Other reports to be provided by the University include the following:*

*a. Monthly Employment Position Report.*

*b. Annual report on salaried, wage, and contract employees.*

*The undersigned hereby agree to the provisions contained in the MOU.*

**APPROVALS:**

*Virginia Commonwealth University*

*By: .....Date.....*

*Senior Vice President for Finance and Administration*

*Department of Human Resource Management*

*By: .....Date.....*

*Director, Department of Human Resource Management*

*EXHIBIT F*

*MANAGEMENT AGREEMENT*

*BETWEEN*

*THE COMMONWEALTH OF VIRGINIA*

*AND*

*VIRGINIA COMMONWEALTH UNIVERSITY*

*PURSUANT TO*

*THE RESTRUCTURED HIGHER EDUCATION*

*FINANCIAL AND ADMINISTRATIVE OPERATIONS*

*ACT OF 2005*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*THE RECTOR AND VISITORS OF VIRGINIA COMMONWEALTH UNIVERSITY*

*POLICY GOVERNING FINANCIAL OPERATIONS AND MANAGEMENT*

*I. PREAMBLE.*

*The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia, establishes by law a process for granting additional authority to institutions of higher education for financial operations and management, subject to the adoption of policies by their governing boards and the approval of management agreements to be negotiated with the Commonwealth.*

*The following provisions of this Policy constitute the adopted Board of Visitors policies regarding Virginia Commonwealth University's financial operations and management. This Policy is intended to cover the authority that may be granted to the University pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the University pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the University's Enabling Legislation, are not affected by this Policy.*

## *II. DEFINITIONS.*

*As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:*

*"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ [23-38.88](#) et seq.) of Title 23 of the Code of Virginia.*

*"Board of Visitors" or "Board" means the Rector and Board of Visitors of Virginia Commonwealth University.*

*"Covered Institution" means, on or after the Effective Date of its initial Management Agreement with the Commonwealth of Virginia, a public institution of higher education of the Commonwealth that has entered into a Management Agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.*

*"Effective Date" means the effective date of the initial Management Agreement between the University and the Commonwealth.*

*"Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the University, and as provided in §§ [2.2-2817.2](#) and [2.2-2905](#).*

*"Management Agreement" means the agreement required by subsection D of § [23-38.88](#) of the Act between the University and the Commonwealth of Virginia.*

*"State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from general government funds, as defined in the December 2006 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.*

*"University" means Virginia Commonwealth University.*

## *III. SCOPE OF POLICY.*

*This Policy applies to the University's responsibility for management, investment and stewardship of all its financial resources, including but not limited to, general, non-general and private funds. This responsibility includes maintaining an independent uniform*

*system of accounting, financial reporting, and internal controls adequate to protect and account for the University's financial resources.*

**IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.**

*The Board of Visitors of the University shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the University, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the University's usual delegation policies and procedures.*

**V. FINANCIAL MANAGEMENT AND REPORTING SYSTEM.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized by the Board to maintain existing and implement new policies governing the management of University financial resources. These policies shall continue to (i) ensure compliance with Generally Accepted Accounting Principles, (ii) ensure consistency with the current accounting principles employed by the Commonwealth, including the use of fund accounting principles, with regard to the establishment of the underlying accounting records of the University and the allocation and utilization of resources within the accounting system, including the relevant guidance provided by the State Council of Higher Education for Virginia chart of accounts with regard to the allocation and proper use of funds from specific types of fund sources, (iii) provide adequate risk management and internal controls to protect and safeguard all financial resources, including moneys transferred to the University pursuant to a general fund appropriation, and (iv) ensure compliance with the requirements of the Appropriation Act.*

*The financial management system shall continue to include a financial reporting system to satisfy both the requirements for inclusion into the Commonwealth's Comprehensive Annual Financial Report, as specified in the related State Comptroller's Directives, and the University's separately audited financial statements. To ensure observance of limitations and restrictions placed on the use of the resources available to the University, the accounting and bookkeeping system of the University shall continue to be maintained in accordance with the principles prescribed for governmental organizations by the Governmental Accounting Standards Board.*

*In addition, the financial management system shall continue to provide financial reporting for the President, acting through the Senior Vice President for Finance and Administration or other designee, and the Board of Visitors to enable them to provide adequate oversight of the financial operations of the University. Upon the Effective Date of the initial Management Agreement between the University and the Commonwealth, except for the recordation of daily revenue deposits of State funds as specified in Section VII below, the University shall not be required to record its financial transactions in the Commonwealth's Accounting and Reporting System (CARS), including the current monthly interfacing with CARS, or to record its financial transactions in any subsequent Commonwealth financial systems that replace CARS or are in addition to CARS, but shall have its own financial reporting system. The University's financial reporting system shall provide (i) monthly summary reports for State agencies including, but not limited to, the Department of Accounts, the Department of Planning and Budget, the Joint Legislative Audit and Review Commission, the Department of Medical Assistance Services, the Auditor of Public Accounts, and the State Council of Higher Education for Virginia, and for the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations at a sufficient level of detail, on such schedule, and using such format that is compatible with the Commonwealth's accounting system, as may be requested by the requesting State agency, and (ii) such other special reports as may be requested from time to time.*

#### **VI. FINANCIAL MANAGEMENT POLICIES.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall create and implement any and all financial management policies necessary to establish a financial management system with adequate risk management and internal control processes and procedures for the effective protection and management of all University financial resources. Such policies will not address the underlying accounting principles and policies employed by the Commonwealth and the University, but rather will focus on the internal operations of the University's financial management. These policies shall include, but need not be limited to, the development of a tailored set of finance and accounting practices that seek to support the University's specific business and administrative operating environment in order to improve the efficiency and effectiveness of its business and administrative functions. In general, the system of independent financial management policies shall be guided by the general principles contained in the Commonwealth's Accounting Policies and Procedures such as establishing strong risk management and internal accounting controls to ensure University financial resources are properly safeguarded and that appropriate*

*stewardship of public funds is obtained through management's oversight of the effective and efficient use of such funds in the performance of University programs.*

*Upon the Effective Date of its initial Management Agreement with the Commonwealth, the University shall continue to follow the Commonwealth's accounting policies until such time as specific alternate policies can be developed, approved and implemented. Such alternate policies shall include applicable accountability measures and shall be submitted to the State Comptroller for review and comment before they are implemented by the University.*

#### **VII. FINANCIAL RESOURCE RETENTION AND MANAGEMENT.**

*Under subsection A of § [23-38.104](#) of the Act, subject to applicable accountability measures and audits, the University shall have the power and authority to manage all monies received by it. All State general funds to be allocated to the University shall remain subject to the appropriations process.*

*Pursuant to subsection C of § [23-9.6:1.01](#) of the Code of Virginia, the State Council of Higher Education for Virginia (SCHEV) annually shall assess and certify to the Governor and General Assembly the degree to which each public institution of higher education of the Commonwealth has met the financial and administrative management and educational-related performance benchmarks called for by that subsection and approved as part of the Appropriation Act then in effect for the State goals and objectives set forth in subdivisions B 1 through B 12 of § [23-38.88](#) of the Act. Pursuant to § [2.2-5005](#) of the Code of Virginia, beginning with the fiscal year that immediately follows the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described in § [23-9.6:1.01](#) are effective, as provided in a general Appropriation Act, and for all fiscal years thereafter, each public institution of higher education of the Commonwealth that (i) has been certified during the fiscal year by SCHEV as having met such institutional performance benchmarks and (ii) meets the conditions prescribed in subsection B of § [23-38.88](#) shall receive certain financial incentives, including interest on the tuition and fees and other non-general fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education. Consistent with the prior paragraph, beginning with the fiscal year following the first fiscal year for which it has received such certification from SCHEV, the University is authorized to hold and invest tuition, Educational and General (E&G) fees, research and sponsored program funds, auxiliary enterprise funds, and all other non-general fund revenues (excluding gift, agency and endowment funds and the investment income thereon) subject to the following requirements:*

- 1. The University shall deposit such funds in the State Treasury pursuant to the State process in place at the time of such deposit.*
- 2. Such non-general funds deposited in the State Treasury shall be disbursed as provided in Section IX below.*
- 3. The University shall remit to the State Comptroller quarterly and the State Comptroller shall hold in escrow all interest earned on the University's tuition and fees and other non-general fund Educational and General Revenues. Upon receipt of the required State Council of Higher Education for Virginia certification that the University has met such institutional performance benchmarks and the conditions prescribed in subsection B of § [23-38.88](#), the Governor shall include in the next budget bill a non-general fund appropriation, payable no later than July 1 of the immediately following fiscal year, equivalent to the amount deposited in the escrow account as the financial incentive provided in subdivision 1 of § [2.2-5005](#), after which time the University may expend the funds for purposes related to its mission. If public institutions of higher education of the Commonwealth are permitted, or the University in particular is permitted, by the Appropriation Act or other law to retain or be paid the interest the Commonwealth would have earned on sponsored programs and research funds, then this paragraph shall not apply to such interest on such funds, and such interest shall not be held in escrow.*
- 4. If in any given year the University does not receive the certification from the State Council of Higher Education for Virginia that it has met for that year the institutional benchmarks called for by subsection C of § [23-9.6:1.01](#) and approved in the then-current Appropriation Act, the Comptroller shall transfer to the general fund the balance in the escrow account as of June 30 of that year.*
- 5. Beginning on the effective date of its initial management agreement with the University until the beginning of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University shall continue to deposit tuition and all other non-general funds with the State Treasurer by the same process that it would have been required to use if it had not entered into a management agreement with the Commonwealth.*
- 6. On the first business day of the first fiscal year following the fiscal year for which it has received the required certification from SCHEV, the University may draw down all cash balances held by the State Treasurer on behalf of the University related to tuition, E&G fees, research and sponsored programs, auxiliary enterprises, and all other non-general fund revenues.*
- 7. The Commonwealth shall retain all funds related to general fund appropriations, but shall pay these funds to the University as specified in Section IX below.*

*The University also shall have sum sufficient appropriation authority for all non-general funds as approved by the Governor and the General Assembly in the Commonwealth's biennial appropriations process, and shall report to the Department of Planning and Budget (i) its estimate of the non-general fund revenues for the sum sufficient appropriation to be included in the biennial Budget Bill for each of the two years in the next biennium by November 1 of each odd-numbered year and the estimate to be included in the Budget Bill for the first and second year of the then-current biennium by November 1 of each even-numbered year, and (ii) report its actual non-general fund revenues for each fiscal year to the Department of Planning and Budget by July 31 of the subsequent fiscal year.*

*The Board of Visitors shall retain the authority to establish tuition, fee, room, board, and other charges, with appropriate commitment provided to need-based grant aid for middle- and lower-income undergraduate Virginians. Except as provided otherwise in the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be exempt from the revenue restrictions in the general provisions of the Appropriation Act related to non-general funds. In addition, unless prohibited by the Appropriation Act then in effect, it is the intent of the Commonwealth and the University that the University shall be entitled to retain non-general fund savings generated from changes in Commonwealth rates and charges, including but not limited to health, life, and disability insurance rates, retirement contribution rates, telecommunications charges, and utility rates, rather than reverting such savings back to the Commonwealth. This financial resource policy assists the University by providing the framework for retaining and managing non-general funds, for the receipt of general funds, and for the use and stewardship of all these funds.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to provide oversight of the University's cash management system which is the framework for the retention of non-general funds. The Assurance Services Department of the University shall periodically audit the University's cash management system in accordance with appropriate risk assessment models and make reports to the Audit Committee of the Board of Visitors. Additional oversight shall continue to be provided through the annual audit and assessment of internal controls performed by the Auditor of Public Accounts.*

*For the receipt of general and non-general funds, the University shall conform to the Security for Public Deposits Act, Chapter 44 (§ [2.2-4400](#) et seq.) of Title 2.2 of the Code of Virginia as it currently exists and from time to time may be amended.*

*VIII. ACCOUNTS RECEIVABLE MANAGEMENT AND COLLECTION.*

*The President, acting through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all Accounts Receivable Management and Collection policies as part of a system for the management of University financial resources. The policies shall be guided by the requirements of the Virginia Debt Collection Act, Chapter 48 (§ [2.2-4800](#) et seq.) of the Code of Virginia, such that the University shall take all appropriate and cost effective actions to aggressively collect accounts receivable in a timely manner.*

*These shall include, but not be limited to, establishing the criteria for granting credit to University customers; establishing the nature and timing of collection procedures within the above general principles; and the independent authority to select and contract with collection agencies and, after consultation with the Office of the Attorney General, private attorneys as needed to perform any and all collection activities for all University accounts receivable such as reporting delinquent accounts to credit bureaus, obtaining judgments, garnishments, and liens against such debtors, and other actions. In accordance with sound collection activities, the University shall continue to utilize the Commonwealth's Debt Set-Off Collection Programs, shall develop procedures acceptable to the Tax Commissioner and the State Comptroller to implement such Programs, and shall provide a quarterly summary report of receivables to the Department of Accounts in accordance with the reporting procedures established pursuant to the Virginia Debt Collection Act.*

#### **IX. DISBURSEMENT MANAGEMENT.**

*The President, through the Senior Vice President for Finance and Administration or other designee, shall continue to be authorized to create and implement any and all disbursement policies as part of a system for the management of University financial resources. The disbursement management policies shall continue to define the appropriate and reasonable uses of all funds, from whatever source derived, in the execution of the University's operations. These policies also shall continue to address the timing of appropriate and reasonable disbursements consistent with the Prompt Payment Act, and the appropriateness of certain goods or services relative to the University's mission, including travel-related disbursements. Further, the University's disbursement policy shall continue to provide for the mechanisms by which payments are made including the use of charge cards, warrants, and electronic payments. Since the University no longer will interface to the CARS system or any replacement for the CARS system for disbursements, the University shall establish its own mechanisms for electronic payments to vendors through Electronic Data Interchange (EDI) or similar process and payments to the Commonwealth's Debt Set-Off Collection Programs.*

*Beginning with the fiscal year after the first fiscal year for which it first receives the required certification from SCHEV, the University may draw down its general fund appropriations (subject to available cash) and tuition and E&G fees and other non-general fund revenues from the State Treasury. Such funds shall be available to the University for disbursement as provided in the then-current rules of the Automated Clearing House (ACH) Network. The drawing down of funds may be initiated in accordance with the following schedule:*

- 1. The University may draw down one-twenty-fourth (1/24) of its annual general fund appropriation for Educational and General programs on the first and fifteenth days of each month, and up to 50 percent of its annual general fund appropriation for Student Financial Assistance on or after September 1 of each year with the remaining 50 percent to be drawn on or after February 1 of each year in order to meet student obligations;*
- 2. The University may draw down the sum of all tuition and E&G fees and all other non-general fund revenues deposited to the State Treasury each day on the same business day they were deposited; and*
- 3. The University anticipates that expenditures could exceed available revenues from time to time during the year if the above disbursement schedule is used. When the University projects a cash deficit is likely in activities supported by general fund appropriations, the University may make a request to the State Comptroller for an early draw on its appropriated general funds deposited in the State Treasury, in a form and within a time frame agreeable to the parties, in order to cover expenditures.*

*These disbursement policies shall authorize the President, acting through the Senior Vice President for Finance and Administration or other designee, to independently select, engage, and contract for such consultants, accountants, and financial experts, and other such providers of expert advice and consultation, and, after consultation with the Office of the Attorney General, private attorneys, as may be necessary or desirable in his or her discretion. The policies also shall continue to include the ability to locally manage and administer the Commonwealth's credit card and cost recovery programs related to disbursements, subject to any restrictions contained in the Commonwealth's contracts governing those programs, provided that the University shall submit the credit card and cost recovery aspects of its financial and operations policies to the State Comptroller for review and comment prior to implementing those aspects of those policies. The disbursement policies shall ensure that adequate risk management and internal control procedures shall be maintained over previously decentralized processes for public records, payroll, and non-payroll disbursements. The University shall continue to provide sum-*

*mary quarterly prompt payment reports to the Department of Accounts in accordance with the reporting procedures established pursuant to the Prompt Payment Act. The University's disbursement policies shall be guided by the principles of the Commonwealth's policies as included in the Commonwealth's Accounting Policy and Procedures Manual. Upon the Effective Date of its initial management agreement with the Commonwealth, the University shall continue to follow the Commonwealth's disbursement policies until such time as specific alternative policies can be developed, approved and implemented. Such alternate policies shall be submitted to the State Comptroller for review and comment prior to their implementation by the University.*

#### **X. DEBT MANAGEMENT.**

*The President, acting through the Senior Vice President for Finance and Administration or other designee, is authorized to create and implement any and all debt management policies as part of a system for the management of University financial resources.*

*Pursuant to subsection B of § [23-38.108](#) of the Act, the University shall have the authority to issue bonds, notes, or other obligations that do not constitute State Tax Supported Debt, as determined by the Treasury Board, and that are consistent with the University's debt-management policy established by its Board of Visitors, without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by Subchapter 3 of the Act; provided that, the University shall notify the Treasurer of Virginia of its intention to issue bonds pursuant to this Policy at the time it adopts the bond issuance planning schedule for those bonds. Any new or revised debt capacity and management policy shall be submitted to the Treasurer of Virginia for review and comment prior to its adoption by the University. The University recognizes that there are numerous types of financing structures and funding sources available each with specific benefits, risks, and costs. All potential funding sources shall be reviewed by the President, acting through the Senior Vice President for Finance and Administration or other designee, within the context of the overall portfolio to ensure that any financial product or structure is consistent with the University's objectives. Regardless of the financing structure(s) utilized, the President, acting through the Senior Vice President for Finance and Administration or other designee, shall obtain sufficient documentation to gain a full understanding of the transaction, including (i) the identification of potential risks and benefits, and (ii) an analysis of the impact on University creditworthiness and debt capacity. All such debt or financial products issued pursuant to the provisions of §§ 23.38-107 and 23.38-108 of the Act shall be authorized by resolution of the Board, providing that they do not constitute State Tax Supported Debt.*

*The University currently has established policy relating to the total permissible amount of outstanding debt by monitoring University-wide ratios that measure debt compared to University balance-sheet resources and annual debt service burden. These measures are monitored and reviewed regularly in light of the University's current strategic initiatives and expected debt requirements. The Board of Visitors shall periodically review and approve the University's debt management policy. Any change in the current policy shall be submitted to the Treasurer of Virginia for review and comment prior to their adoption by the University.*

**XI. INVESTMENT POLICY.**

*It is the policy of the University to invest its operating and reserve funds solely in the interest of the University and in a manner that will provide the highest investment return with the maximum security while meeting daily cash flow demands and conforming to the Investment of Public Funds Act (§ [2.2-4500](#) et seq.) of the Code of Virginia. Investments shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*

*Endowment investments shall be invested and managed in accordance with the Uniform Management of Institutional Funds Act, §§ [55-268.1](#) through [55-268.10](#) and § [23-76.1](#) of the Code of Virginia.*

*The Board of Visitors shall periodically review and approve the investment guidelines governing the University's operating and reserve funds.*

**XII. INSURANCE AND RISK MANAGEMENT.**

*By July 1 of each odd-numbered year, the University shall inform the Secretary of Finance of any intent during the next biennium to withdraw from any insurance or risk management program made available to the University through the Commonwealth's Division of Risk Management and in which the University is then participating, to enable the Commonwealth to complete an adverse selection analysis of any such decision and to determine the additional costs to the Commonwealth that would result from any such withdrawal. If upon notice of such additional costs to the Commonwealth, the University proceeds to withdraw from the insurance or risk management program, the University shall reimburse the Commonwealth for all such additional costs attributable to such withdrawal, as determined by the Commonwealth's actuaries. Such payment shall be made in a manner agreeable to both the University and the Commonwealth.*

2. That the first enactment of this Act shall supersede the terms of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008. Any such management agreement entered into prior to January 1, 2008, shall be deemed incorporated into this Act.

3. That the provisions of the first enactment of this Act shall expire at midnight on June 30, 2012. The expiration of such enactment shall automatically result in the expiration of the provisions of any management agreement between the Commonwealth and Virginia Commonwealth University that was entered into prior to January 1, 2008, and incorporated into this Act.

## **Chapter 620 License plates, special; issuance to supporters of Appalachian Trail.**

An Act to authorize the issuance of special license plates to supporters of the Appalachian Trail; fees.

[\[S 422\]](#)

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Appalachian Trail; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Appalachian Trail.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Appalachian Trail Fund established within the Department of Accounts. These funds shall be paid annually to the Appalachian Trail Conservancy and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him*

*into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 649 Address confidentiality for victims of domestic violence; program expanded.**

An Act to amend and reenact § [2.2-515.2](#) of the Code of Virginia, and to amend and reenact the second and third enactments of Chapter 599 of the Acts of Assembly of 2007, relating to victims of domestic violence.

[\[S 764\]](#)

Approved March 13, 2008

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-515.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-515.2](#). (Contingent scope of application - See Editor's notes) Address confidentiality program established; victims of domestic violence; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence.

"Domestic violence" means an act as defined in § [38.2-508](#) and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

*"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.*

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. An individual who

is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General as the applicant's address *in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials.* The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant *declaring to be true and correct under penalty of perjury* that the applicant has good reason to believe that:
  - a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence; ~~and~~
  - b. The applicant fears further violent acts from the applicant's assailant; *and*
  - c. *The applicant is not on active parole or probation supervision requirements under federal, state, or local law.*
2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;
3. ~~The mailing address where the applicant can be contacted by the Office of the Attorney General~~ *applicant's actual address to which mail can be forwarded* and a telephone number where the applicant can be called;
4. ~~The new address that the applicant requests not be disclosed because of the increased risk of domestic violence~~ *A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant;* and
5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the institution of the program, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the

Attorney General and to those employees involved in the operation of the Address Confidentiality Program and to law-enforcement officers ~~for law-enforcement purposes~~. *A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.*

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;
2. The program participant obtains a name change through an order of the court;
3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;
4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable; ~~or~~
5. Any information contained in the application is false; ~~;~~
6. *The program participant has been placed on parole or probation while a participant in the address confidentiality program; and*
7. *The applicant is required to register as a sex offender pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1.*

*For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.*

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, *except when the program participant is purchasing a firearm from a dealer in firearms.*

The agency shall accept the address designated by the Office of the Attorney General as a program participant's address, unless the agency has ~~demonstrated~~ *received a written exemption from the Office of the Attorney General demonstrating* to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; ~~and~~
2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency; ~~;~~ *and*
3. *A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the*

*agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.*

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

*A program participant's actual address shall be disclosed pursuant to a court order.*

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) to the extent such records contain information identifying a past or current program participant, including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

2. That the second and third enactments of Chapter 599 of the Acts of Assembly of 2007 are amended and reenacted as follows:

2. That the provisions of this act shall be limited to and implemented solely within the ~~County of Arlington~~ *Counties of Albemarle, Arlington, Augusta, Dickenson, Fairfax, Henry, Lee, Rockbridge, Russell, Scott, Washington, and Wise as well as the Cities of Buena Vista, Charlottesville, Lexington, Martinsville, Norfolk, and Roanoke.* An evaluation of the program shall be prepared by the Office of the Attorney General and the results forwarded to the members of the Senate Committee on General Laws and the House Committee on General Laws by December 31, ~~2007~~ *2010*.

3. That following the evaluation of the program by the Office of the Attorney General in accordance with the second enactment of this act, the continuation of the address confidentiality program on a statewide basis shall be conditioned upon an appropriation effectuating the purposes of this act in the appropriation act passed during the 2008 2011 Session of the General Assembly and signed into law by the Governor.

## **Chapter 652 Northern Virginia Transportation Authority; refund of certain fees and taxes imposed thereby.**

An Act to declare certain fees and taxes imposed pursuant to Chapter 896 of the Acts of Assembly of 2007 null and void and to provide for the refund of such fees and taxes to the person or entity that paid such fee or tax.

[\[H 1578\]](#)

Approved March 25, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any contrary provision of law, the following fees and taxes imposed by the Northern Virginia Transportation Authority (Authority) pursuant to Chapter 896 of the Acts of Assembly of 2007 are declared null and void in accordance with the Supreme Court of Virginia's decision dated February 29, 2008, wherein these fees and taxes were declared to be unconstitutional:*

- 1. The congestion relief fee pursuant to § [58.1-802.1](#) of the Code of Virginia.*
- 2. The registration fee pursuant to § [46.2-755.1](#) of the Code of Virginia.*
- 3. The initial vehicle registration fee pursuant to § [46.2-755.2](#) of the Code of Virginia.*
- 4. The motor vehicle rental tax pursuant to § [58.1-2402.1](#) of the Code of Virginia.*
- 5. The transient occupancy tax pursuant to § [58.1-3825.1](#) of the Code of Virginia.*
- 6. The safety inspection fee pursuant to § [46.2-1167.1](#) of the Code of Virginia.*
- 7. The sales and use tax on motor vehicle repairs pursuant to subsection K of § [58.1-605](#) and subsection H of § [58.1-606](#) of the Code of Virginia.*

*All vendors, agencies, clerks, or other entities authorized to collect such fees and taxes shall cease collection of such fees and taxes immediately and shall remit or refund any such fees or taxes collected in accordance with the provisions of § 2.*

*§ 2. Any fees or taxes specified in § 1 that have been collected shall be returned to the person or entity that paid such fee or tax. The return of such fees and taxes shall be accomplished in the following manner:*

*For the congestion relief fee pursuant to § [58.1-802.1](#), any taxes previously paid to the Authority by the clerk of circuit court shall be returned to the applicable clerk no later than May 1, 2008. All taxes collected by the clerk of circuit court shall be returned by the clerks to the persons or entities that acted as settlement agent as defined in § 6.1-2.10 of the Code of Virginia within 60 days from the effective date of this act. Notwithstanding any contrary provision of law, such taxes shall be returned to the persons or entities entitled thereto by no later than 90 days from the date of receipt of such taxes from the clerk of circuit court. The settlement agent shall exercise due diligence in the return of such taxes. The applicable clerk of circuit courts shall jointly develop guidelines within 60 days of the effective date of this act for handling such taxes and make such guidelines available in the clerk's office and on the clerk's website to the settlement agents and the general public. The clerk of circuit court shall not be liable to the persons or entities entitled to receive the overpayment of such taxes, provided the clerk complies with the provisions of this act. The settlement agent shall not be liable to the persons or entities entitled to receive such taxes provided the settlement agent complies with this act, and other applicable state and federal laws governing the activities of settlement agents.*

*For the registration fee pursuant to § [46.2-755.1](#) and the initial vehicle registration fee pursuant to § [46.2-755.2](#), all vendors who collected any such fees shall pay such fees to the Department of Motor Vehicles no later than 30 business days following the enactment of this legislation. All fees collected by the Department of Motor Vehicles or its agents shall be returned by the Department of Motor Vehicles to the person or entity that paid the fee in accordance with guidelines that the Commissioner of the Department of Motor Vehicles shall develop no later than April 1, 2008. Such guidelines shall be available to the public upon request after April 1, 2008.*

*For the motor vehicle rental tax pursuant to § [58.1-2402.1](#), the transient occupancy tax pursuant to § [58.1-3825.1](#), the safety inspection fee pursuant to § [46.2-1167.1](#), and the sales and use tax on motor vehicle repairs pursuant to subsection K of § [58.1-605](#) and subsection H of § [58.1-606](#), all affected vendors shall pay any fees or taxes collected according to its established payment schedule but no later than 30 business days following the effective date of this act, to the designated collection agent as follows: to the Department of Motor Vehicles for the motor vehicle rental tax, the local governing body or the Authority for the transient occupancy tax, the Authority for the safety inspection fee,*

*and the Department of Taxation for the sales and use tax on motor vehicle repairs. Subject to audit and certification by the vendor, the vendor shall be entitled to retain any fees or taxes collected that were paid by the vendor on behalf of the person or entity who is not the vendor. If any vendor retains any fees or taxes they shall be required to provide such information necessary to implement the provisions of this act.*

*Any such payments received by the collection agent shall immediately become unclaimed property as defined in § [55-210.2](#) of the Code of Virginia. Notwithstanding any contrary provision of law, the collection agent shall have 40 business days following the effective date of this act to remit such property to the State Treasurer. For purposes of such remittance, the collection agent shall be exempt from the abandonment period provisions of § [55-210.9](#) of the Code of Virginia and the requirements of § [55-210.12](#) of the Code of Virginia. All such property received by the State Treasurer shall be managed in accordance with the requirements of the Uniform Disposition of Unclaimed Property Act under Chapter 11.1 (§ [55-210.1](#) et seq.) of Title 55 of the Code of Virginia; provided, however, that the State Treasurer may establish separate guidelines to facilitate and expedite the return of such property, none of which shall require a vendor to provide identifying information about any owner of the unclaimed property except for instances where the vendor retains any portion of any taxes or fees collected.*

*§ 3. In the event the Authority has received or receives any payment of the fees and taxes listed in § 1, excluding the congestion relief fee, made directly from a vendor pursuant to the provisions of Chapter 896 of the Acts of Assembly of 2007, such payments shall be deemed unclaimed property as defined in § [55-210.2](#) of the Code of Virginia. Accordingly, and notwithstanding any contrary provision of law, the Authority shall have 40 business days following the effective date of this act to remit such property currently in its possession to the State Treasurer. For any property received after such period, the Authority shall have 10 business days to remit such property to the State Treasurer. For purposes of such remittance, the Authority shall be exempt from the abandonment period provisions of § [55-210.9](#) Code of Virginia, and the requirements of § [55-210.12](#) of the Code of Virginia. All such property received by the State Treasurer shall be managed in accordance with the requirements of the Uniform Disposition of Unclaimed Property Act under Chapter 11.1 (§ [55-210.1](#) et seq.) of Title 55 of the Code of Virginia; provided, however, that the State Treasurer may establish separate guidelines to facilitate and expedite the return of such property, none of which shall require a vendor to provide identifying information about any owner of the unclaimed property except as outlined in § 2 of this act.*

§ 4. *In the event that the clerks of the court, settlement agents, or the Department of Motor Vehicles are not able to return a portion of such fees and taxes pursuant to § 2 by September 30, 2008, such unreturned fees and taxes shall be deemed unclaimed property, as defined in § [55-210.2](#) of the Code of Virginia. Notwithstanding any contrary provision of law, such property shall be reported and remitted to the State Treasurer on or before November 1, 2008. For purposes of such remittance, the Department of Motor Vehicles and the settlement agents or clerks of the court shall be exempt from the abandonment period provisions of § [55-210.2:1](#) or [55-210.9](#), as applicable, of the Code of Virginia. The holder of any such funds shall otherwise comply with the provisions of the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) of Title 55 of the Code of Virginia. All such property received by the State Treasurer shall be managed in accordance with the requirements of the Uniform Disposition of Unclaimed Property Act under Chapter 11.1 (§ [55-210.1](#) et seq.) of Title 55 of the Code of Virginia; provided, however, that the State Treasurer may establish separate guidelines to facilitate and expedite the return of such property.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 655 Recreational Facilities Authority; delays reversion of title to real property.**

An Act to delay the reversion of property owned by the Virginia Recreational Facilities Authority.

[\[H 1142\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That the provisions in § [10.1-1618](#) of the Code of Virginia requiring a reversion of title to real property from the Virginia Recreational Facilities Authority to the Commonwealth, in the event that the Authority ceases to operate a project, shall not be enforceable until July 1, 2009.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 670 TAG; eligibility for students attending Edward Via Virginia College of Osteopathic Medicine.**

An Act to allow students attending the Edward Via Virginia College of Osteopathic Medicine to be eligible for the Tuition Assistance Grant Program.

[\[H 979\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of §§ [23-38.12](#) and [23-38.15](#) of the Code of Virginia, students attending the Edward Via Virginia College of Osteopathic Medicine shall be eligible for the Tuition Assistance Grant Program, pursuant to Chapter 4.1 (§ [23-38.11](#) et seq.) of Title 23. No student who enrolled at Edward Via Virginia College of Osteopathic Medicine as a full-time student prior to the fall of 2009 and is attending the College shall be eligible for the Tuition Assistance Grant Program.*

## **Chapter 634 License plates, special; issuance to supporters of National D-Day Memorial Foundation.**

An Act to authorize the issuance of special license plates to supporters of the National D-Day Memorial Foundation; fees.

[\[S 750\]](#)

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner shall issue special license plates to supporters of the National D-Day Memorial Foundation.*

*The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the National D-Day Memorial Foundation Fund, established within the Department of Accounts. These funds shall be paid annually to the National D-Day Memorial Foundation and used to assist in its programs, activities, and operation. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 653 Jet bases; land use adjacent to certain.**

An Act to amend and reenact § 1 of the first enactment of Chapter 266 of the Acts of Assembly of 2006, relating to land use adjacent to certain jet bases.

[\[H 522\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the first enactment of Chapter 266 of the Acts of Assembly of 2006 is amended and reenacted as follows:

§ 1. Land use adjacent to certain jet bases.

A. The governing body of any locality in which a United States Navy Master Jet Base, or an auxiliary landing field used in connection with flight operations arising from such Master Jet Base, is located shall:

1. Adopt zoning ordinances that require the governing body to follow Navy Air Installation Compatible Use Zone (AICUZ) guidelines in deciding discretionary applications for property in noise levels 70 dB DNL or greater;
2. Undertake an evaluation of undeveloped properties located in noise zones 70 dB DNL or greater to determine the suitability of such properties for rezoning classifications that would prohibit uses incompatible under AICUZ guidelines;
3. Adopt such ordinances or take such other actions as may be recommended in any Joint Land Use Study that has been officially approved by the governing body of the locality; and

4. Establish programs to purchase land or development rights in the corridor of land underneath the flight path between the Master Jet Base and the auxiliary landing field known as an interfacility traffic area.

B. For the purpose of preventing further encroachment, the governing body of any locality in which a United States Navy Master Jet Base is located shall adopt ordinances to establish a program to purchase or condemn pursuant to § 2, incompatible use property or otherwise seek to convert such property to an appropriate compatible use and to prohibit new uses or development deemed incompatible with air operations in the Accident Potential Zone 1 (APZ-1) and Clear Zone areas, as depicted in the Navy's 1999 AICUZ Pamphlet;. *Such ordinances may include provisions for interfacility traffic areas, or any other area designated by the military as an area of special concern by reason of the potential for adverse affects on military operations caused by the encroachment of incompatible land uses*and. A locality may fund and expend no less than \$15 million annually in state and local funds in furtherance of the program, to the extent that properties or development rights are reasonably available for acquisition or their use reasonably may be converted. Such funding and expenditures shall be subject to annual appropriations from the state and locality, and shall continue until such time as all reasonably available properties or development rights have been acquired in the designated areas.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 658 Eastern Virginia Medical School; length of term for Board of Visitors.**

An Act to amend and reenact § 2 of Chapter 471 of the Acts of Assembly of 1964, as amended by Chapter 87 of the Acts of Assembly of 2002, relating to Eastern Virginia Medical School; emergency.

[\[S 613\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 471 of the Acts of Assembly of 1964, as amended by Chapter 87 of the Acts of Assembly of 2002, is amended and reenacted as follows:

§ 2. The Medical School shall be governed by a Board of Visitors (the Board) composed of seventeen members, six of whom shall be appointed by the Eastern Virginia Medical

School Foundation and eleven of whom shall be appointed by their respective city councils as follows: one member for the City of Chesapeake, one member for the City of Hampton, one member for the City of Portsmouth, one member for the City of Suffolk, one member for the City of Newport News, two members for the City of Virginia Beach, and four members for the City of Norfolk.

Appointments by the Eastern Virginia Medical School Foundation (the Foundation) shall represent the broad involvement of the Medical School in the Commonwealth at large. All appointments shall be for terms of three years, commencing on the first day of July of the appointment year. However, appointments to fill vacancies shall be made by the Foundation and each council, as the case may be, to commence on appropriate dates for the unexpired terms.

No person shall be eligible to serve for more than two successive full three-year terms; however, after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which the member was appointed to fill a vacancy, or after one year following the expiration of a second full three-year term, two additional three-year terms may be served by a member, if appointed. *In addition, an officer of the Board may serve up to three additional one-year terms.*

Members shall receive no salaries but shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties. Each member shall continue to hold office until his successor has been appointed and qualified.

The Foundation and each city council shall have the right to remove any member appointed by them, for malfeasance or misfeasance, incompetence, or gross neglect of duty. Members shall take an appropriate oath of office before the clerk of the circuit court of the municipality that they represent or the clerk of an appropriate circuit court, and the oaths shall be filed with the relevant clerks. Members appointed by the Foundation shall take an appropriate oath of office before the clerk of the Norfolk Circuit Court, which shall be filed with the city clerk of Norfolk.

Members of the Board shall elect, on an annual basis, one of their number as rector and another as vice-rector and shall also elect a secretary and treasurer and such assistant secretaries and treasurers as the Board may authorize for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer.

The Board shall appoint a President, who shall be the chief executive officer, with such duties as may be prescribed by the Board. The Board shall also appoint a dean, a provost, such vice presidents, and other administrative and academic officers as the Board

may authorize, and such professors, teachers, staff members, and agents as they deem proper. The Board may prescribe the duties of such staff and faculty, and provide for the employment of other personnel as may be necessary. The Board shall generally direct the affairs of the Medical School.

The Board shall make such rules, regulations and bylaws for its own government and procedures as it shall determine. The Board may generally, in respect to the government and management of the Medical School adopt such rules and regulations as it may deem expedient, which are not contrary to law. The Board shall meet at least six times each year and may hold such special meetings as it deems necessary. The rector or any three members may call special meetings of the Board. The Board may appoint an executive committee composed of at least three and no more than five members for the transaction of business in the recess of the Board.

The Board shall have the right to confer degrees, including honorary degrees, consistent with the approval authority of the State Council of Higher Education pursuant to Title 23 of the Code of Virginia.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 673 Subaqueous lands; Marine Resources Commission to convey parcels thereof.**

An Act to authorize the Marine Resources Commission to convey certain lands in the City of Norfolk to Fort Norfolk LLC.

[\[H 1208\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to Fort Norfolk LLC, and its successors and assigns, upon such terms and conditions as are deemed proper by the Commission pursuant to § [28.2-1200.1](#) of the Code of Virginia, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of previously filled subaqueous land in the City of Norfolk, Virginia, being more particularly described as follows:*

*All that certain lot, piece or parcel of land, belonging, lying, situate and being in the City of Norfolk as shown on the plan entitled "Exhibit Plan Showing Subaqueous Land Situate Below Property of Fort Norfolk, LLC, a Virginia Limited Liability Company, Norfolk, Virginia Scale: 1"=50' November 30, 2007." Such lot commencing at the intersection of the southern line of Front Street and a line 30 feet from and parallel to the west line of 2nd Street, thence from said point of commencement South 66 degrees 50 minutes 32 seconds East a distance of 630.62 feet to a point at the southwestern corner of the intersection of Front Street and Rader Street, thence South 22 degrees 22 minutes 30 seconds West a distance of 121.72 feet to the "Point of Beginning." Thence North 66 degrees 53 minutes 27 seconds West a distance of 107.48 feet to a point, thence North 27 degrees 27 minutes 27 seconds East a distance of 42.60 feet to a point, thence North 66 degrees 57 minutes 22 seconds West a distance of 79.75 feet to a point, thence South 86 degrees 13 minutes 40 seconds East a distance of 36.16 feet to a point, thence South 74 degrees 10 minutes 14 seconds East a distance of 9.37 feet to a point, thence South 56 degrees 40 minutes 45 seconds East a distance of 10.37 feet to a point, thence South 48 degrees 42 minutes 02 seconds East a distance of 9.30 feet to a point, thence South 56 degrees 12 minutes 50 seconds East a distance of 14.88 feet to a point, thence South 50 degrees 43 minutes 27 seconds East a distance of 14.27 feet to a point, thence South 60 degrees 55 minutes 26 seconds East a distance of 8.88 feet to a point, thence South 63 degrees 32 minutes 20 seconds East a distance of 13.27 feet to a point, thence South 51 degrees 50 minutes 30 seconds East a distance of 52.98 feet to a point, thence South 41 degrees 22 minutes 47 seconds East a distance of 7.09 feet to a point, thence South 57 degrees 38 minutes 35 seconds East a distance of 13.45 feet to a point, thence South 22 degrees 22 minutes 30 seconds West a distance of 23.41 feet to the said "Point of Beginning." Said described previously filled subaqueous property contains an approximate total area of 4,489 square feet or 0.103 acres.*

## **Chapter 687 Wilderness Road: Virginia's Heritage Migration Route; designating certain highway segments thereas.**

An Act to designate certain highway segments as the "Wilderness Road: Virginia's Heritage Migration Route."

[\[S 150\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the following route is hereby designated the "Wilderness Road: Virginia's Heritage Migration Route": U.S. Route 11 from Winchester to Bristol, then connecting with the Daniel Boone Wilderness Trail in Scott County and continuing west on U.S. Routes 58 and 23, ending at Cumberland Gap National Heritage Park in Lee County where it intersects with the Kentucky Wilderness Road Heritage Highway, and the Fincastle Turnpike and the Carolina Road spurs that branch off in Botetourt County. These roads, which went by a variety of names depending upon their location, collectively drew thousands of settlers southwestward from Pennsylvania and Maryland into and through the Great Valley of Virginia and into the wilderness of the American frontier. This designation shall not affect any other designation heretofore (including the Great Wagon Road, the Irish Tract, the Peaked Mountain, and the Great Philadelphia Road) or hereafter applied to this route or any portions thereof.*

2. That the provisions of subdivision (4) of § [33.1-12](#) of the Code of Virginia relating to placing and maintaining appropriate signs and the payment of costs associated therewith shall not apply to this act.

## **Chapter 675 Subaqueous lands; Marine Resources Commission to convey parcels of previously filled lands.**

An Act to convey certain previously filled subaqueous lands to Thornton Hall of Norfolk, LLC, and Thornton Hall, Inc.

[\[H 1317\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to Thornton Hall of Norfolk, LLC, and its successors and assigns, upon such terms and conditions as are deemed proper by the Commission pursuant to § [28.2-1200.1](#) of the Code of Virginia, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of previously filled subaqueous land in the City*

*of Norfolk, Virginia, as shown on the plan entitled "Exhibit Plan Showing Outline of Areas 1 and 2, 827 Norview Avenue, Norfolk, Virginia" and is more particularly described in a certain plat by Draper Aden Associates, dated January 28, 2008, as follows:*

*From a rod found at the intersection of the south right-of-way line of Norview Avenue with the western line of Norfolk and Western railroad, thence South 11 degrees 22 minutes 00 seconds East, a distance of 6.8 feet +/- to the intersection of the western line of Norfolk and Western Railroad and approximate location of the old bluff as shown on the subdivision plat recorded in M.B. 11, pp. 20 and 21, said point being the point of beginning of Area 1, and thence South 11 degrees 22 minutes 00 seconds East, a distance of 427.2 feet +/- to a rod set being a point on line, thence continuing South 11 degrees 22 minutes 00 seconds East, a distance of 37 feet +/- to the intersection of the mean low water line of Wayne Creek, a tributary of the Lafayette River, and the western right-of-way line of the Norfolk and Western Railroad; thence, along the meanders of the mean low water line of Wayne Creek in a westerly direction, a distance of 609 feet +/- to the intersection of the western property line; thence North 31 degrees 14 minutes 30 seconds East, a distance of 120.2 feet +/- to a rod set on the western property line, thence continuing along the western property line North 31 degrees 14 minutes 30 seconds East, a distance of 250.8 feet +/- to a point at the approximate location of the old bluff referenced above, thence with the meanders of the old bluff in an easterly direction approximately 34.5 feet +/-, connected with a tie line having a bearing of North 82 degrees 02 minutes 12 seconds East, a distance of 34.38 feet, to a point on the southern property line of Parcel B and being the point of beginning of Area 2, thence South 58 degrees 45 minutes 30 seconds East, a distance of 79.0 feet +/- to a rod found at the southeast corner of Parcel B, thence North 31 degrees 14 minutes 30 seconds East, a distance of 46.0 feet +/- to a point at the intersection of the old bluff with eastern line of Parcel B, thence running with the meanders of the old bluff in an easterly direction generally along the following courses: South 67 degrees 40 minutes 03 seconds East, a distance of 27.02 feet, thence South 78 degrees 52 minutes 25 seconds East, a distance of 50.25 feet, thence South 81 degrees 37 minutes 42 seconds East, a distance of 38.78 feet to the point of beginning of Area 1, containing 187,984 square feet or 4.316 acres more or less.*

*§ 2. That the Marine Resources Commission is hereby authorized to sell and convey on behalf of the Commonwealth to Thornton Hall, Inc. and its successors and assigns, upon such terms and conditions as are deemed proper by the Commission pursuant to § [28.2-](#)*

[1200.1](#) of the Code of Virginia, with the approval of the Governor and in a form approved by the Attorney General, such rights, title, and interest as the Commonwealth may have in a piece or parcel of previously filled subaqueous land in the City of Norfolk, Virginia, as shown on the plan entitled "Exhibit Plan Showing Outline of Areas 1 and 2, 827 Norview Avenue, Norfolk, Virginia" and is more particularly described in a certain plat by Draper Aden Associates, dated January 28, 2008, as follows:

From a rod found at the intersection of the south right-of-way line of Norview Avenue with the western line of Norfolk and Western Railroad, thence South 11 degrees 22 minutes 00 seconds East, a distance of 6.8 feet +/- to the intersection of the western line of Norfolk and Western Railroad and approximate location of the old bluff as shown on the subdivision plat recorded in M.B. 11, pp. 20 and 21, thence North 81 degrees 37 minutes 42 seconds West, a distance of 38.78 feet to a point, thence North 78 degrees, 52 minutes 25 seconds West, a distance of 50.25 feet to a point, thence North 67 degrees 40 minutes 03 seconds West, a distance of 27.02 feet to a point, thence South 31 degrees 14 minutes 30 seconds West, a distance of 46.0 +/- feet to a rod found, thence North 58 degrees 45 minutes 30 seconds West a distance of 79.0 +/- feet to a rod found, marking the point of beginning of Area 2, from the point of beginning of Area 2; thence, departing the south line of Parcel B, and running with the meanders of the old bluff in an easterly direction generally along the following courses: North 72 degrees 38 minutes 00 seconds East, a distance of 18.37 feet; thence North 88 degrees 34 minutes 22 seconds East, a distance of 25.18 feet; thence South 80 degrees 55 minutes 53 seconds East, a distance of 49.25 feet to a point on the eastern line of Parcel B, thence South 31 degrees 14 minutes 30 seconds West, a distance of 46.0 feet +/- to a rod found at the southeast corner of Parcel B; thence, running with the south line of Parcel B, North 58 degrees 45 minutes 30 seconds West, a distance of 79.0 feet +/- to the point of beginning of Area 2, containing 2,212 square feet or 0.051 acres more or less.

§ 3. Prior to any conveyance pursuant to § 1 or § 2, the prospective grantees may request a written determination by the Marine Resources Commission whether any of the property authorized to be conveyed is subject to [§ 28.2-1200](#) of the Code of Virginia by virtue of being, having been, or being situated over, state-owned subaqueous land. Any factual determination that the property is not previously filled state-owned subaqueous land shall be conclusive as between the parties. Any determination by the Marine Resources Commission pursuant to this section shall not be subject to judicial review.

## Chapter 693 Affordable housing; permitting certain densities in plan in City of Charlottesville.

An Act to grant certain authority related to affordable housing to the City of Charlottesville.

[\[S 268\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. The governing body of the City of Charlottesville may provide in its comprehensive plan for the physical development within the city, adopted pursuant to [§ 15.2-2223](#), for densities of development ranging between a floor area ratio (FAR) of 1.0 FAR and 10.0 FAR, or greater, and as such, the governing body may adopt as part of its zoning ordinance requirements for the provision of (i) on-site or off-site "Affordable Dwelling Units," as defined herein, or (ii) a cash contribution to the city's affordable housing fund, in lieu of such units, in such amounts as set out herein, as a condition of the governing body's approval of a rezoning or special use application for residential or the residential portion of mixed-use projects with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre. Residential or the residential portion of mixed-use projects with a density less than 1.0 FAR, or an equivalent density based on units per acre, shall be exempt from the requirements of this section and the city's zoning ordinance adopted pursuant to this section. The city's zoning ordinance requirements shall provide as follows:*

*1. Upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant shall provide on-site Affordable Dwelling Units as part of the project, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that exceeds 1.0 FAR or an equivalent density based on units per acre. For purposes of this section, "applicant" shall mean the person or entity submitting a rezoning or special use application for approval of a residential or mixed-use project that contains residential dwelling units in the city and shall include the successors or assigns of the applicant.*

*2. As an alternative, upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant may elect to provide any one of the following:*

*a. Affordable Dwelling Units at an off-site location in the city, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that is over 1.0 FAR, or an equivalent density based on units per acre; or*

*b. A cash contribution to the city's affordable housing fund, which contribution shall be calculated as follows for each of the density tiers described below:*

*(1) Two dollars per square foot of gross floor area for residential projects greater than 1.0 FAR or an equivalent density based on units per acre.*

*(2) For mixed-use projects, cash contributions shall be calculated by applying the proportionate amount of residential gross floor area at two dollars per square foot.*

*The cash contribution shall be indexed to the Consumer Price Index for Housing in the Charlottesville MSA as published by the Bureau of Labor Statistics and shall be adjusted annually based upon the changes made in January to such index.*

*3. For purposes of this section, "Affordable Dwelling Units" mean units committed for a 30-year term as affordable to households with incomes at 60 percent or less of the area median income.*

*B. With the exception of the authority under § [15.2-2305](#), this section establishes the legislative authority for the city to obtain Affordable Dwelling Units in exchange for the approval of a rezoning or special use application for a residential, or mixed-use project that contains residential dwelling units in the city, and may not be used in combination with any other provision of law in this chapter to obtain Affordable Dwelling Units from an applicant. Nothing in this section shall be construed to repeal the city's authority under any other provision of law.*

## **Chapter 708 License plates, special; issuance to supporters of the Colonial Williamsburg Foundation.**

An Act to authorize the issuance of special license plates to supporters of the Colonial Williamsburg Foundation; fees.

[\[S 600\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Colonial Williamsburg Foundation; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner shall issue special license plates to supporters of the Colonial Williamsburg Foundation.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Colonial Williamsburg Foundation Fund, established within the Department of Accounts. These funds shall be paid annually to the Colonial Williamsburg Foundation and used to assist in its programs, activities, and operation. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 709 Virginia War Memorial; State Treasurer to advance loan for construction of an educational wing.**

An Act to authorize the State Comptroller to advance a no-interest, short-term treasury loan for improvements to the Virginia War Memorial and to repeal Chapter 580 of the Acts of Assembly of 2007.

[\[S 662\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That upon certification by the Governor or his designee that \$2 million in private funds have been raised, pledged, or expended to support construction of an educational wing for the Virginia War Memorial and expand the Shrine of Memory to include Virginians killed in action in the War on Terror, the State Comptroller shall advance a loan*

*of \$5.97 million to the state agency specified by the Governor or his designee for the state share of the construction in the form of a short-term treasury loan, with no interest.*

*§ 2. The State Comptroller shall advance \$500,000 of the \$5.97 million upon certification that \$1 million in private funds have been raised, pledged, or expended for the educational wing. This amount shall be used for the educational wing portion of the project.*

2. That Chapter 580 of the Acts of Assembly of 2007 is repealed.

## **Chapter 730 Community development authority board; City of Richmond appoint seven members.**

An Act to allow the City of Richmond to appoint seven members to a community development authority board.

[\[H 877\]](#)

Approved March 27, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the board of any community development authority previously created pursuant to Article 6 (§ [15.2-5152](#) et seq.) of Chapter 51 of Title 15.2 of the Code of Virginia by the city council of the City of Richmond shall consist of seven members.*

## **Chapter 799 Underground transmission lines; pilot program established.**

An Act to establish a pilot program to place certain transmission lines underground.

[\[H 1319\]](#)

Approved April 2, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established a pilot program to construct qualifying electrical transmission lines of 230 kilovolts or less in whole or in part underground. Such pilot program*

*shall consist of a total of four qualifying electrical transmission line projects, constructed in whole or in part underground, as set forth in this act.*

*§ 2. A. Notwithstanding any other law to the contrary, as a part of the pilot program established pursuant to this act, the State Corporation Commission shall approve as a qualifying project a transmission line of 230 kilovolts or less that has received a certificate of public convenience and necessity from the State Corporation Commission prior to the effective date of this act that approved construction of an electrical transmission line in a right of way located upon land owned by a regional park authority used by the general public for park and recreation purposes, provided that the construction of such electrical transmission line has not commenced prior to the effective date of this act. The project shall be constructed in part underground, and the underground portion shall consist of a double circuit.*

*The State Corporation Commission shall approve such underground construction within 30 days of receipt of the written request of the public utility to participate in the pilot program pursuant to this section. The Commission shall not require the submission of additional technical and cost analyses as a condition of its approval, but may request such analyses for its review. The Commission shall approve the underground construction of one contiguous segment of the transmission line that is approximately 1.8 miles in length that was previously approved for construction upon or immediately adjacent to the right of way of the regional park authority, provided that the underground construction shall be located within the boundaries of such existing right of way upon the land owned by the regional park authority, excluding any substation or transition locations which may be required as a part thereof. The Commission shall make a finding establishing the termini of the underground portion of the line. The remainder of the construction for the previously approved transmission line shall be aboveground pursuant to the terms of the certificate of public convenience and necessity. The Commission shall not be required to perform any further analysis as to the impacts of this route, including environmental impacts or impacts upon historical resources.*

*The approval for constructing the above-described portion of the previously approved electrical transmission line as a double circuit underground shall not impair or delay the implementation of the certificate of public convenience and necessity and no further notice, testimony, or hearings shall be required in connection with such approval. The electric utility may proceed to acquire right of way and take such other actions as it deems appropriate in furtherance of the construction of the approved transmission line, including acquiring the cables necessary for the underground installation. Approval of a*

*transmission line pursuant to this section for inclusion in the pilot program shall be deemed to satisfy the requirements of § [15.2-2232](#) and local zoning ordinances with respect to such transmission line and any substations or transition locations that may be required.*

*B. If the qualifying project approved in subsection A provides only radial, rather than networked, electric service, there shall be a presumption of need in applications filed for a certificate of public convenience and necessity for electrical transmission lines that will complete the network for such qualifying project. The State Corporation Commission shall give priority on its docket for any such application of a public utility. Upon written request of the public utility for participation in the pilot program pursuant to this section, the Commission shall approve the construction of such additional network facilities in whole or in part underground, and such additional network facilities shall be considered a qualifying project for purposes of this act. The Commission shall not require the submission of additional technical and cost analyses as a condition of such approval, but may request such analyses for its review.*

*§ 3. In reviewing applications submitted by public utilities for certificates of public convenience and necessity for the construction of electrical transmission lines of 230 kilovolts or less filed between the effective date of this act and July 1, 2012, the State Corporation Commission shall approve three applications for qualifying projects to be constructed in whole or in part underground, as a part of the pilot program. The three qualifying projects shall be in addition to the qualifying project described in subsection A of § 2. If a public utility submits an application for a certificate of public convenience and necessity for an electrical transmission line that completes the network for a qualifying project as set forth in subsection B of § 2, the approval of such application shall constitute one of the three additional projects to be approved pursuant to this section.*

*§ 4. For purposes of this act, a project shall be qualified to be placed underground, in whole or in part, if it meets all of the following criteria:*

- 1. An engineering analysis demonstrates that it is technically feasible to place the proposed line, in whole or in part, underground;*
- 2. The estimated additional cost of placing the proposed line, in whole or in part, underground does not exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards for undergrounding to ensure safety and reliability. If the public utility, the affected localities, and the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5 times the cost of placing the line overhead may also be accepted into the pilot program; and*

3. *The governing body of each locality in which a portion of the proposed line will be placed underground indicates, by resolution, general community support for the line to be placed underground.*

§ 5. *A. If the State Corporation Commission identifies an application as a potentially qualified project for purposes of the pilot program, the Commission shall request that the public utility provide technical and cost analyses for placing the proposed line overhead and for placing the proposed line, in whole or in part, underground.*

*B. If any application relates to the construction of a proposed line to meet a specific and identifiable industry's needs, and the project must be completed by the public utility within a specific amount of time to facilitate an economic development agreement, then such application need not include the two analyses, so long as the public utility provides documentation regarding the economic development agreement.*

§ 6. *The State Corporation Commission shall report annually to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor on the progress of the pilot program by no later than December 1 of each year that this act is in effect. The State Corporation Commission shall submit a final report to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor no later than December 1, 2012, analyzing the entire program and making recommendations about the continued placement of transmission lines underground in the Commonwealth.*

§ 7. *For any qualifying project chosen pursuant to this act (regardless of whether such project is chosen pursuant to § 2 or 3) and not fully recoverable as charges for new transmission facilities pursuant to subdivision A 4 of § [56-585.1](#), the State Corporation Commission shall approve a rate adjustment clause. The rate adjustment clause shall provide for the full and timely recovery of any portion of the cost of such project not recoverable under applicable rates, terms, and conditions approved by the Federal Energy Regulatory Commission and shall include the use of the fair return on common equity most recently approved in a Commission proceeding for such utility, as defined by subsection A of § [56-585.1](#). Such costs shall be entirely assigned to the utility's Virginia jurisdictional customers. The Commission's final order regarding any petition filed pursuant to this subsection shall be entered not more than three months after the filing of such petition.*

§ 8. *If a transmission line is included in the pilot program pursuant to § 3 that includes only radial, rather than networked, electric service, there shall be a presumption of need in applications for a certificate of public convenience and necessity for electrical transmission lines that will complete the network for such qualifying project. The State*

*Corporation Commission shall give priority on its docket for any such application of a public utility.*

*§ 9. Approval of a proposed transmission line for inclusion in this program shall not preclude the placing of existing or future overhead facilities in the same area or corridor by other transmission projects.*

*§ 10. Public utility companies granted a certificate of public convenience and necessity for a proposed transmission line not included in this program or not otherwise being placed underground shall seek to implement low-cost and effective means to improve the aesthetics of new overhead transmission lines and towers.*

*§ 11. The provisions of this act shall not be construed to limit the ability of the State Corporation Commission to approve additional applications for placement of transmission lines underground.*

*§ 12. If four applications are not submitted to the State Corporation Commission that meet the requirements of this act, the State Corporation Commission shall document the failure of the projects to qualify for the pilot program in order to justify approving fewer than four projects to be placed underground, in whole or in part.*

*§ 13. Insofar as the provisions of this act are inconsistent with the provisions of any other law or local ordinance, the provisions of this act shall be controlling.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 826 No Child Left Behind Act; Board of Education to make recommendation in regard to participation.**

An Act to direct the Board of Education under certain circumstances to make a recommendation in regard to participation in the federal No Child Left Behind Act.

[\[H 1425\]](#)

Approved April 11, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Unless reauthorization of the Elementary and Secondary Education Act provides the necessary revisions in the No Child Left Behind (NCLB) Act that allow Virginia's existing educational accountability system, as set forth in the Standards of Quality, Standards of Learning, and Standards of Accreditation, to substantially meet the accountability*

*requirements of the federal law, the Board of Education shall make a recommendation to the General Assembly on whether Virginia should withdraw from NCLB. Should the Board recommend withdrawing from participation in NCLB, the Board shall develop a plan for withdrawal and shall submit such plan to the Governor and the General Assembly for their consideration by June 30, 2009.*

## **Chapter 831 No Child Left Behind Act; Board of Education to make recommendation regard to participation therein.**

An Act to direct the Board of Education under certain circumstances to make a recommendation in regard to participation in the federal No Child Left Behind Act.

[\[S 490\]](#)

Approved April 11, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Unless reauthorization of the Elementary and Secondary Education Act provides the necessary revisions in the No Child Left Behind (NCLB) Act that allow Virginia's existing educational accountability system, as set forth in the Standards of Quality, Standards of Learning, and Standards of Accreditation, to substantially meet the accountability requirements of the federal law, the Board of Education shall make a recommendation to the General Assembly on whether Virginia should withdraw from NCLB. Should the Board recommend withdrawing from participation in NCLB, the Board shall develop a plan for withdrawal and shall submit such plan to the Governor and the General Assembly for their consideration by June 30, 2009.*

## **Chapter 879 Budget Bill.**

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER 879

An Act to amend

[\[H 30\]](#)

Approved May 9, 2008

Be it enacted by the General Assembly of Virginia:

## **Chapter 802 Nursing home or facility beds; Health Commissioner may accept and issue applications therefor.**

An Act to require the State Health Commissioner to issue a Request For Applications, and to accept applications for 120 new nursing home or nursing facility beds in Planning District 3.

[\[H 1498\]](#)

Approved April 2, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding the provisions of § [32.1-102.3:2](#) of the Code of Virginia, any regulations of the Board of Health, or provisions of any current Request For Applications, the State Health Commissioner may issue a Request For Applications for 120 new nursing home or nursing facility beds in Planning District 3 when the Division of Certificate of Public Need of the Department of Health has determined, in its "Nursing Home Facility Beds and Utilization - Facility Fiscal Years Ending in 2006" analysis, that at least one nursing facility in Planning District 3 is licensed for 120 beds but operated no Medicaid-certified beds in 2006.*

*The Commissioner may accept applications for such 120 nursing home or nursing facility beds and may issue a certificate of public need for an increase of such 120 new beds in which nursing facility or extended care services are to be provided to establish a new facility in Planning District 3. The Commissioner shall consider any certificate of public need for the 120 beds to an applicant that proposes to establish a new nursing facility located within three miles of the boundary of the county seat or within the county seat of the county adjacent to the city or county in which is sited any facility in Planning District 3 determined by the Division of Certificate of Public Need, in its "Nursing Home Facility Beds and Utilization - Facility Fiscal Years Ending in 2006" analysis, to be licensed for 120 beds but that operated no Medicaid-certified beds in 2006.*

## **Chapter 847 Budget Bill.**

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER 847

An Act to amend and reenact Chapter 847 of the 2007 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2007, and the thirtieth day of June, 2008.

[\[H 29\]](#)

Approved April 11, 2008

Be it enacted by the General Assembly of Virginia:

### **Chapter 864 Overweight and overload permits; creates fee schedules therefor to help recover maintenance costs.**

An Act to authorize the review of the current fee structure applied to vehicles operating under permits for weight pursuant to Articles 17 and 18 of Chapter 10 of Title 46.2 of the Code of Virginia and to amend and reenact the second enactment of Chapter 738 of the Acts of Assembly of 2007, relating to vehicle weights; fee structure.

[\[H 1551\]](#)

Approved April 23, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation, in consultation with the Department of Motor Vehicles and representatives of the industries that own and/or operate overload and overweight vehicles, shall review the current fee structure applied to overload and overweight vehicles operating on the highways of the Commonwealth pursuant to Articles 17 (§ [46.2-1122](#) et seq.) and 18 (§ [46.2-1139](#) et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.*

*The review shall endeavor to determine what, if any, additional fees should be associated with damage and additional maintenance costs caused by such vehicles and what mechanism is best suited for the collection of such additional fees.*

*Based on this review, the Commissioner of the Department of Transportation, in consultation with the Department of Motor Vehicles and affected industry representatives, shall recommend legislation regarding the fee structure applied to overload and overweight vehicles operating on the highways of the Commonwealth to the Governor and*

*the members of the Senate Finance and Transportation Committees and the House Appropriations and Transportation Committees no later than December 1, 2008.*

2. That the second enactment of Chapter 738 of the Acts of Assembly of 2007 is amended and reenacted as follows:

2. That from July 1, 2007, to ~~July 1, 2008~~ *June 30, 2008*, the annual overweight permit fee shall be \$800 for each eligible vehicle. *Such vehicles shall pay an annual overweight permit fee of \$265 from July 1, 2008, to June 30, 2009.* The Commonwealth Transportation Board, *in consultation with the Commissioner of the Department of Motor Vehicles*, shall establish a fee structure that shall become effective on July 1, ~~2008~~ *2009*, based on the results of a study of overweight vehicles.

# Uncodified Acts of Assembly - 2008 Special Session II

## Chapter 1 Trooper Robert Tinsley Lohr Memorial Bridge; designating as Rt. 207 bridge over I-95 in Caroline.

An Act to designate the Virginia Route 207 bridge over Interstate Route 95 in Caroline County the "Trooper Robert Tinsley Lohr Memorial Bridge."

[\[H 6009\]](#)

Approved July 24, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 207 bridge over Interstate Route 95 in Caroline County is hereby designated the "Trooper Robert Tinsley Lohr Memorial Bridge." The Department of Transportation shall place and maintain signsto be visible from Virginia Route 207 and Interstate Route 95 in Caroline County. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## Chapter 2 Trooper Robin Lee Farmer Memorial Bridge; designating as Rt. 639 bridge over I-95 in Caroline Co.

An Act to designate the Virginia Route 639 bridge over Interstate Route 95 in Caroline County the "Trooper Robin Lee Farmer Memorial Bridge."

[\[H 6010\]](#)

Approved July 24, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 639 bridge over Interstate Route 95 in Caroline County is hereby designated the "Trooper Robin Lee Farmer Memorial Bridge." The Department of*

*Transportation shall place and maintain signsto be visible from Virginia Route 639 and Interstate Route 95 in Caroline County. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 6 Light rail system; General Assembly determines expansion from Norfolk to beachfront in VA Beach.**

An Act to provide for the extension of the proposed light rail system in the City of Norfolk to the beachfront in the City of Virginia Beach.

[\[H 6028\]](#)

Approved July 24, 2008

Be it enacted by the General Assembly of Virginia:

1

*. § 1. The General Assembly determines that expansion of the Norfolk Light Rail system, including extension from its current terminus at Newtown Road in the City of Norfolk to the Oceanfront in the City of Virginia Beach, along the Interstate 264 corridor on the right-of-way of the Norfolk Southern Railway, is in the public interest and qualifies for public funding, to the extent that any may be required, from the Transportation Partnership Opportunity Fund, established by § [33.1-221.1:8](#) of the Code of Virginia, or other funding available to the Commonwealth.*

*§ 2. Within 90 days of the effective date of this act, the Transportation District Commission of Hampton Roads, in cooperation with the Virginia Department of Rail and Public Transportation, shall initiate study of the project, so that, upon completion of the federally required environmental review and programming processes, the project may be advanced under any available development option, including the solicitation of proposals under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) and the Federal Transit Administration New Starts process.*

## **Chapter 9 Contractors, Board for; extension of time for compliance with certain certification requirements.**

An Act to extend the time for compliance with the certification requirement for individuals who install, service, or repair chairlifts or other vertical conveyances intended for

residential use only.

[\[S 6017\]](#)

Approved July 24, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Board for Contractors shall extend the time for compliance with the requirements of § [54.1-1141](#) of the Code of Virginia until July 1, 2009, for individuals who install, service, or repair chairlifts or other vertical conveyances intended for residential use only.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 10 Health, Department of; granted authority to issue certificates of free sale to certain manufacturer.**

An Act to allow the Department of Health to issue certificates of free sale to certain manufacturers.

[\[S 6018\]](#)

Approved July 24, 2008

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Health, or her designee, shall be authorized to continue to issue a certificate of free sale to any manufacturer, located in Planning District 11, of any product defined as a "cosmetic" in the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 301(i), provided that (i) such manufacturer produces both cosmetics and drugs in the same facility, and (ii) the facility has been inspected by the federal Food and Drug Administration, pursuant to the FFDCA, and found in compliance with applicable federal regulations. Such certificates shall only be issued to a manufacturer that has regularly received certificates of free sale from the Department of Health for at least 25 years.*

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act shall expire on July 1, 2009.

# Uncodified Acts of Assembly - 2009

## Chapter 801 George Washington Toll Road Authority; created, encompasses City of Fredericksburg, etc.

An Act to create the George Washington Toll Road Authority and to prescribe its powers and duties.

[\[H 2099\]](#)

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1.

### *GEORGE WASHINGTON TOLL ROAD AUTHORITY*

#### *§ 1. Definitions.*

*As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:*

*"Authority" means the George Washington Toll Road Authority created by this act, or if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this act to the Authority shall be conferred by law.*

*"Authority facility" means any or all transportation facilities purchased, constructed or otherwise acquired by the Authority pursuant to the provisions of this act, and all extensions, improvements and betterments thereof.*

*"Bonds" or "revenue bonds" means revenue bonds or revenue refunding bonds of the Authority issued under the provisions of this act.*

*"Commonwealth" means the Commonwealth of Virginia.*

*"Cost" as applied to any Project includes the cost of construction, landscaping and conservation; the cost of acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Authority for such construction, landscaping and conservation, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period of time after completion of construction as*

*deemed advisable by the Authority; the cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Project, administrative expenses, initial working capital, debt service reserves; and such other expenses as may be necessary or incident to the construction of the Project, the financing of such construction and the placing of the Project in operation. Any obligation or expense incurred by the Department of Transportation or by a participating locality before or after the effective date of this act, for surveys, engineering, borings, plans and specifications, legal and other professional and technical services, reports, studies and data in connection with the construction of a Project shall be repaid or reimbursed by the Authority and the amounts thereof shall be included as a part of the cost of the Project.*

*"George Washington Region" or "Region" means the areas encompassed by the George Washington Toll Road Authority.*

*"Highways" includes public highways, roads and streets, whether maintained by the Commonwealth, or a participating locality.*

*"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air or access to by reason of the fact that their property abuts upon such limited access highway.*

*"Owner" includes all individuals, partnerships, associations, organizations and corporations, the participating localities and all public agencies and instrumentalities having any title or interest in any property, rights, easements and interests authorized to be acquired by this act.*

*"Participating locality" means the City of Fredericksburg and the County of Spotsylvania.*

*"Project" means any single facility constituting an Authority facility, as described in the resolution or trust agreement providing for the construction thereof, including extensions, improvements and betterments thereof.*

*"Revenues" means any or all fees, tolls, rents, rates, receipts, moneys and income derived by the Authority through the ownership and operation of Authority facilities, and shall include any cash contributions made to the Authority by the Commonwealth or any agency or department thereof, and a participating locality not specifically dedicated by the contributor for a capital improvement. However, the Authority may receive no contribution from the Commonwealth for the payment of bonds.*

## *§ 2. Creation of the Authority.*

*There is hereby created a political subdivision and public body corporate and politic of the Commonwealth to be known as the "George Washington Toll Road Authority,"*

*hereinafter referred to as the "Authority," to be governed by a Board of Directors consisting of seven members, all with voting powers: three members to be appointed by the City of Fredericksburg from among its elected officials; three members to be appointed by the County of Spotsylvania from among its elected officials; and the Commissioner of the Virginia Department of Transportation or his designee. The members of the Board, except for the Commissioner, shall be appointed for terms of three years and until their successors have been appointed and are qualified; however, initial appointments may be for more or less than three years so as to stagger the Board. Vacancies in the membership of the Board shall be filled by the appointment of the governing body of the appropriate locality for the unexpired portion of the term.*

*After the Authority has been in existence for at least one year, additional members from contiguous localities may be admitted as members by a vote of at least 70 percent of Board members. In allowing additional member localities, the Board shall decide on the voting number of new Board members to be seated from each new locality.*

*The Board so appointed shall enter upon the performance of its duties and shall initially and annually thereafter elect one of its members as Chairman and another as Vice Chairman, and shall also elect annually a Secretary or Secretary-Treasurer who need not be a member of the Board. The Chairman, or in his absence the Vice Chairman, shall preside at all meetings of the Board, and in the absence of both the Chairman and Vice Chairman, the Board shall elect a Chairman pro tempore who shall preside at such meetings. Four Directors shall constitute a quorum, and all action by the Board shall require the affirmative vote of a majority of the Directors present and voting. The members of the Board shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the Board or while otherwise engaged in the discharge of their duties, and each member shall also be paid the sum of \$25 per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the Authority in such manner as shall be prescribed by the Authority.*

### *§ 3. Powers of the Authority.*

*In order to alleviate highway congestion, promote highway safety, expand highway construction, increase the utility and benefits and extend the services of public highways, including bridges, tunnels and other highway facilities, both free and toll, and otherwise contribute to the economy, industrial and agricultural development and welfare of the Commonwealth and the George Washington Region, the Authority shall have the following powers in the Virginia Route 3 corridor:*

- 1. To contract and be contracted with; to sue and be sued; and to adopt and use a seal and to alter the same at its pleasure;*
- 2. To acquire and hold real or personal property necessary for its purposes;*
- 3. To sell, lease or otherwise dispose of any personal or real property or rights, easements or estates therein deemed by the Authority not necessary for its purposes;*
- 4. To purchase, construct or otherwise acquire, maintain, repair and operate, or cause to be repaired, maintained and operated, highways and limited access highways, within the boundaries of the Virginia Route 3 corridor, including all bridges, tunnels, overpasses, underpasses, grade separations, interchanges, entrance plazas, approaches, approach roads, tollhouses and administration, storage and other buildings and facilities that the Authority may deem necessary for the operation of such highways and limited access highways. Title to any property acquired by the Authority shall be taken in the name of the Authority;*
- 5. To acquire, own, operate and maintain rapid transit facilities for the transportation of the public, and to enter into contracts with any public service corporations doing business as common carriers of passengers and property for the use of Authority facilities for such purpose;*
- 6. To determine, after appropriate public hearings, the location of any highways or limited access highways constructed or acquired by the Authority, subject to the approval of the Commonwealth Transportation Board and, if required, applicable federal review and approval; and to determine the design standards and materials of construction of such highways based on applicable federal or state engineering and safety standards;*
- 7. To designate with the approval of the Commonwealth Transportation Board the location in the Region, and to establish, limit and control such points of ingress to and egress from any limited access highway constructed by the Authority within the Region as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such highway; to prohibit entrance to and exit from such highway from any point or points not so designated; and to construct, maintain, repair and operate service roads connecting with points of ingress to and egress from such highway at such locations in the Region as may be designated by the Authority;*
- 8. To connect any highway constructed or acquired by the Authority with other highways or toll roads with the approval of the Department of Transportation and the owner of such other toll roads, at such location or locations as shall be mutually agreed upon;*
- 9. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, including con-*

*tracts or agreements authorized by this act with the Department of Transportation and any locality;*

*10. To enter into agreements pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) of the Code of Virginia);*

*11. To construct grade separations at intersections of any limited access highway constructed by the Authority with public highways, streets or other public ways or places, and to change and adjust the lines and grades thereof so as to accommodate the same to the design of the grade separation; the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places shall be ascertained and paid by the Authority as part of the cost of such highway;*

*12. To vacate or change the location of any portion of any public highway, street or other public way or place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole and other equipment and appliances of the Commonwealth, or a participating locality, and to reconstruct the same in such new location as shall be designated by the Authority, and of substantially the same type and in as good condition as the original highway, street, way, place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole, equipment or appliance; the cost of such reconstruction and any damage incurred in vacating or changing the location thereof shall be ascertained and paid by the Authority as a part of the cost of the Project in connection with which such expenditures are made; and any public highway, street, or other public way or place vacated or relocated by the Authority shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the Project; any changes or modifications to any highway under the jurisdiction or supervision of the Commonwealth Transportation Board or the Department of Transportation are subject to the approval of the Commonwealth Transportation Board or the Department of Transportation, as applicable;*

*13. To enter upon any lands, waters and premises for the purpose of making such surveys, soundings, borings and examinations as the Authority may deem necessary for its purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry upon any condemnation proceedings; however, the Authority shall pay any actual damage resulting to such lands, water and premises as a result of such entry and activities;*

*14. To operate or permit the operation of vehicles for the transportation of persons or property for compensation on any limited access highway constructed or acquired by the Authority, provided the State Corporation Commission or the Interstate Commerce*

*Commission shall not be divested of jurisdiction to authorize or regulate the operation of such carriers;*

*15. Within the Route 3 corridor property owned by the Authority, to establish reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances, herein referred to as "public utility facilities," of a participating locality and of public utility and public service corporations and of any person, firm or other corporation rendering similar services, owning or operating public utility facilities in, on, along, over or under highways constructed by the Authority; and whenever the Authority shall determine that it is necessary that any public utility facilities should be relocated or removed, the Authority may relocate or remove the public utility facilities in accordance with the regulations of the Authority and the cost and expense of such relocation or removal, including the cost of installing the public utility facilities in a new location or locations and the cost of any lands or any rights or interests in lands and any other rights acquired to accomplish such relocation or removal shall be paid by the Authority as a part of the costs of such highway, and the owner or operator of the public utility facilities may maintain and operate the public utility facilities with the necessary appurtenances in the new location or locations for as long a period and upon the same terms and conditions as it had the right to maintain and operate the public utility facilities in their former location or locations;*

*16. To borrow money and issue bonds, notes or other evidences of indebtedness for any of its corporate purposes as provided in this act payable solely from the revenues pledged for the payment of such bonds, notes or other evidences of indebtedness;*

*17. To fix, charge and collect fees, tolls, rents, rates and other charges for the use of Authority facilities and the several parts or sections thereof;*

*18. To establish rules and regulations for the use of any of the Authority facilities as may be necessary or expedient in the interest of public safety with respect to the use of Authority facilities and property under the control of the Authority;*

*19. To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, trustees, depositories, paying agents and such other employees and agents as may be necessary in the discretion of the Authority to construct, acquire, maintain and operate Authority facilities and to fix their compensation;*

*20. To receive and accept from any federal agency for or in aid of the construction of any Authority facility, and to receive and accept from the Commonwealth, or a participating locality and from any other source, grants, contributions or other aid in such construction, or for operation and maintenance, either in money, property, labor, materials or other*

*things of value. However, the Authority may receive no contribution from the Commonwealth for the payment of bonds; and*

*21. To do all other acts and things necessary to carry out the powers expressly granted in this act.*

*§ 4. Issuance of revenue bonds.*

*The Authority is hereby authorized to provide by resolution for the issuance from time to time of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities or any project or portion of such facilities. The principal of and interest on such bonds shall be payable solely from the revenues pledged for such payment. The bonds of each issue or series shall be dated, shall bear interest at such rate or rates as the Board shall accept or approve and are permitted by law, shall mature at such time or times not exceeding 50 years from the date or dates thereof, as may be determined by the Authority and may contain provisions reserving the right of the Authority to redeem such bonds before maturity at such price or prices and upon such terms and conditions as may be fixed by the Authority in the resolution authorizing such bonds. Such bonds may be issued in coupon or registered form or both as prescribed by the Authority, and provisions may be made for the registration of coupon bonds as to principal only or as to both principal and interest and for the reconversion of registered bonds into coupon bonds. Such bonds may be issued in any denomination or denominations and may be made payable at any bank or trust company within or without the Commonwealth as the Authority may determine. Such bonds and the coupons attached to coupon bonds shall be signed in such manner either manually or by facsimile signature as shall be determined by the Authority, and sealed with the seal of the Authority or a facsimile thereof. In case any officer whose signature or facsimile thereof shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer or officers had remained in office until the delivery thereof. The Authority may sell such bonds in such manner either at public or private sale and for such price or prices as the Authority may determine. Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall have become mutilated or shall be destroyed or lost.*

*§ 5. Rates and charges.*

*Whenever the Authority shall have constructed or otherwise acquired Authority facilities and has issued bonds for such purpose, the Authority shall fix, revise, charge and collect fees, tolls, rents, rates and other charges for the use of such facilities and the different parts or sections thereof, sufficient, together with any other moneys made available and used for that purpose, to pay the principal of and interest on such bonds, together with reserves for such purposes, and to maintain and operate such facilities and to keep the same in good condition and repair. Such fees, tolls, rents, rates and other charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any municipality, county or other political subdivision of the Commonwealth, except no tolls in excess of one dollar shall be imposed or collected unless approved by an affirmative vote of each participating locality. All revenues, when collected, and the proceeds from the sale of revenue bonds, shall be held by the Authority in trust for the benefit of the holders of bonds of the Authority issued for the construction or acquisition of Authority facilities and for the proper maintaining, operating and repairing of the Authority facilities.*

*Revenue bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or of any locality or a pledge of the faith and credit of the Commonwealth or of any locality, and shall be payable solely from the funds provided therefor from revenues.*

*§ 6. Refunding bonds.*

*The Authority is hereby authorized by resolution to provide for the issuance of refunding revenue bonds with which to refund outstanding revenue bonds or any issue or series of such outstanding bonds, which refunding revenue bonds may be issued at or before the maturity or redemption date of the bonds to be refunded, and to include different issues or series of such outstanding revenue bonds by a single issue of refunding revenue bonds, and to issue refunding revenue bonds to pay any redemption premium and interest to accrue and become payable on the outstanding revenue bonds being refunded to the date of payment or redemption, and to establish reserves for such refunding revenue bonds. Such refunding revenue bonds shall be payable solely from all or that portion of the revenues of the Authority facilities pledged to the payment thereof in the bond resolution pursuant to which the bonds were issued. Such refunding revenue bonds may, in the discretion of the Authority, be exchanged at par for the revenue bonds which are being refunded, or may be sold at public or private sale in such manner and at such price or prices as the Authority shall deem for the best interests of the Authority with such interest rate as may be permitted by law. The proceeds derived from the sale of refunding revenue bonds issued under this act shall be invested in obligations of or*

*guaranteed by the United States government pending the application of such proceeds to the purpose for which such refunding revenue bonds have been issued, and to further secure such refunding revenue bonds the Authority may contract with the purchasers thereof with respect to safekeeping and application of the proceeds thereof and the safekeeping and application of the earnings of such investments. The determination of the Authority with respect to the financial soundness and advantage of the issuance and delivery of refunding revenue bonds authorized under this act shall be conclusive, but nothing herein contained shall require the holders of any outstanding revenue bonds being refunded to accept payment thereof otherwise than as provided in the outstanding bonds.*

*§ 7. Trust agreement.*

*In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a trust agreement or indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth to be selected by the Authority in such manner as it may elect. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign all or any portion of the tolls and other revenues to be received by the Authority from the ownership and operations of Authority facilities; but shall not convey or mortgage any Authority facilities or any part thereof. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as the depository of the proceeds of bonds or of revenue to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such resolution, trust agreement or indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such resolution, trust agreement or indenture may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the Authority facilities or portion thereof.*

*All or any portion of the revenues derived from the ownership and operation of Authority facilities, as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement or indenture securing the same, may be pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter*

*received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement nor indenture by which a pledge is created need be filed or recorded except in the records of the Authority.*

*§ 8. Covenants to secure bonds.*

*Any resolution authorizing the issuance of bonds of the Authority may, for the benefit and security of the holders from time to time of such bonds, contain covenants by the Authority for said purpose, including covenants as to, among other things:*

- 1. The operation, maintenance and repair of the Authority facilities;*
- 2. The purpose or purposes to which the proceeds of the sale of such bonds may be applied and the use and disposition thereof;*
- 3. The use and disposition of the revenues of the Authority derived from the ownership or operation of Authority facilities and additions, betterments and extensions thereof, including the investment thereof and the creation and maintenance of reserve funds and funds for working capital and all renewals and replacements to Authority facilities;*
- 4. The amount, if any, of additional revenue bonds payable from such revenues which may be issued and the terms and conditions on which such additional revenue bonds may be issued;*
- 5. Fixing, maintaining, collection and deposit of fees, tolls, rents, rates and other charges for all the services sold, furnished or supplied by the Authority facilities;*
- 6. The operation, maintenance, repair, management, accounting and auditing of the Authority;*
- 7. Limitations upon the right of the Authority to dispose of Authority facilities or any part thereof without providing for the payment of the outstanding revenue bonds;*
- 8. The appointment of trustees, depositaries and paying agents within or without the Commonwealth to receive, hold, disburse, invest or reinvest the proceeds derived from the sale of revenue bonds and all or any part of the revenues derived by the Authority from the operation, ownership and management of the Authority facilities; and*
- 9. Such other covenants and agreements as may be determined necessary in the discretion of the Authority to advantageously market the revenue bonds of the Authority.*

*§ 9. Revenue bonds eligible for investment.*

*Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banks, banking associations,*

*investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities that may properly and legally be deposited with and received by any Commonwealth or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.*

*§ 10. Authority obligations to be negotiable instruments; enforcement of bonds.*

*Notwithstanding the provisions of this act, or any provisions of the laws of the Commonwealth, and any recitals in any bonds, interim receipts or any other obligations issued under the provisions of this act, all such bonds, interim receipts or other obligations shall be deemed to be negotiable instruments under the laws of this Commonwealth. The provisions of this act, and of any resolution or resolutions or indentures providing for the issuance and security of any revenue bonds, interim receipts or other obligations issued as herein set forth, shall constitute a contract with the holder or holders of any such revenue bonds, interim receipts or other obligations, and the agreements and covenants of the Authority under this act and under any such resolution, resolutions or indentures shall be enforceable by any holder or holders of revenue bonds, interim receipts or other obligations issued under the provisions of this act and any representative of such holder or holders, and any trustee appointed under the bond resolution and authorized so to do may, by suit, action, injunction, mandamus or other proceeding issued by a court of competent jurisdiction, enforce any and all rights of such holders under the laws of the Commonwealth or granted by this act and in any such bond resolution or indenture, and may compel performance of all duties required to be performed by this act and by such bond resolutions or indenture by the Authority or by any officer or agent thereof, including the fixing, charging and collecting of fees, tolls, rents, rates and other charges for the use of the Authority facilities.*

*§ 11. Exemption from taxation.*

*All property, real and personal, and all rights and interests therein and the income of the Authority, the revenue bonds and the interest thereon, and the transfer thereof and any profit made on the sale thereof, shall at all times be free from taxation or assessment by the Commonwealth and by any municipality, county or other political subdivision thereof.*

*§ 12. General powers of participating localities.*

*The participating localities are hereby authorized and empowered to enter into and perform contracts or agreements with the Authority providing for furnishing to the Authority one or more of the following cooperative undertakings or any combination thereof:*

1. *The preparation, acquisition, loan or exchange of survey, engineering, borings, construction and other technical reports, studies, plans and data;*
2. *The providing of engineering, planning and other professional and technical services, labor or other things of value;*
3. *The construction, in whole or in part, of public highways, bridges, tunnels, viaducts, interchanges, connecting roads, grade crossings and other highway facilities;*
4. *The providing of funds in lump sums or installments to assist in paying the cost of any Authority facility or the operation and maintenance thereof;*
5. *The acquisition and transfer to the Authority of land, including easements, rights-of-way or other property, useful in the construction, operation or maintenance of any Authority facility;*
6. *The making of payments or contributions to the Authority for the use of or in compensation for the services rendered by any Authority facility in lieu of the payment of tolls or other charges therefor, and such payments and contributions shall be deemed revenues of the Project to the same extent as the tolls, rentals, fees and other charges collected in the operation of the Project;*
7. *When requested by the Authority, to vacate or change the location of any public highway, street or other public way or place, or any portion thereof, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole and other equipment or appliance owned or controlled by or under the jurisdiction of a participating locality, in the manner required or authorized by law conferring such power on the locality, and to construct the same in such new location as shall be designated by the governing body of the locality, and the cost of vacating or changing the location or reconstruction thereof and any damages resulting therefrom required to be paid by the locality shall be reimbursed by the Authority as a part of the cost of the Project in connection with which such expenditures have been made; and*
8. *The connection of any Project of the Authority with the streets, highways, roads and other public ways in a participating locality.*

*§ 13. Powers of a participating locality with respect to revenue bonds issued by the Authority.*

*A. That the participating localities are hereby authorized and empowered to enter into and perform from time to time contracts and agreements with the Authority to aid the Authority to pay the principal of and interest on revenue bonds or revenue refunding bonds issued by the Authority if, when, and as the revenues of the Authority may not be sufficient to pay such principal or interest when due. No such contract or agreement shall be deemed to be lending or granting credit to or in aid of any person, association,*

*company or corporation; nor shall any such contract or agreement be deemed to be a pledge of the faith and credit or of the taxing power of the locality for the payment of such principal or interest except as may be otherwise provided in such contracts or agreements. Any holder of bonds, notes, certificates or other evidences of borrowing issued by the Authority under the provisions of this act or of any coupons appertaining thereto, and the representatives of such holders and the trustee under any bond resolution or indenture, may either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights of the Authority under or by virtue of any such contract or agreement.*

*B. That funds to perform any such contract or agreement may be provided from time to time by the participating locality by appropriations of general or specific tax revenue, or by appropriations of accumulated funds allocated for public improvements generally, or allocated to the purposes of such contract or agreement, or by appropriations of the proceeds from the sale of bonds, which may be issued from time to time as hereinafter provided.*

*C. A participating locality may issue bonds for the purpose of providing funds to perform any contract or agreement entered into with the Authority pursuant to the provisions of this act. Such bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the governing body of the locality, and may be redeemable before maturity, at the option of the governing body of the locality, at such price or prices and under such terms and conditions as may be prescribed by such governing body prior to the issuance of the bonds. The locality may provide for the issuance of refunding bonds for the purpose of refunding any outstanding bonds which shall have been issued pursuant to the provisions of this subsection, including the payment of any redemption premium thereon, and any interest accrued or to accrue to the date of redemption of such bonds.*

*D. The authority of a participating locality to contract and to issue bonds pursuant to this act is additional to any existing authority to contract and issue bonds under the laws of the Commonwealth.*

*E. The governing body of a participating locality may exercise any of the powers granted by this act by ordinance or resolution, as may be proper and all proceedings of the governing body authorizing the execution of contracts hereunder and providing for the issuance of bonds pursuant to the provisions of this act shall not be subject to the provisions of the Code of Virginia permitting a referendum on actions taken by the board of supervisors except as required by the Constitution, but all such proceedings shall take effect immediately upon the adoption thereof.*

*§ 14. Powers of the Department of Transportation.*

*The Department of Transportation is authorized and empowered:*

- 1. To enter into and perform contracts or agreements with the Authority to furnish it with surveys, engineering, borings, plans and specifications and other technical services, reports, studies and data, the cost of which shall be reimbursed by the Authority as a part of the cost of the Project in connection with which such contracts or agreements were entered into;*
- 2. Subject to appropriation, to allocate to and for the construction, operation or maintenance, of any highways constructed by the Authority and to pay to the Authority such funds as may be or become available to the Department for such purposes;*
- 3. To permit the connection of any highways constructed or acquired by the Authority with highways under the control and jurisdiction of the Department; and*
- 4. To employ independent consulting engineers having a nationwide and favorable repute in estimating traffic over any such highways to determine whether the construction of such highways will result in substantial reduction in the volume of traffic over other highways or toll roads and to use funds under the control of the Department for that purpose.*

*§ 15. Acquisition of property.*

*A. The Authority is hereby authorized and empowered to acquire solely from funds provided under the provisions of this act such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, as it may deem necessary for the construction and operation of Authority facilities, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.*

*B. A participating locality and, with the approval of the Governor, public agencies and commissions of the Commonwealth, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the governing body of a participating locality, or the proper authorities of such agencies or commissions of the Commonwealth may deem reasonable and fair and without the necessity of any advertisement, order of court or other action or formality, other than the regular and formal action of the governing body or authorities concerned, any real property which may be necessary for the effectuation of the authorized purposes of the Authority, including public highways and any other real property already devoted to public use.*

*C. Participating localities are hereby authorized and empowered to acquire by the exercise of the power of eminent domain granted to or conferred upon it by law, and in*

*accordance with the procedure prescribed therefor, any real property that may be necessary for the effectuation of the authorized purposes of the Authority and to lease, lend, grant or convey such property to the Authority upon such terms and conditions as the governing body may deem reasonable and fair.*

*D. In any eminent domain proceedings by the Authority, or any locality under this act, the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Authority, or any locality, as the case may be, and to the owners of the property to be condemned, and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority or a locality to accept and pay for the property, or by reason of the taking of property occupied by such owners, but neither such undertaking or security or any act or obligation of the Authority or the locality shall impose any liability upon the Commonwealth.*

*E. If the owner, lessee or occupier of any property to be condemned or otherwise acquired pursuant to this act shall refuse to remove his property therefrom or give up possession thereof, the Authority or a locality, as the case may be, may proceed to obtain possession in any manner provided by law.*

*F. When the Authority or a locality under this act proposes to construct a highway across the tracks of any railroad, the exercise of the general power of eminent domain over the property of a railroad granted by this act shall be limited with respect to the property, right-of-way, facilities, works or appurtenances upon which the tracks at such proposed crossing are located, to the acquisition only of an easement therein, which crossing shall be constructed either sufficiently above or below the grade of any such railroad track or tracks so that neither the crossing then under construction nor any part thereof, including any bridge abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances of the railroad nor interfere with or endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the exercise of the power of eminent domain for such an easement, plans and specifications of that portion of the Project to be constructed across the railroad tracks showing compliance with such requirements and showing sufficient and safe plans and specifications for such overhead or underground structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within 60 days to approve the plans and specifications so submitted, the matter shall be submitted by the Authority or the locality, as the case may be, to the State Corporation Commission, whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such*

*elevations or distances above or below such tracks. The overhead or underground structures and appurtenances shall be constructed in accordance with such plans and specifications and in accordance with such elevations or distances above or below such tracks so approved by the railroad or the State Corporation Commission, as the case may be. A copy of the plans and specifications approved by the railroad or the State Corporation Commission shall be filed as an exhibit upon the institution of any proceedings brought in the exercise of the power of eminent domain.*

*G. The Commonwealth hereby consents, subject to the approval of the Governor, to the use by the Authority of any other lands or property owned by the Commonwealth, including lands lying under water, which are deemed by the Authority to be necessary for the construction or operation of any Project being constructed by the Authority.*

*§ 16. Transfer to a participating locality.*

*In the event a participating locality shall have rendered financial assistance or contributed in any manner to the cost of construction of a limited access highway or highways by the Authority and the Authority has issued bonds for the construction of such limited access highway or highways, then when all such bonds, including any refunding bonds, and the interest thereon have been paid or a sufficient amount of cash or United States government securities have been deposited and dedicated to the payment of all such bonds and interest to the maturity or redemption date thereof in trust for the benefit of the holders of such bonds, all property, real and personal, acquired in connection with such limited access highway or highways shall be transferred by the Authority to the locality and the governing body of the locality shall have the power to fix and revise from time to time and charge and collect tolls for transit over such limited access highway.*

*§ 17. Withdrawal from Authority; dissolution of Authority.*

*A. Any member locality may withdraw from the Authority, provided that member repays its share of any Authority indebtedness outstanding at the time of withdrawal.*

*B. Upon dissolution of the Authority, all Authority facilities, including highways and limited access highways, shall revert to the participating localities.*

*§ 18. Miscellaneous.*

*A. Any money set aside for the payment of the principal of or interest on any bonds issued by the Authority not claimed within two years from the day the principal of such bonds is due by maturity or by call for redemption shall be paid into the treasury of the Commonwealth. No interest shall accrue on such principal or interest from the day the same is due as aforesaid. The Comptroller of the Commonwealth shall keep an account of all money thus paid into the treasury, and it shall be paid to the individual, copartnership, association or corporation entitled thereto upon satisfactory proof that such*

*individual, copartnership, association or corporation is so entitled to such money. If the claim so presented is rejected by the Comptroller, the claimant may proceed against the Comptroller for recovery in the Circuit Court of the City of Richmond. An appeal from the judgment of the circuit court shall lie to the Supreme Court as in actions at law, and all laws and rules relating to practice and procedure in actions at law shall apply to proceedings authorized hereunder. No such proceedings shall be filed after 10 years from the day the principal of or interest on such bonds is due as aforesaid; provided, if the individual having such claim is an infant or insane person or is imprisoned at such due date, such proceedings may be filed within five years after the removal of such disability, notwithstanding the fact that such 10-year period shall have expired.*

*B. The Authority shall contract with the Department of State Police for the policing of any or all Authority facilities, and may similarly contract with any locality within the Region; the Department of State Police and any locality are hereby authorized to enter into contracts with the Authority for such purpose. State Police officers providing police services pursuant to such contracts shall be under the exclusive control and direction of the Superintendent of State Police. Local Police officers providing police services pursuant to such contracts shall be under the exclusive control and direction of the appropriate locality. The Authority and the Department of State Police shall agree upon reasonable terms and conditions pursuant to which the activities contemplated in this section may take place. The Authority shall reimburse the locality or the Commonwealth, as the case may be, in such amounts and at such time or times as shall be mutually agreed upon, for providing police service. Such officers shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth and all rules and regulations of the Authority made in accordance herewith, and such officers shall have all the rights and duties of police officers as provided by the general laws of the Commonwealth. The violation of any such rule or regulation shall be punishable as follows: if such a violation would have been a violation of law if committed on any public road, street or highway in the locality, it shall be punishable in the same manner as if it had been committed on such public road, street or highway; otherwise it shall be punishable as a Class 4 misdemeanor. All other police officers of the Commonwealth and of the locality shall have the same powers and jurisdiction within the areas of operations agreed upon by the parties that they have beyond such limits and shall have access to all such areas at any and all times without interference for the purpose of exercising such powers and jurisdiction. For the purpose of enforcing such laws, rules and regulations the court or courts having jurisdiction for the trial of criminal offenses committed*

*in the locality shall have jurisdiction to try any person charged with the violation of any such laws, rules and regulations within such boundaries. A copy of the rules and regulations of the Authority, attested by the Secretary or Secretary-Treasurer of the Authority, may be admitted as evidence in lieu of the original. Any such copy purporting to be sealed and signed by such Secretary or Secretary-Treasurer may be admitted as evidence without any proof of the seal or signature, or of the official character of the person whose name is signed to it.*

*C. All actions at law and suits in equity and other proceedings, actions and suits against the Authority, or any other person, firm or corporation, growing out of the construction, maintenance, repair, operation and use of any Authority facility, or growing out of any other circumstances, events or causes in connection therewith, unless otherwise provided herein, shall be brought and conducted in the court or courts having jurisdiction of such actions, suits and proceedings in the appropriate locality. All such actions, suits and proceedings on behalf of the Authority shall be brought and conducted in the Circuit Court of the appropriate locality, except as herein otherwise provided, and exclusive jurisdiction is hereby conferred on such court for the purpose. Eminent domain proceedings instituted and conducted by the Authority shall be brought and conducted in the court or courts having jurisdiction of such proceedings.*

*D. On or before the 30th day of September in each year, the Authority shall prepare a report of its activities for the period of 12 months ending the preceding July 1 of such year and shall file a copy thereof with each locality within the Region. Each such report shall set forth an operating and financial statement covering the Authority's operations during the period of 12 months covered by such report. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants to be selected by the Authority and the cost thereof shall be treated as a part of the cost of construction and operation of the Project.*

*E. The records, books and accounts of the Authority shall be subject to examination and inspection by duly authorized representatives of the governing body of any locality within the Region and any bondholder or bondholders at any reasonable time, provided the business of the Authority is not unduly interrupted or interfered with thereby.*

*F. Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be guilty of a Class 1 misdemeanor. Exclusive jurisdiction for the trial of such misdemeanors is hereby conferred upon the Circuit Court of the County of Spotsylvania; provided, that the term "contract," as used herein, shall not be held to include the depositing of funds in, or the borrowing of*

*funds from or the serving as agent or trustee by, any bank in which any member, agent or employee of the Authority may be a director, officer or employee or have a security interest; nor shall such term include contracts or agreements with the purchase of services from, or other transactions in the ordinary course of business with, public service corporations.*

*§ 19. Approval by Commonwealth Transportation Board.*

*The Authority may not construct a limited access toll highway without the approval of the Commonwealth Transportation Board.*

*§ 20. Construction; inconsistent laws.*

*This act shall be liberally construed to effectuate the purposes hereof, and the foregoing sections of this act shall be deemed to provide an additional and alternative method of doing the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred upon a participating locality by other provisions of law; provided, however, the issuance of revenue bonds or revenue refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds, and except as otherwise expressly provided in this act, none of the powers granted to the Authority under the provisions of this act shall be subject to the supervision or regulation or require the approval or consent of a participating locality or any commission, board, bureau, official or agency thereof or of the Commonwealth, except as otherwise provided in this act.*

*§ 21. Constitutional construction.*

*The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this act.*

*§ 22. Inconsistent laws inapplicable.*

*All other general or special laws inconsistent with any provision of this act are hereby declared to be inapplicable to the provisions of this act and to any Project constructed by the Authority pursuant to this act.*

2. Before the provisions of this act are implemented, each locality embraced by the Authority shall hold at least two public hearings on such implementation.

## **Chapter 832 SSG Jason R. Arnette (U.S.A.) Memorial Bridge; designating as Rt. 360 bridge over Goodes Bridge Rd.**

An Act to designate the U.S. Route 360 (Patrick Henry Highway) bridge over U.S. Route 360 Business (Goodes Bridge Road) in Amelia County the "SSG Jason R. Arnette

(U.S.A.) Memorial Bridge."

[\[S 941\]](#)

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the U.S. Route 360 (Patrick Henry Highway) bridge over U.S. Route 360 Business (Goodes Bridge Road) in Amelia County is hereby designated the "SSG Jason R. Arnette (U.S.A.) Memorial Bridge." The Department of Transportation shall place and maintain signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 849 Government Data Collection and Dissemination Practices Act; extends implementation.**

An Act to amend and reenact §§ [2.2-3800](#), [2.2-3801](#), as it is currently effective and as it shall become effective, and [2.2-3808](#), as it is currently effective and as it shall become effective, of the Code of Virginia and to amend and reenact the second and fourth enactments of Chapters 840 and 843 of the Acts of Assembly of 2008, relating to the Government Data Collection and Dissemination Practices Act; collection of social security numbers.

[\[S 1318\]](#)

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-3800](#), [2.2-3801](#), as it is currently effective and as it shall become effective, and [2.2-3808](#), as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ [2.2-3800](#). Short title; findings; principles of information practice.

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;
2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;
3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and
4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.
2. Information shall not be collected unless the need for it has been clearly established in advance.
3. Information shall be appropriate and relevant to the purpose for which it has been collected.
4. Information shall not be obtained by fraudulent or unfair means.
5. Information shall not be used unless it is accurate and current.
6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.
7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.
8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse. ~~On and after July 1, 2004, no agency shall display the social security number of a data subject on a student or employee identification card, except that for universities and colleges that have such a prevention plan for misuse of personal information in place on or before July 1, 2004, in compliance with this section, the date shall be January 1, 2005. On and after July 1, 2006, no agency shall display an individual's entire social security number on any student or employee identification card.~~
9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.
10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

~~D. After July 1, 2004, no agency, as defined in § 42.1-77, shall send or deliver or cause to be sent or delivered, any letter, envelope or package that displays a social security number on the face of the mailing envelope or package or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.~~ § 2.2-3801. (Effective until July 1, 2009) Definitions.

As used in this chapter, unless the context requires a different meaning:

1. "Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer networks and the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.
2. "Personal information" means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.
3. "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.
4. "Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.
5. "Purge" means to obliterate information completely from the transient, permanent, or archival records of an ~~organization~~ *agency*.
6. "Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship,

provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

§ [2.2-3801](#). (Effective July 1, 2009) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

"Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

"Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

"Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer networks and the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

"Personal information" means all information that (i) describes, locates or indexes anything about an individual including, but not limited to, his social security number, driver's license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an

institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

"Purge" means to obliterate information completely from the transient, permanent, or archival records of an ~~organization~~ agency.

§ [2.2-3808](#). (Effective until July 1, 2009) Disclosure or display of social security number.

A. It shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law *in effect prior to January 1, 1975*.

B. Agency-issued identification cards, student identification cards, or license certificates issued or replaced on or after July 1, 2003, shall not display an individual's entire social security number except as provided in § [46.2-703](#).

C. Any agency-issued identification card, student identification card, or license certificate that was issued prior to July 1, 2003, and that displays an individual's entire social security number shall be replaced no later than July 1, 2006, except that voter registration cards issued with a social security number and not previously replaced shall be replaced no later than the December 31st following the completion by the state and all localities of the decennial redistricting following the 2010 census. This subsection shall not apply to (i) driver's licenses and special identification cards issued by the Department of Motor Vehicles pursuant to Chapter 3 (§ [46.2-300](#) et seq.) of Title 46.2 and (ii) road tax registrations issued pursuant to § [46.2-703](#).

*D. After July 1, 2004, no agency, as defined in § [42.1-77](#), shall send or deliver or cause to be sent or delivered, any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.*

~~D.E.~~ The provisions of subsections A and C of this section shall not be applicable to licenses issued by the State Corporation Commission's Bureau of Insurance until such time as a national insurance producer identification number has been created and implemented in all states. Commencing with the date of such implementation, the licenses issued by the State Corporation Commission's Bureau of Insurance shall be issued in compliance with subsection A of this section. Further, all licenses issued prior to the date

of such implementation shall be replaced no later than 12 months following the date of such implementation.

§ [2.2-3808](#). (Effective July 1, 2009) Collection, disclosure, or display of social security number.

~~A. No agency shall require an individual to furnish or disclose his social security number or driver's license number unless the furnishing or disclosure of~~ *It shall be unlawful for any agency to:*

- 1. Require an individual to disclose or furnish his social security number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege, or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law in effect prior to January 1, 1975; or*
- 2. Collect from an individual his social security number or any portion thereof unless the collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties.*

~~Nor shall any agency require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law.~~

B. Agency-issued identification cards, student identification cards, or license certificates issued or replaced on or after July 1, 2003, shall not display an individual's entire social security number except as provided in § [46.2-703](#).

C. Any agency-issued identification card, student identification card, or license certificate that was issued prior to July 1, 2003, and that displays an individual's entire social security number shall be replaced no later than July 1, 2006, except that voter registration cards issued with a social security number and not previously replaced shall be replaced no later than the December 31st following the completion by the state and all localities of the decennial redistricting following the 2010 census. This subsection shall not apply to (i) driver's licenses and special identification cards issued by the Department of Motor Vehicles pursuant to Chapter 3 (§ [46.2-300](#) et seq.) of Title 46.2 and (ii) road tax registrations issued pursuant to § [46.2-703](#).

*D. After July 1, 2004, no agency, as defined in § [42.1-77](#), shall send or deliver or cause to be sent or delivered, any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.*

~~D.E.~~ The provisions of subsections A and C shall not be applicable to licenses issued by the State Corporation Commission's Bureau of Insurance until such time as a national insurance producer identification number has been created and implemented in all states. Commencing with the date of such implementation, the licenses issued by the State Corporation Commission's Bureau of Insurance shall be issued in compliance with subsection A of this section. Further, all licenses issued prior to the date of such implementation shall be replaced no later than 12 months following the date of such implementation.

2. That the second and fourth enactments of Chapter 840 of the Acts of Assembly of 2008 are amended and reenacted as follows:

2. That the provisions of this act shall become effective on ~~July 1, 2009~~ **July 1, 2010**, except that the third and fourth enactments of this act shall become effective on July 1, 2008.

4. That every county and city, and any town with a population in excess of 15,000 shall, no later than September 10, 2008, provide the Virginia Municipal League or the Virginia Association of Counties, as appropriate, information on a form agreed upon by the Virginia Municipal League, the Virginia Association of Counties and staff of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science identifying (i) all state or federal statutes authorizing or requiring the collection of social security numbers by such county, city or town and (ii) instances where social security numbers are voluntarily collected or (iii) in the absence of statutory authority to collect social security numbers, written justification explaining why continued collection is essential to its transaction of public business. In conducting such a review, each such county, city or town shall be encouraged to consider whether such collection and use is essential for its transaction of public business and to find alternative means of identifying individuals. The information required by this enactment shall be submitted no later than October 1, 2008 to the chairmen of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science, on forms developed by the Council and the Commission. *The chairmen of the Council and the Commission may withhold from public disclosure any such lists or portions of lists as legislative working papers, if it is deemed that the public dissemination of such lists or portions of lists would cause a potential invasion of privacy.*

3. That the second and fourth enactments of Chapter 843 of the Acts of Assembly of 2008 are amended and reenacted as follows:

2. That the provisions of this act shall become effective on ~~July 1, 2009~~ **July 1, 2010**,

except that the third and fourth enactments of this act shall become effective on July 1, 2008.

4. That every county and city, and any town with a population in excess of 15,000 shall, no later than September 10, 2008, provide the Virginia Municipal League or the Virginia Association of Counties, as appropriate, information on a form agreed upon by the Virginia Municipal League, the Virginia Association of Counties and staff of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science identifying (i) all state or federal statutes authorizing or requiring the collection of social security numbers by such county, city or town and (ii) instances where social security numbers are voluntarily collected or (iii) in the absence of statutory authority to collect social security numbers, written justification explaining why continued collection is essential to its transaction of public business. In conducting such a review, each such county, city or town shall be encouraged to consider whether such collection and use is essential for its transaction of public business and to find alternative means of identifying individuals. The information required by this enactment shall be submitted no later than October 1, 2008 to the chairmen of the Freedom of Information Advisory Council and the Joint Commission on Technology and Science, on forms developed by the Council and the Commission. *The chairmen of the Council and the Commission may withhold from public disclosure any such lists or portions of lists as legislative working papers, if it is deemed that the public dissemination of such lists or portions of lists would cause a potential invasion of privacy.*

4. That the provisions of the first enactment of this act shall become effective on July 1, 2010.

5. That an emergency exists and the second and third enactments of this act are in force from their passage.

## **Chapter 615 Open Education Resource Center Grant Fund; established, development of two-year pilot project.**

An Act to direct the State Board for Community Colleges, in consultation with the Virginia Department of Education and the State Council of Higher Education for Virginia, to develop a two-year pilot program to provide grants to community colleges to establish open education resource centers in the Commonwealth.

[\[S 1173\]](#)

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Open Education Resource Center Grant Fund established.*

*There is hereby created in the state treasury a special nonreverting fund to be known as the Open Education Resource Center Grant Fund, hereafter referred to as "the Fund." The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of the pilot program shall revert to the general fund. Interest earned on the Fund shall be credited to the Fund. Moneys in the Fund shall be used solely for the purposes of developing and funding a competitive grant pilot program to provide grants to community colleges to establish open education resource centers in the Commonwealth. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the chairman or vice-chairman of the State Board for Community Colleges.*

2.

*§ 1. "Open education resources" means learning materials or resources whose copyrights have expired, or that have been released with an intellectual property license that permits their free use or re-purposing by others without the permission of the original authors or creators. Open education resources (OER) includes items such as courses, course materials, textbooks, streaming video of classroom lectures, tests, software, and any other tools, materials, or techniques used to transmit knowledge that have an impact on teaching and learning.*

*§ 2. The State Board for Community Colleges shall, in consultation with the Virginia Department of Education and the State Council of Higher Education for Virginia, develop a competitive grant pilot program to provide grants to community colleges to establish open education resource centers in the Commonwealth. To qualify for a grant, community colleges shall be required to demonstrate a partnership with faculty or staff from at least one local school division and one institution of higher education in the Commonwealth.*

*The pilot program grant recipients shall be selected based upon a demonstration of their ability to accomplish all of the following:*

*A. Develop and implement a model for the creation of OER course content that is pedagogically sound and fully accessible, in compliance with the federal Americans With Disabilities Act (Public Law 101-336), by students with varying learning styles and disabilities.*

*B. Develop two elementary, secondary, or community college courses using open education resources. Courses developed for elementary or secondary schools shall meet the corresponding Standards of Learning requirements for the subject areas of the course.*

*C. Develop a professional in-service training and development course that introduces faculty, staff, and course developers to the concept, creation, content, and production methodologies that enable open education resources to be offered to students in elementary, secondary, or community college classes. The professional development course shall include, at a minimum, all of the following:*

- 1. Developing OER textbooks aligned to the Commonwealth's Standards of Learning;*
- 2. Addressing issues relating to copyright and other intellectual property concepts;*
- 3. Providing information on accessibility issues for students with disabilities;*
- 4. Developing options that incorporate multiple learning styles and strategies; and*
- 5. Building learner knowledge and skills that are necessary to find, adapt, repurpose, and create accessible OER for use in the classroom.*

*D. Create or support an OER information repository to serve as a point of contact for information about courses and course materials, research and production processes, and professional resources for creating and repurposing OER.*

*E. Conduct a two-year formative and summative research study and evaluation that compares OER with non-OER courses and materials with regard to quality and cost, and evaluates the efficacy of the pilot program for statewide replication. The successful applicant shall contract with an independent third party with expertise in evaluating educational content and curriculum development. The evaluation shall include, but not be limited to, an assessment of the number of faculty and students that use OER in their classes, the quality of their experiences compared to traditional courses, student performance, potential cost savings, and the quality of OER and non-OER course materials. This evaluation shall be submitted to the General Assembly no later than July 1, 2011.*

*F. Provide outreach to school districts and community colleges at regional and state educational and technology conferences to support the establishment of local OER centers.*

*G. Develop a sustainability plan and business model to fund the OER centers on an ongoing basis.*

3. That the provisions of this act shall not become effective until either an appropriation of general funds effectuating the purposes of this act is included in a general appropriations act passed by the 2009 or 2010 Session of the General Assembly, which becomes law, or funds from other private or public sources are deposited into the Open Education Resource Grant Fund by July 1, 2010.

## **Chapter 625 Pittsylvania County; Department of Corrections to convey certain real property thereto.**

An Act to authorize the Department of Corrections to convey certain real property to the County of Pittsylvania.

[\[S 1312\]](#)

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Corrections is hereby authorized to convey to the County of Pittsylvania, upon terms and conditions the Department deems proper, with the approval of the Governor and in a form approved by the Attorney General pursuant to [§ 2.2-1150](#) of the Code of Virginia, a portion of the Camp 15 Work Camp facility consisting of 13.56 acres, more or less, to include the Diversion Center and outbuildings, and more particularly described as follows:*

*Beginning at a point on the southern right-of-way of Concord Road, State Route 823, approximately 0.8 of a mile northeast of the intersection of West Giles Road, State Route 824, and Concord Road, State Road 823, from the point thus established, thence in a northeasterly direction, north 39°, 02 minutes, 21 seconds east, a distance of 53.46 feet to a point on the southern right-of-way of Concord Road. Thence, in a northeasterly direction, north 43°, 02 minutes, 56 seconds east, a distance of 91.21 feet to a point on the southeastern right-of-way of Concord Road. Thence, in a northeasterly direction north, 48°, 00 minutes, 49 seconds east, a distance of 83.47 feet to a point on the southern right-of-way of Concord Road. Thence, in a northeasterly direction north, 52°, 20 minutes, 47 seconds east, a distance of 69.95 feet to a point on the southern right-of-way of Concord Road. Thence, in a northeasterly direction, 57°, 53 minutes, 02 seconds east, a distance of 72.02 feet to a point on the southern right-of-way of State Route 823,*

*Concord Road. Thence, in a northeasterly direction, north 62°, 08 minutes, 14 seconds east, a distance of 58.05 feet, to a point on the southern right-of-way of Concord Road. Thence, in a northeasterly direction, 64°, 34 minutes, 32 seconds east, a distance of 231.20 feet, to a point on the southeastern right-of-way of Concord Road. Thence, in a northeasterly direction north, 62°, 25 minutes, 15 seconds east, a distance of 100.10 feet, to a point on the southern right-of-way of Concord Road, State Route 823. Thence, in a southeasterly direction south, 34°, 43 minutes, 03 seconds east, a distance of 751.21 feet, to a point adjacent to the property of the Virginia Department of Transportation. Thence, in a southwesterly direction from a point thus established, south 55°, 16 minutes, 56 seconds west, a distance of 750.00 feet, to a point, thence, in a northwesterly direction from the point thus established, in the pasture of the State Prison Camp 15 north, 34°, 43 minutes, 04 seconds west, a distance of 761.32 feet, to the point of beginning, containing 13.56 acres plus or minus.*

*§ 2. That the Department of Corrections is hereby authorized to convey to the County of Pittsylvania, upon terms and conditions the Department deems proper, with the approval of the Governor and in a form approved by the Attorney General pursuant to [§ 2.2-1150](#) of the Code of Virginia, the structure and property referred to as the Warden's Residence, and more particularly described as follows:*

*Beginning at a point on the north right-of-way on Concord Road, State Route 823, thence in a southwesterly direction, south 64°, 34 minutes, 32 seconds; west 180.63 feet to a point on the northern right-of-way on Concord Road. Thence, in a northwesterly direction, north 58°, 49 minutes, 06 seconds; west 158 feet to a point on the property line of Maynard Gregory. Thence, in a northeasterly direction, north 28°, 11 minutes, 28 seconds; east 330.3 feet to a point on the property line between the Department of Corrections and Maynard Gregory. Thence, in a southeasterly direction, south 36°, 19 minutes, 05 seconds; east a distance of 331.23 feet to the point of beginning, containing 1.50 acres, plus or minus.*

*§ 3. That the legal descriptions used above may be modified to conform to accurate surveys or other more accurate information. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

*§ 4. That the County of Pittsylvania shall pay all costs and expenses incurred in the transfer.*

## **Chapter 674 Fallen Heroes Memorial Bridge, etc.; designating as memorial bridges.**

An Act to designate the U.S. Route 29 bridge over the Rapidan River between Greene and Madison Counties the "Fallen Heroes Memorial Bridge in honor of Corporal Adam J. Fargo and Private First Class Edwin A. Andino," and to designate the U.S. Route 340 bridge over Overall Run at the Warren County/Page County line the "Corporal Larry E. Smedley (USMC) Memorial Bridge."

[\[H 2401\]](#)

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The U.S. Route 29 bridge over the Rapidan River between Greene and Madison Counties is hereby designated the "Fallen Heroes Memorial Bridge in honor of Corporal Adam J. Fargo and Private First Class Edwin A. Andino." The Department of Transportation shall place and maintain signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

*§ 2. The U.S. Route 340 bridge over Overall Run at the Warren County/Page County line is hereby designated the "Corporal Larry E. Smedley (USMC) Memorial Bridge." The Department of Transportation shall place and maintain signs indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 689 Land exchange; exchange of parcels of land between Departments of Conservation & Rec. & Forestry.**

An Act authorizing a land exchange between the Department of Conservation and Recreation and the Department of Forestry.

[\[S 1371\]](#)

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to the Department of Forestry, upon terms and conditions as the Department of Conservation and Recreation and the Department of Forestry deem proper, and with the approval of the Governor and in a form approved by the Attorney General, also as required by § [10.1-109](#) of the Code of Virginia, all of its right, title, and interest in a portion of land approved by the Director of the Department of Conservation and Recreation, and located in or adjacent to Grayson Highlands State Park in Grayson County. The boundaries of such conveyance shall be determined by mutual agreement of the Department of Conservation and Recreation and the Department of Forestry.*

*§ 2. That as a prior condition to such conveyance, the Department of Conservation and Recreation and the Department of Forestry shall mutually ascertain the existence of or, if necessary, acquire public road access to said property acceptable to the Department of Forestry.*

*§ 3. That in exchange for such conveyance, the Department of Conservation and Recreation is authorized to receive, and the Department of Forestry is authorized to convey, upon terms and conditions as the Department of Conservation and Recreation and the Department of Forestry deem proper, and with the approval of the Governor and in a form approved by the Attorney General pursuant to § [2.2-1150](#) of the Code of Virginia, the Department of Forestry's rights, title, and interest in a portion of land approved by the State Forester, and adjoining Holliday Lake State Park in Appomattox County. The boundaries of such conveyance shall be determined by mutual agreement of the Department of Conservation and Recreation and the Department of Forestry.*

*§ 4. That the purpose of this exchange is to provide the Department of Conservation and Recreation with additional property for the possible future expansion of Holliday Lake State Park and the protection of its viewshed, and to provide the Department of Forestry with a location for research and seed sources for native species.*

*§ 5. That as may be required, the conveyances authorized shall additionally comply with the requirements of the federal Land and Water Conservation Fund Act, 16 U.S.C. § 4601-4 et seq.*

## Chapter 679 License plates, special; issuance to veterans of Operation Enduring Freedom, etc.

An Act to amend and reenact §§ [46.2-743](#) and [46.2-749.5](#) of the Code of Virginia and to repeal Chapters 432 and 634 of the Acts of Assembly of 2008, relating to special license plates for veterans of Operation Enduring Freedom, members of the Virginia State Defense Force, supporters of the Lake Taylor Transitional Care Hospital Foundation, and supporters of the National D-Day Memorial Foundation.

[\[H 2534\]](#)

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ [46.2-743](#) and [46.2-749.5](#) of the Code of Virginia are amended and reenacted as follows:

§ [46.2-743](#). Special license plates for members of the Virginia State Defense Force and certain veterans; fees.

A. On receipt of an application and written evidence that the applicant is an honorably discharged former member of one of the armed forces of the United States, the Commissioner shall issue to the applicant special license plates.

B. On receipt of an application and written evidence that the applicant is on active duty with, has been honorably discharged after at least six months of active duty service in, or has retired from the United States Marine Corps, the Commissioner shall issue to the applicant special license plates whose design incorporates an emblem of the United States Marine Corps. Unremarried surviving spouses of persons eligible to receive special license plates under this subsection may also be issued special license plates under this subsection.

C. On receipt of an application and written evidence that the applicant is on active duty with, has been honorably discharged after at least six months of active duty service in, or has retired from the United States Army, the Commissioner shall issue to the applicant special license plates whose design incorporates an emblem of the United States Army.

D. On receipt of an application and written evidence that the applicant is a veteran of World War II, the Commissioner shall issue special license plates to veterans of World War II. For each set of license plates issued under this subsection, the Commissioner

shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.

E. On receipt of an application and written evidence that the applicant is a veteran of the Korean War, the Commissioner shall issue special license plates to veterans of the Korean War.

F. On receipt of an application and written evidence that the applicant is a veteran of the Vietnam War, the Commissioner shall issue special license plates to veterans of the Vietnam War.

G. On receipt of an application and written evidence that the applicant is a veteran of the Asiatic-Pacific Campaign, the Commissioner shall issue special license plates to veterans of that campaign. For each set of license plates issued under this subsection, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.

H. On receipt of an application and written evidence that the applicant is a veteran of Operation Iraqi Freedom, the Commissioner shall issue special license plates to veterans of Operation Iraqi Freedom.

I. *On receipt of an application and written evidence that the applicant is a veteran of Operation Enduring Freedom, the Commissioner shall issue special license plates to veterans of Operation Enduring Freedom.*

J. *On receipt of an application and written evidence that the applicant is a member of the Virginia State Defense Force, the Commissioner shall issue special license plates to members of the Virginia State Defense Force.*

K. The provisions of subdivisions B 1 and B 2 of § [46.2-725](#) shall not apply to license plates issued under subsection A, D, E, F, or H, I, or J of this section.

§ [46.2-749.5](#). Special license plates celebrating Virginia's tobacco heritage.

A. On receipt of an application, the Commissioner shall issue special license plates celebrating Virginia's tobacco heritage. For each set of license plates issued under this section, the Commissioner shall charge, in addition to the prescribed cost of state license plates, an annual fee of ten dollars.

B. *License plates may be issued under this section for display on vehicles registered as trucks, as that term is defined in § [46.2-100](#), provided that no license plates are issued pursuant to this section for (i) vehicles operated for hire; (ii) vehicles registered under the International Registration Plan, or (iii) vehicles registered as tow trucks or tractor trucks as defined in § [46.2-100](#). No permanent license plates without decals as authorized in subsection B of § [46.2-712](#) may be issued under this section. For each set of truck*

*license plates issued under this subsection, the Commissioner shall charge, in addition to the prescribed cost of state license plates, an annual fee of \$25.*

2. That Chapters 432 and 634 of the Acts of Assembly of 2008 are repealed.

## **Chapter 702 Subdivision roadways; conveys through quitclaim any interest of Dept. of Conservation & Recreation.**

An Act authorizing the Department of Conservation and Recreation to quitclaim its interest in certain subdivision roadways.

[\[S 975\]](#)

Approved March 30, 2009

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey by quitclaim deed to the Widewater Beach Subdivision Citizen Association Inc., its successors and assigns, upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General pursuant to § [10.1-109](#) of the Code of Virginia, any right, title, or interest that it may have, and that it wishes to convey, in and to certain roadways contained within, or related to, Widewater Beach Subdivision, Stafford County, Virginia.*

*§ 2. The purpose of this conveyance is to allow the Department to transfer its rights in subdivision roads associated with Widewater Beach subdivision that may have been conveyed to the Department as part of a larger transfer of land related to the future Widewater State Park by instrument dated December 29, 2005, and recorded in the Clerk's Office of the Stafford County Circuit Court as instrument number 060008150. As the Department deems proper, such roads may include, but need not be limited to, Shady Cove Lane, Rodgers Lane, Woodrow Drive, Robin Road, Mallard Road, Ortega Street, Hollywood Avenue, Lake Drive, Mynell Street, Shore Drive, and Sandy Lane, and also may include stormwater management or other facilities and easements serving such subdivision roads. The conveyance shall comply with the requirements of the federal Land and Water Conservation Fund Act, 16 U.S.C. § 4601-4 et seq.*

## **Chapter 777 Constitutional amendment; property tax exemption for certain veterans (first reference).**

SENATE JOINT RESOLUTION NO. 275

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 6-A, relating to a property tax exemption for certain veterans.

Agreed to by the Senate, February 25, 2009

Agreed to by the House of Delegates, February 24, 2009

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-A as follows:

### ARTICLE X

#### TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not*

*remarry and continues to occupy the real property as his or her principal place of residence.*

# Uncodified Acts of Assembly - 2010

## Chapter 31 Higher Educational Institutions Bond Act of 2010; created.

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$206,870,000 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[H 41\]](#)

Approved March 4, 2010

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2010."*

§ 2. *Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$206,870,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs and reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

*Institution*

*Project Title*

*Project Code*

*Amount*

*Christopher Newport*

*Renovate Santoro*

*University*

*Residence Hall*

*17837*

*\$5,000,000*

*Christopher Newport*

*Construct Residence*

*University*

*Hall VII*

*17857*

*\$37,000,000*

Uncodified Acts of Assembly - 2010

<i>George Mason University</i>		
<i>Construct Housing VII</i>	17367	\$750,000
<i>George Mason University</i>	<i>Renovate Student</i>	
<i>Apartments</i>	17844	\$3,098,000
<i>George Mason University</i>		
<i>Renovate Commons</i>	17841	\$16,002,000
<i>Norfolk State University</i>	<i>Construct Residential</i>	
<i>Housing</i>	17818	\$46,001,000
<i>The College of William</i>	<i>Construct New</i>	
<i>and Mary in Virginia</i>		
<i>Dormitory</i>	17808	\$25,800,000
<i>The College of William</i>	<i>Renovate Residence</i>	
<i>and Mary in Virginia</i>		
<i>Halls</i>	17811	\$4,500,000
<i>Virginia Commonwealth</i>	<i>Construct West Grace</i>	

Uncodified Acts of Assembly - 2010

<i>University</i>		<i>Housing and Parking,</i>
<i>Phase I</i>	<i>17832</i>	<i>\$33,566,000</i>
<i>Virginia Polytechnic</i>		<i>Construct Academic</i>
<i>Institute and State</i>		<i>and Student Affairs</i>
<i>University</i>		
<i>Building</i>	<i>17859</i>	<i>\$35,153,000</i>
<i>Total</i>		
		<i>\$206,870,000</i>

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at*

*rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by,*

*such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for*

*investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A. of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B. of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 41 Dam Safety Act; Soil & Water Conservation Board to adopt regulations concerning low traffic roadway.**

An Act to require the Virginia Soil and Water Conservation Board to adopt regulations that consider the impact of roadways with low traffic volume on the determination of the hazard potential classification of an impounding structure.

[\[S 244\]](#)

Approved March 4, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Soil and Water Conservation Board shall, in accordance with the*

*Administrative Process Act (§ [2.2-4000](#) et seq.), adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ [10.1-604](#) et seq.).*

## **Chapter 44 9/11 Heroes Memorial Highway; Route 27 adjacent to Pentagon in Arlington County designated thereas.**

An Act to designate Virginia Route 27 in Arlington County as the "9/11 Heroes Memorial Highway."

[\[H 1109\]](#)

Approved March 5, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Virginia Route 27 adjacent to the Pentagon in Arlington County is hereby designated as the "9/11 Heroes Memorial Highway." The Department of Transportation shall place and maintain signs indicating this designation. This designation shall not affect any other designation heretofore or hereafter applied to this route.*

## **Chapter 54 Certificate of public need; definition of project.**

An Act to require the Commissioner of Health to accept applications and to authorize the Commissioner to issue certificates of public need for certain nursing home beds.

[\[S 470\]](#)

Approved March 8, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [32.1-102.1](#) of the Code of Virginia, the relocation of 10 or fewer nursing home beds or 10 percent of the beds, whichever is less, from one facility to another facility under common ownership or control that is located in an adjacent planning district shall not constitute a "project" for purposes of Article 1.1 (§ [32.1-](#)*

[102.1](#) et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, and any regulations of the Board of Health adopted pursuant thereto, provided that the facility to which the beds will be transferred is in compliance with all other laws governing such facilities and, as of December 31 of the year preceding the year in which relocation is proposed, the following criteria are met:

1. The occupancy rate of the facility from which beds are to be relocated was, based upon the total number of beds for which the facility is licensed, less than 90 percent for that preceding year;
2. The average occupancy rate of the facility to which beds are to be relocated was, based upon the total number of beds for which the facility is licensed, 95 percent or more over the previous two years; and
3. Prior to the transfer, the facility to which the beds are to be relocated was licensed for 50 or fewer nursing home beds.

## **Chapter 72 Homebound instruction services; Board of Education shall review its regulations.**

An Act to require the Board of Education to amend its Regulations Establishing Standards for Accrediting Public Schools in Virginia as they relate to homebound instructional services.

[\[H 257\]](#)

Approved March 9, 2010

Be it enacted by the General Assembly of Virginia:

1.  
*§ 1. That the Board of Education shall review its Regulations Establishing Standards for Accrediting Public Schools in Virginia (8 VAC [20-131](#)) as they relate to homebound instructional services to address whether homebound instruction may be made available to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon evidence submitted by any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions.*

## **Chapter 109 Route 1; designating as Historic Route 1 in State.**

An Act to designate U. S. Route 1 in the Commonwealth "Historic Route 1."

[\[H 530\]](#)

Approved March 10, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That U. S. Route 1 in the Commonwealth is hereby designated "Historic Route 1." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 136 Information Technology; Governor to appoint Chief Information Officer of VITA, etc.**

An Act to amend and reenact §§ [2.2-106](#), [2.2-225](#), [2.2-1115.1](#), [2.2-1509.3](#), [2.2-2005](#) through [2.2-2009](#), [2.2-2012](#), [2.2-2013](#), [2.2-2015](#), [2.2-2019](#), [2.2-2020](#), [2.2-2021](#), [2.2-2023](#), [23-38.111](#), and [23-77.4](#) of the Code of Virginia; to amend and reenact the third enactment of Chapters 758 and 812 of the Acts of Assembly of 2009; to amend the Code of Virginia by adding in Chapter 26 of Title 2.2 an article numbered 35, consisting of sections numbered [2.2-2699.5](#), [2.2-2699.6](#), and [2.2-2699.7](#); and to repeal Article 7 (§§ [2.2-2033](#) and [2.2-2034](#)) of Chapter 20.1 of Title 2.2 and Article 20 (§§ [2.2-2457](#), [2.2-2458](#), and [2.2-2458.1](#)) of Chapter 24 of Title 2.2 of the Code of Virginia, relating to Information Technology governance in the Commonwealth; the Chief Information Officer; the Information Technology Investment Board, abolished; and the Information Technology Advisory Council, established; emergency.

[\[H 1034\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-106](#), [2.2-225](#), [2.2-1115.1](#), [2.2-1509.3](#), [2.2-2005](#) through [2.2-2009](#), [2.2-2012](#), [2.2-2013](#), [2.2-2015](#), [2.2-2019](#), [2.2-2020](#), [2.2-2021](#), [2.2-2023](#), [23-38.111](#), and [23-](#)

[77.4](#) of the Code of Virginia are amended and reenacted and that Code of Virginia is amended by adding in Chapter 26 of Title 2.2 an article numbered 35, consisting of sections numbered [2.2-2699.5](#), [2.2-2699.6](#), and [2.2-2699.7](#), as follows:

§ [2.2-106](#). Appointment of agency heads; severance.

A. Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;
2. Director of the State Council of Higher Education for Virginia;
3. Executive Director of the Department of Game and Inland Fisheries;
4. Executive Director of the Jamestown-Yorktown Foundation;
5. Executive Director of the Motor Vehicle Dealer Board;
6. Librarian of Virginia;
7. Administrator of the Commonwealth's Attorneys' Services Council;
8. Executive Director of the Virginia Housing Development Authority; *and*
9. Executive Director of the Board of Accountancy; ~~and~~
10. ~~Chief Information Officer of the Commonwealth.~~

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

B. As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed pursuant to § [2.2-3117](#) to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § [2.2-107](#), there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the Senate Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. The members of the House of Delegates shall be

appointed in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this ~~paragraph~~ *subsection* pertaining to the confirmation process.

C. For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ [23-253.7](#), [22.1-346](#), [23-14](#), and [23-252](#), and; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ [2.2-215](#) et seq.) of Chapter 2 of this title.

D. Severance benefits provided to any departing agency head, whether or not appointed by the Governor, shall be publicly announced by the appointing authority prior to such departure.

§ [2.2-225](#). Position established; agencies for which responsible; additional powers.

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies, *councils*, and boards: Information Technology ~~Investment Board~~ *Advisory Council*, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the Wireless E-911 Services Board. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary may, with regard to strategy development, planning and budgeting for technology programs in the Commonwealth:

1. Monitor trends and advances in fundamental technologies of interest and importance to the economy of the Commonwealth and direct and approve a stakeholder-driven technology strategy development process that results in a comprehensive and coordinated view of research and development goals for industry, academia and government in the Commonwealth. This strategy shall be updated biennially and submitted to the Governor, the Speaker of the House of Delegates and the President Pro Tempore of the Senate.
2. Work closely with the appropriate federal research and development agencies and program managers to maximize the participation of Commonwealth industries and universities in these programs consistent with agreed strategy goals.

3. Direct the development of plans and programs for strengthening the technology resources of the Commonwealth's high technology industry sectors and for assisting in the strengthening and development of the Commonwealth's Regional Technology Councils.
  4. Direct the development of plans and programs for improving access to capital for technology-based entrepreneurs.
  5. Assist the Joint Commission on Technology and Science created pursuant to § [30-85](#) in its efforts to stimulate, encourage, and promote the development of technology in the Commonwealth.
  6. Continuously monitor and analyze the technology investments and strategic initiatives of other states to ensure the Commonwealth remains competitive.
  7. Strengthen interstate and international partnerships and relationships in the public and private sectors to bolster the Commonwealth's reputation as a global technology center.
  8. Develop and implement strategies to accelerate and expand the commercialization of intellectual property created within the Commonwealth.
  9. Ensure the Commonwealth remains competitive in cultivating and expanding growth industries, including life sciences, advanced materials and nanotechnology, biotechnology, and aerospace.
  10. Monitor the trends in the availability and deployment of and access to broadband communications services, which include, but are not limited to, competitively priced, high-speed data services and Internet access services of general application, throughout the Commonwealth and advancements in communications technology for deployment potential. The Secretary shall report annually by December 1 to the Governor and General Assembly on those trends.
  11. *Review and approve the procurement or termination of major information technology projects, and contracts or amendments thereto proposed by the Chief Information Officer (CIO) pursuant to § [2.2-2007](#).*
  12. *Review and approve statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth, as recommended by the CIO.*
  13. *Develop criteria and requirements defining "major information technology project" for purposes of § [2.2-2006](#). Such criteria and requirements shall include, but are not limited to, analysis of each project's risk and complexity.*
- § [2.2-1115.1](#). Standard vendor accounting information.

A. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall develop and maintain data standards for use by all agencies and institutions for payments and purchases of goods and services pursuant to §§ [2.2-1115](#) and [2.2-2012](#). Such standards shall include at a minimum the vendor number, name, address, and tax identification number; commodity code, order number, invoice number, and receipt information; and other information necessary to appropriately and consistently identify all suppliers of goods, commodities, and other services to the Commonwealth. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall annually review and update these standards to provide the Commonwealth information to monitor all procurement of goods and services and to implement adequate controls to pay only authorized providers of goods and services to the Commonwealth.

B. The Division and the Virginia Information Technologies Agency shall submit these standards to the Information Technology Investment Board *Advisory Council* in accordance with ~~§ [2.2-2458](#)~~ [§ 2.2-2699.6](#) for approval review as statewide technical and data standards for information technology.

[§ 2.2-1509.3](#). Budget bill to include appropriations for major information technology projects.

A. For purposes of this section:

"Major information technology project" means the same as that term is defined in [§ 2.2-2006](#).

"Major information technology project funding" means an estimate of each funding source for a major information technology project for the duration of the project.

B. In "The Budget Bill" submitted pursuant to [§ 2.2-1509](#), the Governor shall provide for the funding of major information technology projects, as specified herein. Such funding recommendations shall be for major information technology projects that have or are pending project development approval as defined by [§ 2.2-2019](#) or procurement approval as defined by [§ 2.2-2020](#).

The Governor shall include in "The Budget Bill" submitted pursuant to [§ 2.2-1509](#) a biennial appropriation for major information technology projects and the following information for each such project:

1. A brief statement explaining the project, the ~~Information Technology Investment Board's~~ *CIO's* ranking and recommendations on the project as required by ~~§ [2.2-2458](#)~~ [§ 2.2-2008](#), an explanation, if necessary, if the Governor informed the ~~Chief Information Officer~~ *Secretary of Technology* that an emergency existed as set forth in [§ 2.2-2008](#), and the anticipated duration of the project;

2. A brief explanation of the inclusion of any project in the budget bill that has not undergone review and approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* as required by ~~§ 2.2-2458~~ § [2.2-225](#);
3. Total estimated project costs, as defined by the Commonwealth's Project Management Standards, including the amount of the agency's or institution's operating appropriation, which will support the project, and long-term contract cost beyond the biennium;
4. Costs incurred to date, as defined by the Commonwealth's Project Management Standards, which includes both the project planning cost and internal operating costs to support the project;
5. Recommendations or comments of the Public-Private Partnership Advisory Commission, if the project is part of a proposal under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.); and
6. The ~~Information Technology Investment Board's~~ *CIO's* assessment of the project and the status as of the date of the budget bill submission to the General Assembly.

C. The ~~Information Technology Investment Board~~ *Secretary of Technology* shall immediately notify each member of the Senate Finance Committee and the House Appropriations Committee of any ~~Board~~ decision to terminate in accordance with ~~§ 2.2-2458~~ § [2.2-225](#) any major information technology project in the budget bill. Such communication shall include the ~~Information Technology Investment Board's~~ *Secretary of Technology's* reason for such termination.

§ [2.2-2005](#). Creation of Agency; appointment of Chief Information Officer.

A. There is hereby created the Virginia Information Technologies Agency (VITA), which shall serve as the agency responsible for administration and enforcement of the provisions of this Chapter ~~and the rules and policies of the Board~~.

B. The ~~Board~~ *Governor* shall appoint a Chief Information Officer (the CIO) ~~as the chief administrative officer of the Board~~ to oversee the operation of VITA. The CIO shall ~~be employed under special contract for a term not to exceed five years and shall, under the direction and control of the Board,~~ exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the ~~Board~~ *Governor and the Secretary of Technology*.

§ [2.2-2006](#). Definitions.

As used in this chapter:

"Board" means the ~~Information Technology Investment Board~~ created in ~~§ 2.2-2457~~.

"Communications services" includes telecommunications services, automated data processing services, and management information systems that serve the needs of state agencies and institutions.

"Confidential data" means information made confidential by federal or state law that is maintained by a state agency in an electronic format.

"Information technology" means telecommunications, automated data processing, databases, the Internet, management information systems, and related information, equipment, goods, and services. ~~It is in the interest of the Commonwealth that its public institutions of higher education in Virginia be in the forefront of developments in technology. Therefore, the~~ *The* provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

*"ITAC" means the Information Technology Advisory Council created in § [2.2-2699.5](#).*

"Major information technology project" means any state agency information technology project that ~~(i) is mission-critical, (ii) has statewide application, or (iii) has a total estimated cost of more than \$1 million~~ *(i) meets the criteria and requirements developed by the Secretary of Technology pursuant to § [2.2-225](#) or (ii) has a total estimated cost of more than \$1 million.*

"Noncommercial telecommunications entity" means any public broadcasting station as defined in § [2.2-2427](#).

"Public telecommunications entity" means any public broadcasting station as defined in § [2.2-2427](#).

"Public telecommunications facilities" means all apparatus, equipment and material necessary for or associated in any way with public broadcasting stations or public broadcasting services as those terms are defined in § [2.2-2427](#), including the buildings and structures necessary to house such apparatus, equipment and material, and the necessary land for the purpose of providing public broadcasting services, but not telecommunications services.

"Public telecommunications services" means public broadcasting services as defined in § [2.2-2427](#).

"Secretary" means the Secretary of Technology.

"State agency" or "agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act. However, the terms "state agency," "agency," "institution," "public body," and "public institution of higher education," shall not include the University of Virginia Medical Center.

"Technology asset" means hardware and communications equipment not classified as traditional mainframe-based items, including personal computers, mobile computers, and other devices capable of storing and manipulating electronic data.

"Telecommunications" means any origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

"Telecommunications facilities" means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus and the necessary land.

§ [2.2-2007](#). Powers of the CIO.

A. In addition to such other duties as the ~~Board~~ *Secretary* may assign, the CIO shall:

1. Monitor trends and advances in information technology; develop a comprehensive, statewide, ~~four-year~~ *two-year* strategic plan for information technology to include: (i) specific projects that implement the plan; ~~and~~ (ii) a plan for the acquisition, management, and use of information technology by state agencies; and (iii) a report of the progress of any ongoing enterprise application projects, any factors or risks that might affect their successful completion, and any changes to their projected implementation costs and schedules. The statewide plan shall be updated annually and submitted to the ~~Board~~

*Secretary* for approval.

2. Direct the formulation and promulgation of policies, guidelines, standards, and specifications for the purchase, development, and maintenance of information technology for state agencies, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies, (ii) concerned with the development of electronic transactions including the use of electronic signatures as provided in § [59.1-496](#), and (iii) necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

3. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and performance budgeting processes, and that state agencies and public institutions of higher education shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and public institutions of higher education in preparing budget requests.

4. Review budget requests for information technology from state agencies and public institutions of higher education and recommend budget priorities to the ~~Information Technology Investment Board~~ *Secretary*.

Review of such budget requests shall include, but not be limited to, all data processing or other related projects for amounts exceeding \$100,000 in which the agency or institution has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessments or revenues to pay for the project. For each project, the agency or institution, with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § [23-38.88](#), shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or institution or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms.

5. Direct the development of policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the CIO of agency and public institution of higher education *major* information technology projects ~~estimated to cost \$1 million or more or deemed to be mission-critical or of statewide application by the CIO~~. The CIO shall provide technical guidance to the Department of General Services in the development of policies and procedures for the recycling and disposal of computers and other technology assets. Such policies and procedures shall include the expunging, in a manner as determined by the CIO, of all state confidential data and personal identifying information of citizens of the Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

6. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § [2.2-2023](#).

7. Periodically evaluate the feasibility of outsourcing information technology resources and services, and outsource those resources and services that are feasible and beneficial to the Commonwealth.

8. Have the authority to enter into contracts, and with the approval of the ~~Board~~ *Secretary of Technology* for any contracts over \$1 million, with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia for the provision of information technology services.

9. Report annually to the Governor, *the Secretary*, and the Joint Commission on Technology and Science created pursuant to § [30-85](#) on the use and application of information technology by state agencies and public institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government. *The CIO shall prepare an annual report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects based upon major information technology projects submitted for approval pursuant to this chapter. As part of this plan, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation of points to defined criteria. The criteria and their definitions shall be presented in the plan. For each project listed in the plan, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also indicate (i) the projected cost of the project for the next three biennia following project implementation; (ii) all projected costs of ongoing operations and maintenance activities; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by state agencies and at the enterprise level, including spending on projects, operations and maintenance, and payments to VITA.*

10. Direct the development of policies and procedures that require VITA to review *major* information technology projects proposed by state agencies and institutions ~~exceeding \$100,000~~, and recommend *to the Secretary* whether such projects be approved or disapproved. The CIO shall disapprove *major information technology* projects ~~between \$100,000 and \$1 million~~ that do not conform to the statewide *strategic* information technology plan or to the individual plans of state agencies or institutions of higher education. *For projects that do not meet the definition of major information technology project as defined in § [2.2-2006](#), the CIO shall develop criteria and requirements defining whether such projects are subject to the provisions of this subdivision.*

11. *Oversee the Commonwealth's efforts to modernize the planning, development, implementation, improvement, and retirement of Commonwealth applications, including the coordination and development of enterprise-wide or multiagency applications.*

*12. Develop and recommend to the Secretary statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth.*

B. Consistent with § [2.2-2012](#), the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue or cost savings attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue or cost savings attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § [2.2-2023](#). The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection. All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the Governor, *the Secretary*, and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant.

*C. The CIO shall strive to follow acceptable technology investment methods, such as Information Technology Investment Management (ITIM) principles developed by the United States Government Accountability Office, to ensure that all technology expenditures are an integral part of the Commonwealth's performance management system and are aligned with (i) agency strategic business objectives, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.*

*D. Subject to review and approval by the Secretary, the CIO shall have the authority to enter*

*into and amend contracts for the provision of information technology services.*

§ [2.2-2008](#). Additional duties of the CIO relating to project management.

The CIO shall have the following duties relating to the management of information technology projects:

1. Develop an approval process for proposed major information technology projects by state agencies to ensure that all such projects conform to the statewide information management plan and the information management plans of agencies and public institutions of higher education.
2. Establish a methodology for conceiving, planning, scheduling and providing appropriate oversight for information technology projects including a process for approving the planning, development and procurement of information technology projects. Such methodology shall include guidelines for the establishment of appropriate oversight for information technology projects.
3. Establish minimum qualifications and training standards for project managers.
4. ~~Review and approve~~ *Provide the Secretary with a recommendation and rank of* all procurement solicitations involving major information technology projects.
5. Direct the development of any statewide or multiagency enterprise project.
6. Develop and update a project management methodology to be used by agencies in the development of information technology.
7. Establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the Commonwealth's previous experiences with the development of major information technology projects.
8. Determine, prior to proceeding with the development of a major information technology project pursuant to § [2.2-2019](#) or the procurement of any major information technology project pursuant to § [2.2-2020](#), that the funding for such project has been included in the budget bill in accordance with § [2.2-1509.3](#). ~~Notwithstanding the~~ *The* provisions of this subdivision; *shall not apply* upon a determination by the Governor that an emergency exists and a major information technology project is necessary to address the emergency, ~~the CIO shall refer such project directly to the Information Technology Investment Board.~~

§ [2.2-2009](#). Additional duties of the CIO relating to security of government information.

A. To provide for the security of state government electronic information from unauthorized uses, intrusions or other security threats, the CIO shall direct the development of policies, procedures and standards for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, procedures, and standards will apply to the Commonwealth's executive, legislative, and judicial branches, and independent agencies and institutions of higher education. The CIO shall work with representatives of the Chief Justice of the Supreme Court and Joint Rules Committee of the General Assembly to identify their needs.

B. The CIO shall also develop policies, procedures, and standards that shall address the scope of security audits and the frequency of such security audits. In developing and updating such policies, procedures, and standards, the CIO shall designate a government entity to oversee, plan and coordinate the conduct of periodic security audits of all executive branch and independent agencies and institutions of higher education. The CIO will coordinate these audits with the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission. The Chief Justice of the Supreme Court and the Joint Rules Committee of the General Assembly shall determine the most appropriate methods to review the protection of electronic information within their branches.

C. The CIO shall *annually* report to the Governor, *the Secretary*, and General Assembly ~~by December 2008 and annually thereafter~~; those executive branch and independent agencies and institutions of higher education that have not implemented acceptable policies, procedures, and standards to control unauthorized uses, intrusions, or other security threats. For any executive branch ~~and~~ *or* independent agency or institution of higher education whose security audit results and plans for corrective action are unacceptable, the CIO shall report such results to ~~the (i) Information Technology Investment Board~~ *the Secretary*, (ii) *any other* affected cabinet secretary, (iii) *the* Governor, and (iv) *the* Auditor of Public Accounts. Upon review of the security audit results in question, ~~the Information Technology Investment Board~~ *CIO* may take action to suspend the public ~~bodies~~ *body's* information technology projects pursuant to ~~subdivision 3 of § 2.2-2458~~ § [2.2-2015](#), limit additional information technology investments pending acceptable corrective actions, and recommend to the Governor *and Secretary* any other appropriate actions.

*The CIO shall also include in this report (a) results of security audits, including those state agencies, independent agencies, and institutions of higher education that have not implemented acceptable regulations, standards, policies, and guidelines to control unauthorized uses, intrusions, or other security threats and (b) the extent to which security standards and guidelines have been adopted by state agencies.*

D. All public bodies subject to such audits as required by this section shall fully cooperate with the entity designated to perform such audits and bear any associated costs. Public bodies that are not required to but elect to use the entity designated to perform such audits shall also bear any associated costs.

E. The provisions of this section shall not infringe upon responsibilities assigned to the Comptroller, the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by other provisions of the Code of Virginia.

F. To ensure the security and privacy of citizens of the Commonwealth in their interactions with state government, the CIO shall direct the development of policies, procedures, and standards for the protection of confidential data maintained by state agencies against unauthorized access and use. Such policies, procedures, and standards shall include, but not be limited to:

1. Requirements that any state employee or other authorized user of a state technology asset provide passwords or other means of authentication to (i) use a technology asset and (ii) access a state-owned or operated computer network or database; and
2. Requirements that a digital rights management system or other means of authenticating and controlling an individual's ability to access electronic records be utilized to limit access to and use of electronic records that contain confidential data to authorized individuals.

G. The CIO shall promptly receive reports from directors of departments in the executive branch of state government made in accordance with § [2.2-603](#) and shall take such actions as are necessary, convenient or desirable to ensure the security of the Commonwealth's electronic information and confidential data.

*H. The CIO shall also develop policies, procedures, and standards that shall address the creation and operation of a risk management program designed to identify information technology security gaps and develop plans to mitigate the gaps. All agencies in the Commonwealth shall cooperate with the CIO. Such cooperation includes, but is not limited to, (i) providing the CIO with information required to create and implement a Commonwealth risk management program; (ii) creating an agency risk management program; and (iii) complying with all other risk management activities.*

§ [2.2-2012](#). Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the statewide information technology plan or to the individual plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § [2.2-4301](#), VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

~~B~~C. The Department may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

~~C~~D. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § [2.2-4301](#), may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

~~D~~E. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § [2.2-803](#).

~~E~~F. The CIO of VITA shall, on or before October 1, 2009, and every two years thereafter, solicit from each state agency and public institution of higher education a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The CIO shall make the lists available to the public on VITA's website.

§ [2.2-2013](#). Internal service funds; Automated Services Internal Service Fund; Computer Services Internal Service Fund; Telecommunication Services Internal Service Fund.

A. There are established the following internal service funds to be administered by VITA:

1. The Automated Services Internal Service Fund to be used to finance automated systems design, development and testing services and staff of VITA;
2. The Computer Services Internal Service Fund to be used to finance computer operations and staff of VITA; and
3. The Telecommunication Services Internal Service Fund to be used to finance telecommunications operations and staff of VITA.

B. There is established the Acquisition Services Special Fund to be administered by VITA and used to finance procurement and contracting activities and programs unallowable for federal fund reimbursement.

C. All users of services provided for in this chapter administered by VITA shall be assessed a surcharge, which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow VITA to finance the operations and staff of the services offered.

D. Additional moneys necessary to establish these funds or provide for the administration of the activities of VITA may be advanced from the general account of the state treasury.

*E. The CIO shall direct that the following activities be conducted with respect to VITA's internal service funds:*

*1. VITA shall establish fee schedules for the collection of fees from users when general fund appropriations are not available for the services rendered.*

*2. VITA shall develop and implement information, billing, and collections methods that will assist state agencies in analyzing and effectively managing their use of VITA's services, and which will allow VITA to forecast service demands and balances of its internal service funds.*

*3. By September 1 of each year, VITA shall submit biennial projections of future revenues and expenditures for each internal service fund and estimates of any anticipated changes to fee schedules to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget.*

*4. In the event that changes to fee schedules or rates are required, the CIO shall submit documentation to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget no later than September 1 prior to the fiscal year in which the new or revised rates are to take effect so that the impact of the rate changes can be considered for inclusion in the executive budget submitted to the General Assembly pursuant to [§ 2.2-1508](#). In emergency circumstances, deviations from this approach shall be approved in advance by the Joint Legislative Audit and Review Commission.*

§ [2.2-2015](#). Authority of CIO to modify or suspend major information technology projects; project termination.

The CIO may direct the modification or suspension of any major information technology project that, as the result of a periodic review authorized by subdivision A 5 of § [2.2-2007](#), has not met the performance measures agreed to by the CIO and the sponsoring agency or public institution of higher education or if he otherwise deems such action appropriate and consistent with the terms of any affected contracts. The CIO may recommend to the ~~Board~~ *Secretary* the termination of such project. Nothing in this section shall be construed to supersede the responsibility of a board of visitors for the management and operation of a public institution of higher education.

The provisions of this section shall not apply to research projects, research initiatives or instructional programs at public institutions of higher education. However, technology investments in research projects, research initiatives or instructional programs at such institutions estimated to cost \$1 million or more of general fund appropriations may be reviewed as provided in subdivision A 5 of § [2.2-2007](#) if the projects are deemed mission-critical by the institution or of statewide application by the CIO. The CIO and the Secretary of Education, in consultation with public institutions of higher education, shall develop and provide to such institution criteria to be used in determining whether projects are mission-critical.

§ [2.2-2019](#). Project development approval.

A. Upon approval of the CIO of the project plan, an agency shall submit to the Division a project development proposal containing (i) a detailed business case including a cost-benefit analysis; (ii) a business process analysis, if applicable; (iii) system requirements, if known; (iv) a proposed development plan and project management structure; and (v) a proposed resource or funding plan. The project management specialist may require the submission of additional information necessary to meet the criteria developed by the Division.

B. The project management specialist assigned to review the project development proposal shall recommend its approval or rejection to the CIO. ~~If the CIO determines that the proposal be approved, he shall recommend such approval to the Board.~~

§ [2.2-2020](#). Procurement approval for major information technology projects.

Upon approval of the ~~Board~~ *CIO* of the project development proposal involving a major information technology project that requires the procurement of goods or services, the agency shall submit a copy of any Invitation for Bid (IFB) or Request for Proposal (RFP) to the Division. The project management specialist shall review the IFB or RFP and recommend its approval or rejection to the ~~CIO~~ *Secretary*. The ~~CIO~~ *Secretary*, pursuant

to § [2.2-225](#), shall have the final authority to approve the IFB or RFP prior to its release and shall approve the proposed contract for the award of the project.

§ [2.2-2021](#). Project oversight.

A. Whenever an agency has received approval from the ~~Board~~ *Secretary* to proceed with the development and acquisition of a major information technology project, an internal agency oversight committee shall be established by the CIO. The internal agency oversight committee shall provide ongoing oversight for the project and have the authority to approve or reject any changes in the project's scope, schedule, or budget. The CIO shall ensure that the project has in place adequate project management and oversight structures for addressing major issues that could affect the project's scope, schedule or budget and shall address issues that cannot be resolved by the internal agency oversight committee.

B. Whenever a statewide or multiagency project has received approval from the ~~Board~~ *Secretary*, the primary project oversight shall be conducted by a committee composed of representatives from agencies impacted by the project, which shall be established by the CIO.

§ [2.2-2023](#). Virginia Technology Infrastructure Fund created; contributions.

A. The Virginia Technology Infrastructure Fund (the Fund) is created in the state treasury. The Fund is to be used to fund major information technology projects or to pay private partners as authorized in subsection B of § [2.2-2007](#).

B. The Fund shall consist of: (i) the transfer of general and nongeneral fund appropriations from state agencies which represent savings that accrue from reductions in the cost of information technology and communication services, (ii) the transfer of general and nongeneral fund appropriations from state agencies which represent savings from the implementation of information technology enterprise projects, (iii) funds identified pursuant to subsection B of § [2.2-2007](#), (iv) such general and nongeneral fund fees or surcharges as may be assessed to agencies for enterprise technology projects, (v) gifts, grants, or donations from public or private sources, and (vi) such other funds as may be appropriated by the General Assembly. Savings shall be as identified by the CIO through a methodology ~~approved~~ *reviewed* by the ~~Board~~ *ITAC* and *approved* by the Secretary of Finance. The Auditor of Public Accounts shall certify the amount of any savings identified by the CIO. For public institutions of higher education, however, savings shall consist only of that portion of total savings that represent general funds. The State Comptroller is authorized to transfer cash consistent with appropriation transfers. Appropriated funds from federal sources are exempted from transfer. Except for funds to pay private

partners as authorized in subsection B of § [2.2-2007](#), moneys in the Fund shall only be expended as provided by the appropriation act.

Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.

*Article 35.*

*Information Technology Advisory Council.*

§ [2.2-2699.5](#). *Information Technology Advisory Council; membership; terms; quorum; compensation; staff.*

*A. The Information Technology Advisory Council (ITAC) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The ITAC shall be responsible for advising the CIO and the Secretary of Technology on the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.*

*B. The ITAC shall consist of not more than 14 members as follows: (i) one representative from an agency under each of the Governor's Secretaries, as set out in Chapter 2 (§ [2.2-200](#) et seq.), to be appointed by the Governor and serve with voting privileges; (ii) the Secretary of Technology and the CIO who shall serve ex officio with voting privileges; and (iii) at the Governor's discretion, not more than two nonlegislative citizen members to be appointed by the Governor and serve with voting privileges.*

*Nonlegislative citizen members shall be appointed for terms of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.*

*C. The Secretary of Technology shall serve as chairman of the ITAC. The CIO shall serve as vice-chairman. A majority of the members shall constitute a quorum. The ITAC shall meet at least quarterly each year. The meetings of the ITAC shall be held at the call of the chairman or whenever the majority of the members so request.*

*D. Nonlegislative citizen members shall receive compensation and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and*

*expenses of the members shall be provided by the Virginia Information Technologies Agency.*

*E. The disclosure requirements of subsection B of § [2.2-3114](#) of the State and Local Government Conflict of Interests Act shall apply to citizen members of the ITAC.*

*F. The Virginia Information Technologies Agency shall serve as staff to the ITAC.*

*§ [2.2-2699.6](#). Powers and duties of the ITAC.*

*The ITAC shall have the power and duty to:*

- 1. Adopt rules and procedures for the conduct of its business;*
- 2. Advise the CIO on the development of all major information technology projects as defined in § [2.2-2006](#);*
- 3. Advise the CIO on strategies, standards, and priorities for the use of information technology for state agencies in the executive branch of state government;*
- 4. Advise the CIO on developing the two-year plan for information technology projects;*
- 5. Advise the CIO on statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth;*
- 6. Advise the CIO on statewide information technology architecture and related system standards;*
- 7. Advise the CIO on assessing and meeting the Commonwealth's business needs through the application of information technology; and*
- 8. Advise the CIO on the prioritization, development, and implementation of enterprise-wide technology applications; annually review all agency technology applications budgets; and advise the CIO on infrastructure expenditures. For purposes of this section, technology applications include, but are not limited to, hardware, software, maintenance, facilities, contractor services, goods, and services that promote business functionality and facilitate the storage, flow, use or processing of information by agencies of the Commonwealth in the execution of their business activities.*

*§ [2.2-2699.7](#). Health Information Technology Standards Advisory Committee.*

*The ITAC may appoint an advisory committee of persons with expertise in health care and information technology to advise the ITAC on the utilization of nationally recognized technical and data standards for health information technology systems or software pursuant to subdivision 5 of § [2.2-2699.6](#). The ITAC, in consultation with the Secretary of Health and Human Resources, may appoint up to five persons to serve on the advisory committee. Members appointed to the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred*

*in the performance of their duties as provided in § [2.2-2825](#). The CIO, the Secretary of Technology, and the Secretary of Health and Human Resources, or their designees, may also serve on the advisory committee.*

§ [23-38.111](#). Information technology.

Subject to the terms of the management agreement, covered institutions may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies Investment Board Advisory Council, Article ~~20~~ 35 (§ [2.2-2699.5](#) et seq.) of Chapter ~~24~~ (~~§ [2.2-2457](#) et seq.~~) 26 of Title 2.2; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § [23-38.110](#) and that include provisions addressing cooperative arrangements for such procurement as described in § [23-38.110](#), and shall adopt and comply with institutional policies and professional best practices regarding strategic planning for information technology, project management, security, budgeting, infrastructure, and ongoing operations.

§ [23-77.4](#). Medical center management.

A. The General Assembly recognizes and finds that the economic viability of the University of Virginia Medical Center, hereafter referred to as the Medical Center, together with the requirement for its specialized management and operation, and the need of the Medical Center to participate in cooperative arrangements reflective of changes in health care delivery, as set forth in § [23-77.3](#), are dependent upon the ability of the management of the Medical Center to make and implement promptly decisions necessary to conduct the affairs of the Medical Center in an efficient, competitive manner. The General Assembly also recognizes and finds that it is critical to, and in the best interests of, the Commonwealth that the University continue to fulfill its mission of providing quality medical and health sciences education and related research and, through the presence of its Medical Center, continue to provide for the care, treatment, health-related services, and education activities associated with Virginia patients, including indigent and medically indigent patients. Because the General Assembly finds that the ability of the University to fulfill this mission is highly dependent upon revenues derived from providing health care through its Medical Center, and because the General Assembly also finds that the ability of the Medical Center to continue to be a reliable source of such revenues is heavily dependent upon its ability to compete with other providers of health care that are not subject to the requirements of law applicable to agencies of the Commonwealth, the University is hereby authorized to implement the following modifications

to the management and operation of the affairs of the Medical Center in order to enhance its economic viability:

B. Capital projects; leases of property; procurement of goods, services and construction.

1. Capital projects.

a. For any Medical Center capital project entirely funded by a nongeneral fund appropriation made by the General Assembly, all post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments are hereby delegated to the University, subject to the following stipulations and conditions: (i) the Board of Visitors shall develop and implement an appropriate system of policies, procedures, reviews and approvals for Medical Center capital projects to which this subdivision applies; (ii) the system so adopted shall provide for the review and approval of any Medical Center capital project to which this subdivision applies in order to ensure that, except as provided in clause (iii), the cost of any such capital project does not exceed the sum appropriated therefor and that the project otherwise complies with all requirements of the Code of Virginia regarding capital projects, excluding only the post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments; (iii) the Board of Visitors may, during any fiscal year, approve a transfer of up to a total of 15 percent of the total nongeneral fund appropriation for the Medical Center in order to supplement funds appropriated for a capital project or capital projects of the Medical Center, provided that the Board of Visitors finds that the transfer is necessary to effectuate the original intention of the General Assembly in making the appropriation for the capital project or projects in question; (iv) the University shall report to the Department of General Services on the status of any such capital project prior to commencement of construction of, and at the time of acceptance of, any such capital project; and (v) the University shall ensure that Building Officials and Code Administrators (BOCA) Code and fire safety inspections of any such project are conducted and that such projects are inspected by the State Fire Marshal or his designee prior to certification for building occupancy by the University's assistant state building official to whom such inspection responsibility has been delegated pursuant to § [36-98.1](#). Nothing in this section shall be deemed to relieve the University of any reporting requirement pursuant to § [2.2-1513](#). Notwithstanding the foregoing, the

terms and structure of any financing of any capital project to which this subdivision applies shall be approved pursuant to § [2.2-2416](#).

b. No capital project to which this subdivision applies shall be materially increased in size or materially changed in scope beyond the plans and justifications that were the basis for the project's appropriation unless: (i) the Governor determines that such increase in size or change in scope is necessary due to an emergency or (ii) the General Assembly approves the increase or change in a subsequent appropriation for the project. After construction of any such capital project has commenced, no such increase or change may be made during construction unless the conditions in (i) or (ii) have been satisfied.

## 2. Leases of property.

a. The University shall be exempt from the provisions of § [2.2-1149](#) and from any rules, regulations and guidelines of the Division of Engineering and Buildings in relation to leases of real property that it enters into on behalf of the Medical Center and, pursuant to policies and procedures adopted by the Board of Visitors, may enter into such leases subject to the following conditions: (i) the lease must be an operating lease and not a capital lease as defined in guidelines established by the Secretary of Finance and Generally Accepted Accounting Principles (GAAP); (ii) the University's decision to enter into such a lease shall be based upon cost, demonstrated need, and compliance with guidelines adopted by the Board of Visitors which direct that competition be sought to the maximum practical degree, that all costs of occupancy be considered, and that the use of the space to be leased actually is necessary and is efficiently planned; (iii) the form of the lease is approved by the Special Assistant Attorney General representing the University; (iv) the lease otherwise meets all requirements of law; (v) the leased property is certified for occupancy by the building official of the political subdivision in which the leased property is located; and (vi) upon entering such leases and upon any subsequent amendment of such leases, the University shall provide copies of all lease documents and any attachments thereto to the Department of General Services.

b. Notwithstanding the provisions of §§ [2.2-1155](#) and [23-4.1](#), but subject to policies and procedures adopted by the Board of Visitors, the University may lease, for a purpose consistent with the mission of the Medical Center and for a term not to exceed 50 years, property in the possession or control of the Medical Center.

c. Notwithstanding the foregoing, the terms and structure of any financing arrangements secured by capital leases or other similar lease financing agreements shall be approved pursuant to § [2.2-2416](#).

## 3. Procurement of goods, services and construction.

Contracts awarded by the University in compliance with this section, on behalf of the Medical Center, for the procurement of goods; services, including professional services; construction; and information technology and telecommunications, shall be exempt from (i) the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), except as provided below; (ii) the requirements of the Division of Purchases and Supply of the Department of General Services as set forth in Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2; (iii) the requirements of the Division of Engineering and Buildings as set forth in Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2; and (iv) the authority of the *Chief Information Officer and the Virginia Information Technologies Agency* as set forth in Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 and the Information Technology Investment Board created pursuant to § [2.2-2457](#) regarding the review and approval of contracts for (a) the construction of Medical Center capital projects and (b) information technology and telecommunications projects; however, the provisions of this subdivision may not be implemented by the University until such time as the Board of Visitors has adopted guidelines generally applicable to the procurement of goods, services, construction and information technology and telecommunications projects by the Medical Center or by the University on behalf of the Medical Center. Such guidelines shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The guidelines shall implement a system of competitive negotiation for professional services; shall prohibit discrimination because of race, religion, color, sex, or national origin of the bidder or offeror in the solicitation or award of contracts; may take into account in all cases the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; may implement a pre-qualification procedure for contractors or products; may include provisions for cooperative procurement arrangements with private health or educational institutions, or with public agencies or institutions of the several states, territories of the United States or the District of Columbia; shall incorporate the prompt payment principles of §§ [2.2-4350](#) and [2.2-4354](#); and may implement provisions of law. The following sections of the Virginia Public Procurement Act shall continue to apply to procurements by the Medical Center or by the University on behalf of the Medical Center: §§ [2.2-4311](#), [2.2-4315](#), and [2.2-4342](#) (which section shall not be construed to require compliance with the pre-qualification application procedures of subsection B of § [2.2-4317](#)), [2.2-4330](#), [2.2-4333](#) through [2.2-4341](#), and [2.2-4367](#) through [2.2-4377](#).

C. Subject to such conditions as may be prescribed in the budget bill under § [2.2-1509](#) as enacted into law by the General Assembly, the State Comptroller shall credit, on a monthly basis, to the nongeneral fund operating cash balances of the University of

Virginia Medical Center the imputed interest earned by the investment of such non-general fund operating cash balances, including but not limited to those balances derived from patient care revenues, on deposit with the State Treasurer.

2. That Article 7 (§§ [2.2-2033](#) and [2.2-2034](#)) of Chapter 20.1 of Title 2.2 and Article 20 (§§ [2.2-2457](#), [2.2-2458](#), and [2.2-2458.1](#)) of Chapter 24 of Title 2.2 of the Code of Virginia are repealed.

3. That the third enactment of Chapter 758 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the Department of General Services, the Virginia Information Technologies Agency, and the State Comptroller shall submit to the Information Technology Investment Board the standards required pursuant to § [2.2-1115.1](#) of this act by December 1, 2009. The Department of General Services and the Virginia Information Technologies Agency shall undertake to use these standards in the Commonwealth's enterprise electronic procurement system upon approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* and make the standards available for use by all agencies and institutions by July 1, 2010. After July 1, 2010, the Department of General Services shall provide purchasing data from the Commonwealth's enterprise electronic procurement system, to the extent it is available, at least quarterly for inclusion in the Auditor of Public Accounts' searchable database established pursuant to § [30-133](#) of the Code of Virginia. All agencies and institutions that use the standards developed pursuant to this act that have not previously reported data to the Auditor of Public Accounts through the Commonwealth's enterprise electronic procurement system shall, to the extent practicable, provide such data to the Auditor of Public Accounts at least quarterly beginning after July 1, 2010.

4. That the third enactment of Chapter 812 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the Department of General Services, the Virginia Information Technologies Agency, and the State Comptroller shall submit to the Information Technology Investment Board the standards required pursuant to § [2.2-1115.1](#) of this act by December 1, 2009. The Department of General Services and the Virginia Information Technologies Agency shall undertake to use these standards in the Commonwealth's enterprise electronic procurement system upon approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* and make the standards available for use by all agencies and institutions by July 1, 2010. After July 1, 2010, the Department of General

Services shall provide purchasing data from the Commonwealth's enterprise electronic procurement system, to the extent it is available, at least quarterly for inclusion in the Auditor of Public Accounts' searchable database established pursuant to § [30-133](#) of the Code of Virginia. All agencies and institutions that use the standards developed pursuant to this act that have not previously reported data to the Auditor of Public Accounts through the Commonwealth's enterprise electronic procurement system shall, to the extent practicable, provide such data to the Auditor of Public Accounts at least quarterly beginning after July 1, 2010.

5. That on or before October 1, 2010, the Chief Information Officer, in consultation with the Joint Legislative Audit and Review Commission and any other parties as directed by the Secretary of Technology, shall develop a new review, approval, and monitoring process for information technology projects to replace the process required by §§ [2.2-2008](#) and [2.2-2017](#) through [2.2-2021](#) of the Code of Virginia. The new process shall be operational by January 1, 2011, and shall be implemented and regularly updated by the Division of Project Management. The process shall be designed to ensure that information technology projects conform to the statewide information management plan and the information management plans of agencies and public institutions of higher education. The process shall also be designed to ensure that projects are provided with appropriate levels of oversight once they are under execution. The level of review and oversight shall vary depending upon defined risk factors including, but not limited to, the cost of the project. In order to achieve the above goals, the process shall describe a methodology for agencies to follow in conceiving, planning, developing, scheduling and executing information technology projects, including procurements related to those projects.

6. That on or before October 1, 2010, the Chief Information Officer shall, in consultation with the Joint Legislative Audit and Review Commission and the Department of Planning and Budget, develop standard documentation and information to be used as part of any requests for changes to the Virginia Information Technologies Agency's fee schedules and rates.

7. That as of the effective date of this act, the Secretary of Technology shall be deemed the successor in interest to the Information Technology Investment Board. Without limiting the foregoing, all right, title, and interest in and to any real or tangible personal property or contract vested in the Information Technology Investment Board as of the effective date of this act shall be transferred to and taken as standing in the name of the Secretary of Technology.

8. That as of the effective date of this act, the Secretary of Technology shall be deemed the successor in interest to the Division of Enterprise Applications and Virginia Chief Applications Officer. Without limiting the foregoing, all right, title, and interest in and to any real or tangible personal property or contract vested in the Division of Enterprise Applications and Virginia Chief Applications Officer as of the effective date of this act shall be transferred to and taken as standing in the name of the Secretary of Technology.

9. That the Secretary of Technology shall provide in writing the criteria and requirements defining "major information technology project" to the chairs of the House Committee on General Laws, the Senate Committee on General Laws and Technology, the House Committee on Appropriations, the Senate Finance Committee, and the House Committee on Science and Technology.

10. That the Virginia Information Technologies Agency shall continue following the definition of "major information technology project" in effect prior to the passage of this act until the Secretary of Technology develops criteria and requirements defining "major information technology project" pursuant to the provisions of this act.

11. That the Information Technology Advisory Council shall develop a technology business plan for the Commonwealth in consultation with the Council on Virginia's Future, and that on or before December 31, 2011, such technology business plan shall be provided in writing to the chairs of the House Committee on General Laws, the Senate Committee on General Laws and Technology, the House Committee on Appropriations, the Senate Finance Committee, and the House Committee on Science and Technology.

12. That an emergency exists and this act is in force from its passage.

## **Chapter 145 Information Technology; Governor to appoint Chief Information Officer of VITA, etc.**

An Act to amend and reenact §§ [2.2-106](#), [2.2-225](#), [2.2-1115.1](#), [2.2-1509.3](#), [2.2-2005](#) through [2.2-2009](#), [2.2-2012](#), [2.2-2013](#), [2.2-2015](#), [2.2-2019](#), [2.2-2020](#), [2.2-2021](#), [2.2-2023](#), [23-38.111](#), and [23-77.4](#) of the Code of Virginia; to amend and reenact the third enactment of Chapters 758 and 812 of the Acts of Assembly of 2009; to amend the Code of Virginia by adding in Chapter 26 of Title 2.2 an article numbered 35, consisting of sections numbered [2.2-2699.5](#), [2.2-2699.6](#), and [2.2-2699.7](#); and to repeal Article 7 (§§ [2.2-2033](#) and [2.2-2034](#)) of Chapter 20.1 of Title 2.2 and Article 20 (§§ [2.2-2457](#), [2.2-2458](#), and [2.2-2458.1](#)) of Chapter 24 of Title 2.2 of the Code of Virginia, relating to Information

Technology governance in the Commonwealth; the Chief Information Officer; the Information Technology Investment Board, abolished; and the Information Technology Advisory Council, established; emergency.

[\[S 236\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-106](#), [2.2-225](#), [2.2-1115.1](#), [2.2-1509.3](#), [2.2-2005](#) through [2.2-2009](#), [2.2-2012](#), [2.2-2013](#), [2.2-2015](#), [2.2-2019](#), [2.2-2020](#), [2.2-2021](#), [2.2-2023](#), [23-38.111](#), and [23-77.4](#) of the Code of Virginia are amended and reenacted and that Code of Virginia is amended by adding in Chapter 26 of Title 2.2 an article numbered 35, consisting of sections numbered [2.2-2699.5](#), [2.2-2699.6](#), and [2.2-2699.7](#), as follows:

§ [2.2-106](#). Appointment of agency heads; severance.

A. Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;
2. Director of the State Council of Higher Education for Virginia;
3. Executive Director of the Department of Game and Inland Fisheries;
4. Executive Director of the Jamestown-Yorktown Foundation;
5. Executive Director of the Motor Vehicle Dealer Board;
6. Librarian of Virginia;
7. Administrator of the Commonwealth's Attorneys' Services Council;
8. Executive Director of the Virginia Housing Development Authority; *and*
9. Executive Director of the Board of Accountancy; ~~and~~
10. ~~Chief Information Officer of the Commonwealth.~~

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

B. As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed pursuant to § [2.2-3117](#) to the chairs of the House of Delegates

and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § [2.2-107](#), there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the Senate Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. The members of the House of Delegates shall be appointed in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this ~~paragraph~~ *subsection* pertaining to the confirmation process.

C. For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ [23-253.7](#), [22.1-346](#), [23-14](#), and [23-252](#), and; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ [2.2-215](#) et seq.) of Chapter 2 of this title.

D. Severance benefits provided to any departing agency head, whether or not appointed by the Governor, shall be publicly announced by the appointing authority prior to such departure.

§ [2.2-225](#). Position established; agencies for which responsible; additional powers.

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies, *councils*, and boards: Information Technology ~~Investment Board~~ *Advisory Council*, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the Wireless E-911 Services Board. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary may, with regard to strategy development, planning and budgeting for technology programs in the Commonwealth:

1. Monitor trends and advances in fundamental technologies of interest and importance to the economy of the Commonwealth and direct and approve a stakeholder-driven technology strategy development process that results in a comprehensive and coordinated view of research and development goals for industry, academia and government in the Commonwealth. This strategy shall be updated biennially and submitted to the Governor, the Speaker of the House of Delegates and the President Pro Tempore of the Senate.
2. Work closely with the appropriate federal research and development agencies and program managers to maximize the participation of Commonwealth industries and universities in these programs consistent with agreed strategy goals.
3. Direct the development of plans and programs for strengthening the technology resources of the Commonwealth's high technology industry sectors and for assisting in the strengthening and development of the Commonwealth's Regional Technology Councils.
4. Direct the development of plans and programs for improving access to capital for technology-based entrepreneurs.
5. Assist the Joint Commission on Technology and Science created pursuant to § [30-85](#) in its efforts to stimulate, encourage, and promote the development of technology in the Commonwealth.
6. Continuously monitor and analyze the technology investments and strategic initiatives of other states to ensure the Commonwealth remains competitive.
7. Strengthen interstate and international partnerships and relationships in the public and private sectors to bolster the Commonwealth's reputation as a global technology center.
8. Develop and implement strategies to accelerate and expand the commercialization of intellectual property created within the Commonwealth.
9. Ensure the Commonwealth remains competitive in cultivating and expanding growth industries, including life sciences, advanced materials and nanotechnology, biotechnology, and aerospace.
10. Monitor the trends in the availability and deployment of and access to broadband communications services, which include, but are not limited to, competitively priced, high-speed data services and Internet access services of general application, throughout the Commonwealth and advancements in communications technology for deployment potential. The Secretary shall report annually by December 1 to the Governor and General Assembly on those trends.

11. Review and approve the procurement or termination of major information technology projects, and contracts or amendments thereto proposed by the Chief Information Officer (CIO) pursuant to § [2.2-2007](#).

12. Review and approve statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth, as recommended by the CIO.

13. Develop criteria and requirements defining "major information technology project" for purposes of § [2.2-2006](#). Such criteria and requirements shall include, but are not limited to, analysis of each project's risk and complexity.

§ [2.2-1115.1](#). Standard vendor accounting information.

A. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall develop and maintain data standards for use by all agencies and institutions for payments and purchases of goods and services pursuant to §§ [2.2-1115](#) and [2.2-2012](#). Such standards shall include at a minimum the vendor number, name, address, and tax identification number; commodity code, order number, invoice number, and receipt information; and other information necessary to appropriately and consistently identify all suppliers of goods, commodities, and other services to the Commonwealth. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall annually review and update these standards to provide the Commonwealth information to monitor all procurement of goods and services and to implement adequate controls to pay only authorized providers of goods and services to the Commonwealth.

B. The Division and the Virginia Information Technologies Agency shall submit these standards to the Information Technology Investment Board Advisory Council in accordance with § [2.2-2458](#) § [2.2-2699.6](#) for approval review as statewide technical and data standards for information technology.

§ [2.2-1509.3](#). Budget bill to include appropriations for major information technology projects.

A. For purposes of this section:

"Major information technology project" means the same as that term is defined in § [2.2-2006](#).

"Major information technology project funding" means an estimate of each funding source for a major information technology project for the duration of the project.

B. In "The Budget Bill" submitted pursuant to § [2.2-1509](#), the Governor shall provide for the funding of major information technology projects, as specified herein. Such funding recommendations shall be for major information technology projects that have or are

pending project development approval as defined by § [2.2-2019](#) or procurement approval as defined by § [2.2-2020](#).

The Governor shall include in "The Budget Bill" submitted pursuant to § [2.2-1509](#) a biennial appropriation for major information technology projects and the following information for each such project:

1. A brief statement explaining the project, the ~~Information Technology Investment Board's~~ *CIO's* ranking and recommendations on the project as required by ~~§ [2.2-2458](#) § [2.2-2008](#)~~, an explanation, if necessary, if the Governor informed the ~~Chief Information Officer~~ *Secretary of Technology* that an emergency existed as set forth in § [2.2-2008](#), and the anticipated duration of the project;
2. A brief explanation of the inclusion of any project in the budget bill that has not undergone review and approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* as required by ~~§ [2.2-2458](#) § [2.2-225](#)~~;
3. Total estimated project costs, as defined by the Commonwealth's Project Management Standards, including the amount of the agency's or institution's operating appropriation, which will support the project, and long-term contract cost beyond the biennium;
4. Costs incurred to date, as defined by the Commonwealth's Project Management Standards, which includes both the project planning cost and internal operating costs to support the project;
5. Recommendations or comments of the Public-Private Partnership Advisory Commission, if the project is part of a proposal under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.); and
6. The ~~Information Technology Investment Board's~~ *CIO's* assessment of the project and the status as of the date of the budget bill submission to the General Assembly.

C. The ~~Information Technology Investment Board~~ *Secretary of Technology* shall immediately notify each member of the Senate Finance Committee and the House Appropriations Committee of any ~~Board~~ decision to terminate in accordance with ~~§ [2.2-2458](#) § [2.2-225](#)~~ any major information technology project in the budget bill. Such communication shall include the ~~Information Technology Investment Board's~~ *Secretary of Technology's* reason for such termination.

§ [2.2-2005](#). Creation of Agency; appointment of Chief Information Officer.

A. There is hereby created the Virginia Information Technologies Agency (VITA), which shall serve as the agency responsible for administration and enforcement of the provisions of this Chapter ~~and the rules and policies of the Board~~.

B. The ~~Board~~ *Governor* shall appoint a Chief Information Officer (the CIO) ~~as the chief administrative officer of the Board~~ to oversee the operation of VITA. The CIO shall be

~~employed under special contract for a term not to exceed five years and shall, under the direction and control of the Board, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Board Governor and the Secretary of Technology.~~

§ [2.2-2006](#). Definitions.

As used in this chapter:

~~"Board" means the Information Technology Investment Board created in § [2.2-2457](#).~~

"Communications services" includes telecommunications services, automated data processing services, and management information systems that serve the needs of state agencies and institutions.

"Confidential data" means information made confidential by federal or state law that is maintained by a state agency in an electronic format.

"Information technology" means telecommunications, automated data processing, databases, the Internet, management information systems, and related information, equipment, goods, and services. ~~It is in the interest of the Commonwealth that its public institutions of higher education in Virginia be in the forefront of developments in technology. Therefore, the~~ The provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

*"ITAC" means the Information Technology Advisory Council created in § [2.2-2699.5](#).*

"Major information technology project" means any state agency information technology project that ~~(i) is mission-critical, (ii) has statewide application, or (iii) has a total estimated cost of more than \$1 million~~ (i) meets the criteria and requirements developed by the Secretary of Technology pursuant to § [2.2-225](#) or (ii) has a total estimated cost of more than \$1 million.

"Noncommercial telecommunications entity" means any public broadcasting station as defined in § [2.2-2427](#).

"Public telecommunications entity" means any public broadcasting station as defined in § [2.2-2427](#).

"Public telecommunications facilities" means all apparatus, equipment and material necessary for or associated in any way with public broadcasting stations or public broadcasting services as those terms are defined in § [2.2-2427](#), including the buildings and structures necessary to house such apparatus, equipment and material, and the necessary land for the purpose of providing public broadcasting services, but not telecommunications services.

"Public telecommunications services" means public broadcasting services as defined in § [2.2-2427](#).

"Secretary" means the Secretary of Technology.

"State agency" or "agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act. However, the terms "state agency," "agency," "institution," "public body," and "public institution of higher education," shall not include the University of Virginia Medical Center.

"Technology asset" means hardware and communications equipment not classified as traditional mainframe-based items, including personal computers, mobile computers, and other devices capable of storing and manipulating electronic data.

"Telecommunications" means any origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

"Telecommunications facilities" means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus and the necessary land.

§ [2.2-2007](#). Powers of the CIO.

A. In addition to such other duties as the ~~Board~~ *Secretary* may assign, the CIO shall:

1. Monitor trends and advances in information technology; develop a comprehensive, statewide, ~~four-year~~ *two-year* strategic plan for information technology to include: *(i) specific projects that implement the plan; and (ii) a plan for the acquisition, management, and use of information technology by state agencies; and (iii) a report of the progress of any ongoing enterprise application projects, any factors or risks that might affect their successful completion, and any changes to their projected implementation costs and schedules.* The statewide plan shall be updated annually and submitted to the ~~Board~~ *Secretary* for approval.

2. Direct the formulation and promulgation of policies, guidelines, standards, and specifications for the purchase, development, and maintenance of information technology for state agencies, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies, (ii) concerned with the development of electronic transactions including the use of electronic signatures as provided in § [59.1-496](#), and (iii) necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

3. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and performance budgeting processes, and that state agencies and public institutions of higher education shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and public institutions of higher education in preparing budget requests.

4. Review budget requests for information technology from state agencies and public institutions of higher education and recommend budget priorities to the ~~Information Technology Investment Board~~ *Secretary*.

Review of such budget requests shall include, but not be limited to, all data processing or other related projects for amounts exceeding \$100,000 in which the agency or institution has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessments or revenues to pay for the project. For each project, the agency or institution, with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § [23-38.88](#), shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or institution or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms.

5. Direct the development of policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the CIO of agency and public institution of higher education *major* information technology projects ~~estimated to cost \$1 million or more or deemed to be mission-critical or of statewide application by the CIO~~. The CIO shall provide technical guidance to the Department of General Services in the development of policies and procedures for the recycling and disposal of computers and other technology assets. Such policies and procedures shall include the expunging, in a

manner as determined by the CIO, of all state confidential data and personal identifying information of citizens of the Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

6. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § [2.2-2023](#).

7. Periodically evaluate the feasibility of outsourcing information technology resources and services, and outsource those resources and services that are feasible and beneficial to the Commonwealth.

8. Have the authority to enter into contracts, and with the approval of the ~~Board~~ *Secretary of Technology* for any contracts over \$1 million, with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia for the provision of information technology services.

9. Report annually to the Governor, *the Secretary*, and the Joint Commission on Technology and Science created pursuant to § [30-85](#) on the use and application of information technology by state agencies and public institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government. *The CIO shall prepare an annual report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects based upon major information technology projects submitted for approval pursuant to this chapter. As part of this plan, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation of points to defined criteria. The criteria and their definitions shall be presented in the plan. For each project listed in the plan, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also indicate (i) the projected cost of the project for the next three biennia following project implementation; (ii) all projected costs of ongoing operations and maintenance activities; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by state agencies and at the enterprise level, including spending on projects, operations and maintenance, and payments to VITA.*

10. Direct the development of policies and procedures that require VITA to review *major* information technology projects proposed by state agencies and institutions ~~exceeding \$100,000~~, and recommend *to the Secretary* whether such projects be approved or disapproved. The CIO shall disapprove *major information technology* projects ~~between~~

~~\$100,000 and \$1 million~~ that do not conform to the statewide *strategic* information *technology* plan or to the individual plans of state agencies or institutions of higher education. *For projects that do not meet the definition of major information technology project as defined in § 2.2-2006, the CIO shall develop criteria and requirements defining whether such projects are subject to the provisions of this subdivision.*

*11. Oversee the Commonwealth's efforts to modernize the planning, development, implementation, improvement, and retirement of Commonwealth applications, including the coordination and development of enterprise-wide or multiagency applications.*

*12. Develop and recommend to the Secretary statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth.*

B. Consistent with § [2.2-2012](#), the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue or cost savings attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue or cost savings attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § [2.2-2023](#). The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection. All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the Governor, *the Secretary*, and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant.

*C. The CIO shall strive to follow acceptable technology investment methods, such as Information Technology Investment Management (ITIM) principles developed by the United States Government Accountability Office, to ensure that all technology expenditures are an integral part of the Commonwealth's performance management system and*

*are aligned with (i) agency strategic business objectives, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.*

*D. Subject to review and approval by the Secretary, the CIO shall have the authority to enter*

*into and amend contracts for the provision of information technology services.*

§ [2.2-2008](#). Additional duties of the CIO relating to project management.

The CIO shall have the following duties relating to the management of information technology projects:

1. Develop an approval process for proposed major information technology projects by state agencies to ensure that all such projects conform to the statewide information management plan and the information management plans of agencies and public institutions of higher education.
2. Establish a methodology for conceiving, planning, scheduling and providing appropriate oversight for information technology projects including a process for approving the planning, development and procurement of information technology projects. Such methodology shall include guidelines for the establishment of appropriate oversight for information technology projects.
3. Establish minimum qualifications and training standards for project managers.
4. ~~Review and approve~~ *Provide the Secretary with a recommendation and rank of all procurement solicitations involving major information technology projects.*
5. Direct the development of any statewide or multiagency enterprise project.
6. Develop and update a project management methodology to be used by agencies in the development of information technology.
7. Establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the Commonwealth's previous experiences with the development of major information technology projects.
8. Determine, prior to proceeding with the development of a major information technology project pursuant to § [2.2-2019](#) or the procurement of any major information technology project pursuant to § [2.2-2020](#), that the funding for such project has been included in the budget bill in accordance with § [2.2-1509.3](#). ~~Notwithstanding the~~ *The provisions of this subdivision; shall not apply upon a determination by the Governor that an emergency exists and a major information technology project is necessary to address the emergency, the CIO shall refer such project directly to the Information Technology Investment Board.*

§ [2.2-2009](#). Additional duties of the CIO relating to security of government information.

A. To provide for the security of state government electronic information from unauthorized uses, intrusions or other security threats, the CIO shall direct the development of policies, procedures and standards for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, procedures, and standards will apply to the Commonwealth's executive, legislative, and judicial branches, and independent agencies and institutions of higher education. The CIO shall work with representatives of the Chief Justice of the Supreme Court and Joint Rules Committee of the General Assembly to identify their needs.

B. The CIO shall also develop policies, procedures, and standards that shall address the scope of security audits and the frequency of such security audits. In developing and updating such policies, procedures, and standards, the CIO shall designate a government entity to oversee, plan and coordinate the conduct of periodic security audits of all executive branch and independent agencies and institutions of higher education. The CIO will coordinate these audits with the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission. The Chief Justice of the Supreme Court and the Joint Rules Committee of the General Assembly shall determine the most appropriate methods to review the protection of electronic information within their branches.

C. The CIO shall *annually* report to the Governor, *the Secretary*, and General Assembly ~~by December 2008 and annually thereafter~~; those executive branch and independent agencies and institutions of higher education that have not implemented acceptable policies, procedures, and standards to control unauthorized uses, intrusions, or other security threats. For any executive branch ~~and~~ *or* independent agency or institution of higher education whose security audit results and plans for corrective action are unacceptable, the CIO shall report such results to the (i) ~~Information Technology Investment Board~~ *the Secretary*, (ii) *any other* affected cabinet secretary, (iii) *the* Governor, and (iv) *the* Auditor of Public Accounts. Upon review of the security audit results in question, the ~~Information Technology Investment Board~~ *CIO* may take action to suspend the public ~~bodies~~ *body's* information technology projects pursuant to ~~subdivision 3 of §~~ [2.2-2458](#) § [2.2-2015](#), limit additional information technology investments pending acceptable corrective actions, and recommend to the Governor *and Secretary* any other appropriate actions.

*The CIO shall also include in this report (a) results of security audits, including those state agencies, independent agencies, and institutions of higher education that have not implemented acceptable regulations, standards, policies, and guidelines to control unau-*

*thorized uses, intrusions, or other security threats and (b) the extent to which security standards and guidelines have been adopted by state agencies.*

D. All public bodies subject to such audits as required by this section shall fully cooperate with the entity designated to perform such audits and bear any associated costs.

Public bodies that are not required to but elect to use the entity designated to perform such audits shall also bear any associated costs.

E. The provisions of this section shall not infringe upon responsibilities assigned to the Comptroller, the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by other provisions of the Code of Virginia.

F. To ensure the security and privacy of citizens of the Commonwealth in their interactions with state government, the CIO shall direct the development of policies, procedures, and standards for the protection of confidential data maintained by state agencies against unauthorized access and use. Such policies, procedures, and standards shall include, but not be limited to:

1. Requirements that any state employee or other authorized user of a state technology asset provide passwords or other means of authentication to (i) use a technology asset and (ii) access a state-owned or operated computer network or database; and

2. Requirements that a digital rights management system or other means of authenticating and controlling an individual's ability to access electronic records be utilized to limit access to and use of electronic records that contain confidential data to authorized individuals.

G. The CIO shall promptly receive reports from directors of departments in the executive branch of state government made in accordance with § [2.2-603](#) and shall take such actions as are necessary, convenient or desirable to ensure the security of the Commonwealth's electronic information and confidential data.

*H. The CIO shall also develop policies, procedures, and standards that shall address the creation and operation of a risk management program designed to identify information technology security gaps and develop plans to mitigate the gaps. All agencies in the Commonwealth shall cooperate with the CIO. Such cooperation includes, but is not limited to, (i) providing the CIO with information required to create and implement a Commonwealth risk management program; (ii) creating an agency risk management program; and (iii) complying with all other risk management activities.*

§ [2.2-2012](#). Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies

and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the statewide information technology plan or to the individual plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § [2.2-4301](#), VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

~~B~~C. The Department may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

~~C~~D. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § [2.2-4301](#), may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

~~D~~E. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § [2.2-803](#).

E-F. The CIO of VITA shall, on or before October 1, 2009, and every two years thereafter, solicit from each state agency and public institution of higher education a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The CIO shall make the lists available to the public on VITA's website.

§ [2.2-2013](#). Internal service funds; Automated Services Internal Service Fund; Computer Services Internal Service Fund; Telecommunication Services Internal Service Fund.

A. There are established the following internal service funds to be administered by VITA:

1. The Automated Services Internal Service Fund to be used to finance automated systems design, development and testing services and staff of VITA;
2. The Computer Services Internal Service Fund to be used to finance computer operations and staff of VITA; and
3. The Telecommunication Services Internal Service Fund to be used to finance telecommunications operations and staff of VITA.

B. There is established the Acquisition Services Special Fund to be administered by VITA and used to finance procurement and contracting activities and programs unallowable for federal fund reimbursement.

C. All users of services provided for in this chapter administered by VITA shall be assessed a surcharge, which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow VITA to finance the operations and staff of the services offered.

D. Additional moneys necessary to establish these funds or provide for the administration of the activities of VITA may be advanced from the general account of the state treasury.

*E. The CIO shall direct that the following activities be conducted with respect to VITA's internal service funds:*

- 1. VITA shall establish fee schedules for the collection of fees from users when general fund appropriations are not available for the services rendered.*
- 2. VITA shall develop and implement information, billing, and collections methods that will assist state agencies in analyzing and effectively managing their use of VITA's services, and which will allow VITA to forecast service demands and balances of its internal service funds.*
- 3. By September 1 of each year, VITA shall submit biennial projections of future revenues and expenditures for each internal service fund and estimates of any anticipated*

*changes to fee schedules to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget.*

*4. In the event that changes to fee schedules or rates are required, the CIO shall submit documentation to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget no later than September 1 prior to the fiscal year in which the new or revised rates are to take effect so that the impact of the rate changes can be considered for inclusion in the executive budget submitted to the General Assembly pursuant to § [2.2-1508](#). In emergency circumstances, deviations from this approach shall be approved in advance by the Joint Legislative Audit and Review Commission.*

§ [2.2-2015](#). Authority of CIO to modify or suspend major information technology projects; project termination.

The CIO may direct the modification or suspension of any major information technology project that, as the result of a periodic review authorized by subdivision A 5 of § [2.2-2007](#), has not met the performance measures agreed to by the CIO and the sponsoring agency or public institution of higher education or if he otherwise deems such action appropriate and consistent with the terms of any affected contracts. The CIO may recommend to the ~~Board~~ Secretary the termination of such project. Nothing in this section shall be construed to supersede the responsibility of a board of visitors for the management and operation of a public institution of higher education.

The provisions of this section shall not apply to research projects, research initiatives or instructional programs at public institutions of higher education. However, technology investments in research projects, research initiatives or instructional programs at such institutions estimated to cost \$1 million or more of general fund appropriations may be reviewed as provided in subdivision A 5 of § [2.2-2007](#) if the projects are deemed mission-critical by the institution or of statewide application by the CIO. The CIO and the Secretary of Education, in consultation with public institutions of higher education, shall develop and provide to such institution criteria to be used in determining whether projects are mission-critical.

§ [2.2-2019](#). Project development approval.

A. Upon approval of the CIO of the project plan, an agency shall submit to the Division a project development proposal containing (i) a detailed business case including a cost-benefit analysis; (ii) a business process analysis, if applicable; (iii) system requirements, if known; (iv) a proposed development plan and project management structure; and (v) a proposed resource or funding plan. The project management specialist may require the submission of additional information necessary to meet the criteria developed by the Division.

B. The project management specialist assigned to review the project development proposal shall recommend its approval or rejection to the CIO. ~~If the CIO determines that the proposal be approved, he shall recommend such approval to the Board.~~

§ [2.2-2020](#). Procurement approval for major information technology projects.

Upon approval of the ~~Board~~ CIO of the project development proposal involving a major information technology project that requires the procurement of goods or services, the agency shall submit a copy of any Invitation for Bid (IFB) or Request for Proposal (RFP) to the Division. The project management specialist shall review the IFB or RFP and recommend its approval or rejection to the ~~CIO~~ Secretary. The ~~CIO~~ Secretary, pursuant to § [2.2-225](#), shall have the final authority to approve the IFB or RFP prior to its release and shall approve the proposed contract for the award of the project.

§ [2.2-2021](#). Project oversight.

A. Whenever an agency has received approval from the ~~Board~~ Secretary to proceed with the development and acquisition of a major information technology project, an internal agency oversight committee shall be established by the CIO. The internal agency oversight committee shall provide ongoing oversight for the project and have the authority to approve or reject any changes in the project's scope, schedule, or budget. The CIO shall ensure that the project has in place adequate project management and oversight structures for addressing major issues that could affect the project's scope, schedule or budget and shall address issues that cannot be resolved by the internal agency oversight committee.

B. Whenever a statewide or multiagency project has received approval from the ~~Board~~ Secretary, the primary project oversight shall be conducted by a committee composed of representatives from agencies impacted by the project, which shall be established by the CIO.

§ [2.2-2023](#). Virginia Technology Infrastructure Fund created; contributions.

A. The Virginia Technology Infrastructure Fund (the Fund) is created in the state treasury. The Fund is to be used to fund major information technology projects or to pay private partners as authorized in subsection B of § [2.2-2007](#).

B. The Fund shall consist of: (i) the transfer of general and nongeneral fund appropriations from state agencies which represent savings that accrue from reductions in the cost of information technology and communication services, (ii) the transfer of general and nongeneral fund appropriations from state agencies which represent savings from the implementation of information technology enterprise projects, (iii) funds identified pursuant to subsection B of § [2.2-2007](#), (iv) such general and nongeneral fund fees or surcharges as may be assessed to agencies for enterprise technology projects, (v) gifts,

grants, or donations from public or private sources, and (vi) such other funds as may be appropriated by the General Assembly. Savings shall be as identified by the CIO through a methodology ~~approved~~ *reviewed* by the ~~Board~~ *ITAC* and *approved* by the Secretary of Finance. The Auditor of Public Accounts shall certify the amount of any savings identified by the CIO. For public institutions of higher education, however, savings shall consist only of that portion of total savings that represent general funds. The State Comptroller is authorized to transfer cash consistent with appropriation transfers. Appropriated funds from federal sources are exempted from transfer. Except for funds to pay private partners as authorized in subsection B of § [2.2-2007](#), moneys in the Fund shall only be expended as provided by the appropriation act.

Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.

*Article 35.*

*Information Technology Advisory Council.*

§ [2.2-2699.5](#). *Information Technology Advisory Council; membership; terms; quorum; compensation; staff.*

*A. The Information Technology Advisory Council (ITAC) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The ITAC shall be responsible for advising the CIO and the Secretary of Technology on the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.*

*B. The ITAC shall consist of not more than 14 members as follows: (i) one representative from an agency under each of the Governor's Secretaries, as set out in Chapter 2 (§ [2.2-200](#) et seq.), to be appointed by the Governor and serve with voting privileges; (ii) the Secretary of Technology and the CIO who shall serve ex officio with voting privileges; and (iii) at the Governor's discretion, not more than two nonlegislative citizen members to be appointed by the Governor and serve with voting privileges.*

*Nonlegislative citizen members shall be appointed for terms of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.*

*C. The Secretary of Technology shall serve as chairman of the ITAC. The CIO shall serve as vice-chairman. A majority of the members shall constitute a quorum. The ITAC shall meet at least quarterly each year. The meetings of the ITAC shall be held at the call of the chairman or whenever the majority of the members so request.*

*D. Nonlegislative citizen members shall receive compensation and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Virginia Information Technologies Agency.*

*E. The disclosure requirements of subsection B of § [2.2-3114](#) of the State and Local Government Conflict of Interests Act shall apply to citizen members of the ITAC.*

*F. The Virginia Information Technologies Agency shall serve as staff to the ITAC.*

*§ [2.2-2699.6](#). Powers and duties of the ITAC.*

*The ITAC shall have the power and duty to:*

- 1. Adopt rules and procedures for the conduct of its business;*
- 2. Advise the CIO on the development of all major information technology projects as defined in § [2.2-2006](#);*
- 3. Advise the CIO on strategies, standards, and priorities for the use of information technology for state agencies in the executive branch of state government;*
- 4. Advise the CIO on developing the two-year plan for information technology projects;*
- 5. Advise the CIO on statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth;*
- 6. Advise the CIO on statewide information technology architecture and related system standards;*
- 7. Advise the CIO on assessing and meeting the Commonwealth's business needs through the application of information technology; and*
- 8. Advise the CIO on the prioritization, development, and implementation of enterprise-wide technology applications; annually review all agency technology applications budgets; and advise the CIO on infrastructure expenditures. For purposes of this section, technology applications include, but are not limited to, hardware, software, maintenance, facilities, contractor services, goods, and services that promote business functionality and facilitate the storage, flow, use or processing of information by agencies of the Commonwealth in the execution of their business activities.*

*§ [2.2-2699.7](#). Health Information Technology Standards Advisory Committee.*

*The ITAC may appoint an advisory committee of persons with expertise in health care and information technology to advise the ITAC on the utilization of nationally recognized technical and data standards for health information technology systems or software pursuant to subdivision 5 of § [2.2-2699.6](#). The ITAC, in consultation with the Secretary of Health and Human Resources, may appoint up to five persons to serve on the advisory committee. Members appointed to the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § [2.2-2825](#). The CIO, the Secretary of Technology, and the Secretary of Health and Human Resources, or their designees, may also serve on the advisory committee.*

§ [23-38.111](#). Information technology.

Subject to the terms of the management agreement, covered institutions may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies Investment Board Advisory Council, Article 20 35 (§ [2.2-2699.5](#) et seq.) of Chapter ~~24~~ (~~§ [2.2-2457](#) et seq.~~) 26 of Title 2.2; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § [23-38.110](#) and that include provisions addressing cooperative arrangements for such procurement as described in § [23-38.110](#), and shall adopt and comply with institutional policies and professional best practices regarding strategic planning for information technology, project management, security, budgeting, infrastructure, and ongoing operations.

§ [23-77.4](#). Medical center management.

A. The General Assembly recognizes and finds that the economic viability of the University of Virginia Medical Center, hereafter referred to as the Medical Center, together with the requirement for its specialized management and operation, and the need of the Medical Center to participate in cooperative arrangements reflective of changes in health care delivery, as set forth in § [23-77.3](#), are dependent upon the ability of the management of the Medical Center to make and implement promptly decisions necessary to conduct the affairs of the Medical Center in an efficient, competitive manner. The General Assembly also recognizes and finds that it is critical to, and in the best interests of, the Commonwealth that the University continue to fulfill its mission of providing quality medical and health sciences education and related research and, through the presence of its Medical Center, continue to provide for the care, treatment, health-related services, and education activities associated with Virginia patients, including indigent

and medically indigent patients. Because the General Assembly finds that the ability of the University to fulfill this mission is highly dependent upon revenues derived from providing health care through its Medical Center, and because the General Assembly also finds that the ability of the Medical Center to continue to be a reliable source of such revenues is heavily dependent upon its ability to compete with other providers of health care that are not subject to the requirements of law applicable to agencies of the Commonwealth, the University is hereby authorized to implement the following modifications to the management and operation of the affairs of the Medical Center in order to enhance its economic viability:

B. Capital projects; leases of property; procurement of goods, services and construction.

1. Capital projects.

a. For any Medical Center capital project entirely funded by a nongeneral fund appropriation made by the General Assembly, all post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments are hereby delegated to the University, subject to the following stipulations and conditions: (i) the Board of Visitors shall develop and implement an appropriate system of policies, procedures, reviews and approvals for Medical Center capital projects to which this subdivision applies; (ii) the system so adopted shall provide for the review and approval of any Medical Center capital project to which this subdivision applies in order to ensure that, except as provided in clause (iii), the cost of any such capital project does not exceed the sum appropriated therefor and that the project otherwise complies with all requirements of the Code of Virginia regarding capital projects, excluding only the post-appropriation review, approval, administrative, and policy and procedure functions performed by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget and any other agency that supports the functions performed by these departments; (iii) the Board of Visitors may, during any fiscal year, approve a transfer of up to a total of 15 percent of the total nongeneral fund appropriation for the Medical Center in order to supplement funds appropriated for a capital project or capital projects of the Medical Center, provided that the Board of Visitors finds that the transfer is necessary to effectuate the original intention of the General Assembly in making the appropriation for the capital project or projects in question; (iv) the University shall report to the Department of General Services on the status of any such capital project prior to commencement of construction of, and at the time of acceptance of, any such capital project; and (v) the University shall ensure that Building

Officials and Code Administrators (BOCA) Code and fire safety inspections of any such project are conducted and that such projects are inspected by the State Fire Marshal or his designee prior to certification for building occupancy by the University's assistant state building official to whom such inspection responsibility has been delegated pursuant to § [36-98.1](#). Nothing in this section shall be deemed to relieve the University of any reporting requirement pursuant to § [2.2-1513](#). Notwithstanding the foregoing, the terms and structure of any financing of any capital project to which this subdivision applies shall be approved pursuant to § [2.2-2416](#).

b. No capital project to which this subdivision applies shall be materially increased in size or materially changed in scope beyond the plans and justifications that were the basis for the project's appropriation unless: (i) the Governor determines that such increase in size or change in scope is necessary due to an emergency or (ii) the General Assembly approves the increase or change in a subsequent appropriation for the project. After construction of any such capital project has commenced, no such increase or change may be made during construction unless the conditions in (i) or (ii) have been satisfied.

## 2. Leases of property.

a. The University shall be exempt from the provisions of § [2.2-1149](#) and from any rules, regulations and guidelines of the Division of Engineering and Buildings in relation to leases of real property that it enters into on behalf of the Medical Center and, pursuant to policies and procedures adopted by the Board of Visitors, may enter into such leases subject to the following conditions: (i) the lease must be an operating lease and not a capital lease as defined in guidelines established by the Secretary of Finance and Generally Accepted Accounting Principles (GAAP); (ii) the University's decision to enter into such a lease shall be based upon cost, demonstrated need, and compliance with guidelines adopted by the Board of Visitors which direct that competition be sought to the maximum practical degree, that all costs of occupancy be considered, and that the use of the space to be leased actually is necessary and is efficiently planned; (iii) the form of the lease is approved by the Special Assistant Attorney General representing the University; (iv) the lease otherwise meets all requirements of law; (v) the leased property is certified for occupancy by the building official of the political subdivision in which the leased property is located; and (vi) upon entering such leases and upon any subsequent amendment of such leases, the University shall provide copies of all lease documents and any attachments thereto to the Department of General Services.

b. Notwithstanding the provisions of §§ [2.2-1155](#) and [23-4.1](#), but subject to policies and procedures adopted by the Board of Visitors, the University may lease, for a purpose

consistent with the mission of the Medical Center and for a term not to exceed 50 years, property in the possession or control of the Medical Center.

c. Notwithstanding the foregoing, the terms and structure of any financing arrangements secured by capital leases or other similar lease financing agreements shall be approved pursuant to § [2.2-2416](#).

### 3. Procurement of goods, services and construction.

Contracts awarded by the University in compliance with this section, on behalf of the Medical Center, for the procurement of goods; services, including professional services; construction; and information technology and telecommunications, shall be exempt from (i) the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), except as provided below; (ii) the requirements of the Division of Purchases and Supply of the Department of General Services as set forth in Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2; (iii) the requirements of the Division of Engineering and Buildings as set forth in Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2; and (iv) the authority of the *Chief Information Officer and the Virginia Information Technologies Agency* as set forth in Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 and the Information Technology Investment Board created pursuant to § [2.2-2457](#) regarding the review and approval of contracts for (a) the construction of Medical Center capital projects and (b) information technology and telecommunications projects; however, the provisions of this subdivision may not be implemented by the University until such time as the Board of Visitors has adopted guidelines generally applicable to the procurement of goods, services, construction and information technology and telecommunications projects by the Medical Center or by the University on behalf of the Medical Center. Such guidelines shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The guidelines shall implement a system of competitive negotiation for professional services; shall prohibit discrimination because of race, religion, color, sex, or national origin of the bidder or offeror in the solicitation or award of contracts; may take into account in all cases the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; may implement a pre-qualification procedure for contractors or products; may include provisions for cooperative procurement arrangements with private health or educational institutions, or with public agencies or institutions of the several states, territories of the United States or the District of Columbia; shall incorporate the prompt payment principles of §§ [2.2-4350](#) and [2.2-4354](#); and may implement provisions of law. The following sections of the Virginia Public Procurement Act shall continue to apply to procurements by the Medical Center or by the University on behalf of the Medical Center: §§ [2.2-4311](#), [2.2-4315](#), and [2.2-](#)

[4342](#) (which section shall not be construed to require compliance with the pre-qualification application procedures of subsection B of § [2.2-4317](#)), [2.2-4330](#), [2.2-4333](#) through [2.2-4341](#), and [2.2-4367](#) through [2.2-4377](#).

C. Subject to such conditions as may be prescribed in the budget bill under § [2.2-1509](#) as enacted into law by the General Assembly, the State Comptroller shall credit, on a monthly basis, to the nongeneral fund operating cash balances of the University of Virginia Medical Center the imputed interest earned by the investment of such nongeneral fund operating cash balances, including but not limited to those balances derived from patient care revenues, on deposit with the State Treasurer.

2. That Article 7 (§§ [2.2-2033](#) and [2.2-2034](#)) of Chapter 20.1 of Title 2.2 and Article 20 (§§ [2.2-2457](#), [2.2-2458](#), and [2.2-2458.1](#)) of Chapter 24 of Title 2.2 of the Code of Virginia are repealed.

3. That the third enactment of Chapter 758 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the Department of General Services, the Virginia Information Technologies Agency, and the State Comptroller shall submit to the Information Technology Investment Board the standards required pursuant to § [2.2-1115.1](#) of this act by December 1, 2009. The Department of General Services and the Virginia Information Technologies Agency shall undertake to use these standards in the Commonwealth's enterprise electronic procurement system upon approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* and make the standards available for use by all agencies and institutions by July 1, 2010. After July 1, 2010, the Department of General Services shall provide purchasing data from the Commonwealth's enterprise electronic procurement system, to the extent it is available, at least quarterly for inclusion in the Auditor of Public Accounts' searchable database established pursuant to § [30-133](#) of the Code of Virginia. All agencies and institutions that use the standards developed pursuant to this act that have not previously reported data to the Auditor of Public Accounts through the Commonwealth's enterprise electronic procurement system shall, to the extent practicable, provide such data to the Auditor of Public Accounts at least quarterly beginning after July 1, 2010.

4. That the third enactment of Chapter 812 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the Department of General Services, the Virginia Information Technologies Agency, and the State Comptroller shall submit to the Information Technology

Investment Board the standards required pursuant to § [2.2-1115.1](#) of this act by December 1, 2009. The Department of General Services and the Virginia Information Technologies Agency shall undertake to use these standards in the Commonwealth's enterprise electronic procurement system upon approval by the ~~Information Technology Investment Board~~ *Secretary of Technology* and make the standards available for use by all agencies and institutions by July 1, 2010. After July 1, 2010, the Department of General Services shall provide purchasing data from the Commonwealth's enterprise electronic procurement system, to the extent it is available, at least quarterly for inclusion in the Auditor of Public Accounts' searchable database established pursuant to § [30-133](#) of the Code of Virginia. All agencies and institutions that use the standards developed pursuant to this act that have not previously reported data to the Auditor of Public Accounts through the Commonwealth's enterprise electronic procurement system shall, to the extent practicable, provide such data to the Auditor of Public Accounts at least quarterly beginning after July 1, 2010.

5. That on or before October 1, 2010, the Chief Information Officer, in consultation with the Joint Legislative Audit and Review Commission and any other parties as directed by the Secretary of Technology, shall develop a new review, approval, and monitoring process for information technology projects to replace the process required by §§ [2.2-2008](#) and [2.2-2017](#) through [2.2-2021](#) of the Code of Virginia. The new process shall be operational by January 1, 2011, and shall be implemented and regularly updated by the Division of Project Management. The process shall be designed to ensure that information technology projects conform to the statewide information management plan and the information management plans of agencies and public institutions of higher education. The process shall also be designed to ensure that projects are provided with appropriate levels of oversight once they are under execution. The level of review and oversight shall vary depending upon defined risk factors including, but not limited to, the cost of the project. In order to achieve the above goals, the process shall describe a methodology for agencies to follow in conceiving, planning, developing, scheduling and executing information technology projects, including procurements related to those projects.

6. That on or before October 1, 2010, the Chief Information Officer shall, in consultation with the Joint Legislative Audit and Review Commission and the Department of Planning and Budget, develop standard documentation and information to be used as part of any requests for changes to the Virginia Information Technologies Agency's fee schedules and rates.

7. That as of the effective date of this act, the Secretary of Technology shall be deemed the successor in interest to the Information Technology Investment Board. Without limiting the foregoing, all right, title, and interest in and to any real or tangible personal property or contract vested in the Information Technology Investment Board as of the effective date of this act shall be transferred to and taken as standing in the name of the Secretary of Technology.

8. That as of the effective date of this act, the Secretary of Technology shall be deemed the successor in interest to the Division of Enterprise Applications and Virginia Chief Applications Officer. Without limiting the foregoing, all right, title, and interest in and to any real or tangible personal property or contract vested in the Division of Enterprise Applications and Virginia Chief Applications Officer as of the effective date of this act shall be transferred to and taken as standing in the name of the Secretary of Technology.

9. That the Secretary of Technology shall provide in writing the criteria and requirements defining "major information technology project" to the chairs of the House Committee on General Laws, the Senate Committee on General Laws and Technology, the House Committee on Appropriations, the Senate Finance Committee, and the House Committee on Science and Technology.

10. That the Virginia Information Technologies Agency shall continue following the definition of "major information technology project" in effect prior to the passage of this act until the Secretary of Technology develops criteria and requirements defining "major information technology project" pursuant to the provisions of this act.

11. That the Information Technology Advisory Council shall develop a technology business plan for the Commonwealth in consultation with the Council on Virginia's Future, and that on or before December 31, 2011, such technology business plan shall be provided in writing to the chairs of the House Committee on General Laws, the Senate Committee on General Laws and Technology, the House Committee on Appropriations, the Senate Finance Committee, and the House Committee on Science and Technology.

12. That an emergency exists and this act is in force from its passage.

## **Chapter 150 Clarksville-Boydton Airport Commission; name changed to Lake Country Airport Commission.**

An Act to amend and reenact §§ 1, 2, 5, 6, 7, 8, and 12 of Chapter 680 of the Acts of Assembly of 2005, relating to the Clarksville-Boydton Airport Commission; name

change.

[\[S 322\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 2, 5, 6, 7, 8, and 12 of Chapter 680 of the Acts of Assembly of 2005 are amended and reenacted as follows:

~~Clarksville-Boydton Airport Commission~~ *Lake Country Airport Commission.*

§ 1. If the governing bodies of the towns of Clarksville and Boydton shall by resolution declare that there is a need for an airport commission to be created for the purpose of establishing and operating one or more airports or landing fields for all such political subdivisions, an airport commission, ~~to be originally~~ known as "The Clarksville-Boydton Airport Commission," shall thereupon exist for the towns and shall exercise its powers and functions therein.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of *the Lake Country Airport Commission, formerly known as and doing business as* The Clarksville-Boydton Airport Commission, the airport commission shall be conclusively deemed to have become created as a body corporate, and to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body of each of the towns creating the airport commission declaring that there is need for an airport commission and that it unites with the other political subdivision in its creation. A copy of the resolution, duly certified by the clerk of the governing body of the town which adopted it, shall be admissible in evidence in any suit, action, or proceeding.

§ 2. ~~The Clarksville-Boydton Airport Commission~~ *Lake Country Airport Commission*, hereinafter referred to as the "Commission," shall consist of members from the participating ~~towns~~ *localities*, the membership being composed of ~~five~~ *three* members appointed by the Town of Clarksville, ~~and two members by the Town of Boydton, and three members by Mecklenburg County.~~ Each member shall be appointed by the governing bodies thereof. Original appointments of members shall be for terms as follows: from the Town of Clarksville, one member for two years, ~~two members each for three and four years~~ *one member for three years, and one member for four years*; from the Town of Boydton, one member for one year and one member for two years; *from Mecklenburg*

*County, one member for two years, one member for three years, and one member for four years.* Thereafter all appointments shall be for three-year terms, except appointments to fill vacancies which shall be for the unexpired terms.

The governing body appointing any member may remove that member at any time and appoint his successor. The Commission shall have power to elect its chairman and to adopt rules and regulations for its own procedures and government. The members of the Commission so appointed shall constitute the Commission, and the powers of such Commission shall be vested in and exercised by the members in office from time to time. A majority of the members in office shall constitute a quorum.

§ 5. The ~~towns~~-localities for which the Commission is formed are hereby authorized to appropriate to the Commission from available funds, or from funds provided for the purpose by bond issues, such funds as may be necessary for the acquisition, construction, maintenance, and operation of airports, air landing fields, and other air navigation facilities. The basis of financial participation by the ~~towns~~-localities shall be determined by agreement between their governing bodies.

§ 6. The Commission shall prepare annually and submit to the governing bodies of the respective ~~towns~~-localities for which it is formed for their approval, a budget showing the estimated revenues it may reasonably expect to receive for such year, and its estimated expenses for all purposes for such period. After the approval of such budget, the Commission shall be limited in its expenditures for such year to the estimated expenses shown therein, and shall not commit the participating subdivisions beyond appropriations actually made. If the estimated expenditures exceed the estimated revenue from the operation of the Commission for such year the governing bodies of the participating local subdivisions may appropriate, in any amount the particular ~~town~~-locality determines it can contribute, the funds necessary to supply the deficiency. If the actual revenue received shall be less than the estimated revenue as approved in the budget, the governing bodies of the participating local subdivisions may appropriate, in the same manner, the funds necessary to supply the deficiency.

§ 7. If the funds received by the Commission in any year including money appropriated for its use by the participating subdivisions, shall exceed its expenditures for such year, the surplus shall be set aside in a separate fund for capital improvements and extensions. Such fund shall be used for this purpose only with the approval of both the participating subdivisions. Whenever such surplus fund shall amount to \$100,000, any additional revenue received in any year in excess of operating costs shall be applied towards repaying the participating ~~towns~~'-localities' contributions to the Commission in amounts proportionate to each ~~town~~'s-locality's financial interest in the Commission. The

financial interest of a ~~town~~-locality shall consist of the proportionate share of the total financial contributions, including those made for capital outlay and for any other reason whatsoever, each participating ~~town~~-locality has made to the Commission. Thereafter any profits derived from the operations of the Commission shall be distributed to the participating subdivisions in proportion to their financial interest in the Commission.

§ 8. The Commission shall be an independent body corporate, invested with the rights, powers, and authority and charged with the duties set forth in this act, and the political subdivisions which created it shall not be responsible for its acts. No pecuniary liability of any kind shall be imposed upon any ~~town~~-locality creating the Commission because of any act, agreement, contract, tort, malfeasance or misfeasance by or on the part of the Commission or any member thereof, or its agents, servants or employees, except as otherwise provided in this act with respect to contracts and agreements between the Commission and ~~either such town~~ any such locality.

§ 12. ~~Either town creating~~ Any participating locality of the Commission may withdraw therefrom upon giving one year's notice to the action, due regard being had for existing contracts and obligations. Upon the cessation of its activities all of the assets of the Commission shall be distributed to the ~~towns~~-localities participating therein at the time of liquidation in the proportion equal to their financial interest in the Commission as defined in § 7 herein.

2. That in all regards, the Lake Country Airport Commission shall be the successor in interest to the Clarksville-Boydton Airport Commission, except as otherwise provided by law.

## **Chapter 194 Higher Educational Institutions Bond Act of 2010; created.**

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$206,870,000 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[S 15\]](#)

Approved April 7, 2010

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues

derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2010."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$206,870,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs and reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

Uncodified Acts of Assembly - 2010

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>Christopher Newport University</i>	<i>Renovate Santoro Residence Hall</i>	<i>17837</i>	<i>\$5,000,000</i>
<i>Christopher Newport University</i>	<i>Construct Residence Hall VII</i>	<i>17857</i>	<i>\$37,000,000</i>
<i>George Mason University</i>	<i>Construct Housing VII</i>	<i>17367</i>	<i>\$750,000</i>
<i>George Mason University</i>	<i>Renovate Student Apartments</i>	<i>17844</i>	<i>\$3,098,000</i>
<i>George Mason University</i>	<i>Renovate Commons</i>	<i>17841</i>	<i>\$16,002,000</i>
<i>Norfolk State University</i>	<i>Construct Residential</i>		

Uncodified Acts of Assembly - 2010

<i>Housing</i>	<i>17818</i>	<i>\$46,001,000</i>
<i>The College of William</i>	<i>Construct New</i>	
<i>and Mary in Virginia</i>		
<i>Dormitory</i>	<i>17808</i>	<i>\$25,800,000</i>
<i>The College of William</i>	<i>Renovate Residence</i>	
<i>and Mary in Virginia</i>		
<i>Halls</i>	<i>17811</i>	<i>\$4,500,000</i>
<i>Virginia Commonwealth</i>	<i>Construct West Grace</i>	
<i>University</i>	<i>Housing and Parking,</i>	
<i>Phase I</i>	<i>17832</i>	<i>\$33,566,000</i>
<i>Virginia Polytechnic</i>	<i>Construct Academic</i>	
<i>Institute and State</i>	<i>and Student Affairs</i>	
<i>University</i>		
<i>Building</i>	<i>17859</i>	<i>\$35,153,000</i>

*Total*

*\$206,870,000*

*§ 3. Application of proceeds.*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

**§ 6. Sources for payment of expenses.**

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

**§ 7. Revenues.**

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge, and collect rates, fees and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the*

*payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A. of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B. of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and*

*the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the*

*applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

§ 13. Severability.

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 338 Fort Monroe Authority; created.**

An Act to amend and reenact § [15.2-6304](#) of the Code of Virginia; to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered [15.2-7200](#) through [15.2-7215](#); and to repeal the first and third enactments of Chapter 707 of the Acts of Assembly of 2007, the first and third enactments of Chapter 740 of the Acts of Assembly of 2007, and § [15.2-6304.1](#) of the Code of Virginia, relating to the Fort Monroe Authority Act.

[\[H 1297\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-6304](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered [15.2-7200](#) through [15.2-7215](#), as follows:

§ [15.2-6304](#). Board of commissioners; appointment of director, agents and employees.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter referred to as board or board of commissioners.

B. In the case of authorities created by proclamation of the Governor pursuant to § [15.2-6302](#), the board shall consist of seven members to be appointed by the Governor, of whom at least five shall be residents of the locality or localities in which the authority is located. The members shall serve for terms of six years each, the initial appointment to be two members for terms of six years, two members for terms of five years, two members for terms of four years and one member for a term of three years, and subsequent appointments to be made for terms of six years, except appointments to fill vacancies which shall be made for the unexpired term.

C. In the case of authorities created by the City of Hampton pursuant to § [15.2-6302](#), ~~other than the Fort Monroe Federal Area Development Authority pursuant to § [15.2-6304.1](#)~~, the board shall consist of up to seven members appointed by the locality in which the authority is located, all of whom shall be residents of such locality. The members shall serve for terms of not more than four years each. If a member resigns, dies, or is otherwise removed from his position on the board, the locality may appoint a new member to fill the vacancy for the remainder of the unexpired term.

D. Members shall receive from the authority their necessary travel and business expenses while on business of the board. Each commissioner shall before entering on his duties take and subscribe the oath prescribed by § [49-1](#).

E. The board shall appoint the chief executive officer of the authority, who shall not be a member thereof, to be known as the director of that authority, hereinafter referred to as director, and whose compensation shall be paid by the authority in the amount determined by the board. The board shall employ or retain such other agents or employees subordinate to the director as may be necessary, including persons with special qualifications, and shall determine which such agents or employees shall be bonded and the amount of such bonds. The director and other agents and employees so appointed shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. ~~Except as provided in § [15.2-6304.1](#), four~~ Four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.

CHAPTER 72.

FORT MONROE AUTHORITY ACT.

§ [15.2-7200](#). *Short title; declaration of public purpose; Fort Monroe Authority created; successor in interest to Fort Monroe Federal Area Development Authority.*

A. *This chapter shall be known and may be cited as the Fort Monroe Authority Act.*

B. *The General Assembly finds and declares that:*

1. *Fort Monroe, located on a barrier spit at Hampton Roads Harbor and the southern end of Chesapeake Bay where the Old Point Comfort lighthouse has been welcoming ships since 1802, is one of the Commonwealth's most important cultural treasures.*

*Strategically located near Virginia's Historic Triangle of Williamsburg, Yorktown, and Jamestown, the 565-acre site has been designated a National Historic Landmark District;*

*2. As a result of decisions made by the federal Base Realignment and Closure Commission, Fort Monroe will cease to be an army base in 2011, and at that time most of the site will revert to the Commonwealth;*

*3. The planning phase of Fort Monroe's transition from a United States Army base to a village that will be owned by the Commonwealth has been managed by the Fort Monroe Federal Area Development Authority (FMFADA), established by the City of Hampton pursuant to legislation enacted by the General Assembly in 2007. The Fort Monroe Federal Area Development Authority, a partnership between the City and the Commonwealth, has fulfilled its primary purpose of formulating a reuse plan for Fort Monroe;*

*4. It is the policy of the Commonwealth to protect the historic resources at Fort Monroe, provide public access to the Fort's historic resources and recreational opportunities, exercise exemplary stewardship of the Fort's natural resources, and maintain Fort Monroe in perpetuity as a place that is a desirable one in which to reside, do business, and visit, all in a way that is economically sustainable;*

*5. Fort Monroe's status as a Commonwealth-owned village is unique. Municipal services will need to be provided to Fort Monroe's visitors, residents, and businesses. Both the Commonwealth and the FMFADA are signatories to a Programmatic Agreement under Section 106 of the National Historic Preservation Act that requires several specific actions be taken, including the enforcement of Design Standards to be adopted by the FMFADA or its successor to govern any new development or building restoration or renovation at Fort Monroe. There exists a need for an entity that can manage the property for the Commonwealth and ensure adherence to the findings, declarations, and policies set forth in this section; and*

*6. The creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.*

*C. The Fort Monroe Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted as a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this*

*chapter and its public purpose shall be in all respects for the benefit of the inhabitants of the Commonwealth.*

*D. The Fort Monroe Authority is the successor in interest to that political subdivision formerly known as the Fort Monroe Federal Area Development Authority. As such, the Authority stands in the place and stead of, and assumes all rights and duties formerly of, the Fort Monroe Federal Area Development Authority, including but not limited to all leases, contracts, grants-in-aid, and all other agreements of whatsoever nature; holds title to all realty and personalty formerly held by the Fort Monroe Federal Area Development Authority; and may exercise all powers that might at any time past have been exercised by the Fort Monroe Federal Area Development Authority, including the powers and authorities of a Local Redevelopment Authority under the provisions of any and all applicable federal laws, including the Base Relocation and Closure Act of 2005.*

*E. The Fort Monroe Authority shall be subject to the Virginia Public Procurement Act ([§ 2.2-4300](#) et seq.) and the Board shall adopt procedures consistent with that Act to govern its procurement processes.*

*F. Employees of the FMFADA shall be eligible for membership in the Virginia Retirement System and participation in health insurance and other benefits programs for employees of local governments established in accordance with [§ 2.2-1204](#).*

*[§ 15.2-7201](#). Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Adjacent to such Authority" means real or personal property that is contiguous, neighboring, or within reasonable proximity of Fort Monroe.*

*"Area of operation" means an area coextensive with the territorial boundaries of the land acquired or to be acquired from the federal government by the Authority.*

*"Authority" means the Fort Monroe Authority.*

*"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.*

*"Facility" means a particular building or structure or particular buildings or structures, including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility.*

*"Project" means any specific enterprise undertaken by an authority, including the facilities as defined in this chapter, and all other property, real or personal, or any interest therein, necessary or appropriate for the operation of such property.*

*"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate,*

*interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.*

*"Trustees" means the members of the Board of Trustees of the Authority.*

§ [15.2-7202](#). *Board of Trustees; membership.*

*There is hereby created a political subdivision and public body corporate and politic of the Commonwealth of Virginia to be known as the Fort Monroe Authority, to be governed by a Board of Trustees consisting of 11 voting members appointed as follows: the Secretary of Natural Resources and the Secretary of Commerce and Trade, or their successor positions if those positions no longer exist, from the Governor's cabinet; the member of the Senate of Virginia and the member of the House of Delegates representing the district in which Fort Monroe lies; two members appointed by the Hampton City Council; and five nonlegislative citizen members appointed by the Governor, four of whom shall have expertise relevant to the implementation of the Fort Monroe Reuse Plan, including but not limited to the fields of historic preservation, tourism, environment, real estate, finance, and education, and one of whom shall be a citizen representative from the Hampton Roads region. Cabinet members and elected representatives shall serve terms commensurate with their terms of office. Citizen appointees shall initially be appointed for staggered terms of either one, two, or three years, and thereafter shall serve for four-year terms. Cabinet members shall be entitled to send their deputies or other cabinet member, and legislative members another legislator, to meetings as full voting members in the event that official duties require their presence elsewhere. The Governor's Assistant for Commonwealth Preparedness may serve as an ex officio, non-voting member of the board.*

*The Board so appointed shall enter upon the performance of its duties and shall initially and annually thereafter elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary or secretary-treasurer who need not be a member of the Board. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Board, and in the absence of both the chairman and vice-chairman, the Board shall elect a chairman pro tempore who shall preside at such meetings. Six Trustees shall constitute a quorum, and all action by the Board shall require the affirmative vote of a majority of the Trustees present and voting, except that any action to amend or terminate the existing Reuse Plan, or to adopt a new Reuse Plan, shall require the affirmative vote of 75 percent or more of the Trustees present and voting. The members of the Board shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the Board or while otherwise engaged in the discharge of their duties.*

*Such expenses shall be paid out of the treasury of the Authority in such manner as shall be prescribed by the Authority.*

§ [15.2-7203](#). *Duties of the Authority.*

*The Authority shall have the following duties to:*

- 1. Do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers as well as the Virginia Indians to the building of our Commonwealth and nation, to commemorate the establishment of the first coastal fortification in the English-speaking New World, to commemorate the lives of prominent Virginians who were connected to the largest moated fortification in the United States, to commemorate the important role of African Americans in the history of the site, including the “Contraband” slave decision in 1861 that earned Fort Monroe the designation as “Freedom’s Fortress,” to commemorate Old Point Comfort’s role in establishing international trade and British Maritime law in Virginia, and to commemorate almost 250 years of continuous service as a coastal defense fortification of the United States of America;*
- 2. Provide for the education, safety, and well-being of the residents, businesses, and visitors at Fort Monroe;*
- 3. Hire and develop a professional staff including an executive director and such other staff as is necessary to discharge the responsibilities of the Authority;*
- 4. Establish personnel policies and benefits for staff;*
- 5. Oversee the preservation, conservation, protection, and maintenance of the Commonwealth’s natural resources and real property interests at Fort Monroe and the renewal of Fort Monroe as a vibrant and thriving community; and*
- 6. Adopt an annual budget, which shall be submitted to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and the Department of Planning and Budget by March 1 of each year.*

§ [15.2-7204](#). *Additional declaration of policy; powers of the Authority.*

*A. It is the policy of the Commonwealth that property at Fort Monroe shall not be sold to private interests, but shall be maintained as Commonwealth-owned land that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate public, private, or joint venture entities. If the decision is ever made to sell property at Fort Monroe, it may only be sold with the consent of both the Governor and the General Assembly, and approval as to form of the documents by the Attorney General.*

*B. The Authority shall have the following powers to:*

- 1. Sue and be sued; to adopt and use a common seal and to alter the same as may be deemed expedient; to have perpetual succession; to make and execute contracts and*

*other instruments necessary or convenient to the exercise of the powers of the Authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with law, to carry into effect the powers and purposes of the Authority;*

*2. Foster and stimulate the economic and other development of Fort Monroe and its area of influence, including without limitation development for business, employment, housing, commercial, recreational, educational, and other public purposes; to prepare and carry out plans and projects to accomplish such objectives; to provide for the construction, reconstruction, improvement, alteration, maintenance, removal, equipping, or repair of any buildings, structures, or land of any kind; to lease, or rent to others or to develop, operate, or manage with others in a joint venture or other partnering arrangement, on such terms as it deems proper and which are consistent with the provisions of § [15.2-7209](#), any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within Fort Monroe; to establish, collect, and revise the rents charged and terms and conditions of occupancy thereof; to terminate any such lease or rental obligation upon the failure of the lessee or renter to comply with any of the obligations thereof; to arrange or contract for the furnishing by any person or agency, public or private, of works, services, privileges, or facilities in connection with any activity in which the Authority may engage, including the provision of any and all municipal services that may be required at Fort Monroe; to acquire, own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, easement, dedication, or otherwise any real or personal property or any interest therein, which purchase, lease, or acquisition may be made for less than fair market value; to sell, lease, exchange, transfer, assign, or pledge any personal property or any interest therein, which sale, lease, or other transfer or assignment may be made for less than fair market value; to dedicate, make a gift of, or lease for a nominal amount any real or personal property or any interest therein to the Commonwealth or the localities or agencies, public or private, within the area of operation or adjacent to such authority, jointly or severally, for public use or benefit, such as, but not limited to, game preserves, playgrounds, park and recreational areas and facilities, hospitals, clinics, schools, and airports; to acquire, lease, maintain, alter, operate, improve, expand, sell, or otherwise dispose of on-site utility and infrastructure systems or sell any excess service capacity for off-site use; to acquire, lease, construct, maintain, and operate and dispose of tracks, spurs, crossings, terminals, warehouses, and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares, and merchandise; and to insure or provide for the insurance of any real or personal property or*

*operation of the Authority against any risks or hazards. The title to any real property acquired shall be in the name of the Commonwealth;*

*3. Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in property or security in which fiduciaries may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled;*

*4. Undertake and carry out examinations, investigations, studies, and analyses of the business, industrial, agricultural, utility, transportation, and other economic development needs, requirements, and potentialities of its area of operation, or off-site needs, requirements, and potentialities that directly affect the success of the Authority at Fort Monroe, and the manner in which such needs and requirements and potentialities are being met, or should be met, in order to accomplish the purposes for which it is created; to make use of the facts determined in such research and analyses in its own operation; and to make the results of such studies and analyses available to public bodies and to private individuals, groups, and businesses, except as such information may be exempted pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.);*

*5. Administer, develop, and maintain at Fort Monroe permanent commemorative cultural and historical museums and memorials;*

*6. Adopt names, flags, seals, and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth;*

*7. Enter into any contracts not otherwise specifically authorized herein to further the purposes of the Authority, after approval as to form by the Attorney General;*

*8. Establish nonprofit corporations as instrumentalities to assist in administering the affairs of the Authority;*

*9. Exercise the power of eminent domain in the manner provided by Chapter 3 (§ [25.1-300](#) et seq.) of Title 25.1; however, eminent domain may only be used to obtain easements across the leasehold interests of lessees of property on Fort Monroe, for the provision of water, sewer, electrical, ingress and egress, and other necessary or useful services to further the purposes of the Authority, unless the Governor has expressly granted authority to obtain interests for other purposes;*

*10. Convey by lease land to any person, association, firm, or corporation for such term and on such conditions as the Authority may determine, after approval as to form by the Attorney General;*

*11. Receive and expend gifts, grants, and donations from whatever source derived for the purposes of the Authority;*

*12. Employ an executive director and such deputies and assistants as may be required;*

13. *Elect any past chairman of the Board of Trustees to the honorary position of chairman emeritus. Chairmen emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected in addition to the at-large positions defined in § [15.2-7202](#);*
14. *Determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired by purchase, gift, or loan, and to exchange or sell the same if not inconsistent with the terms of such purchase, gift, loan, or other acquisition;*
15. *Change the form of investment of any funds, securities, or other property, real or personal, provided the same are not inconsistent with the terms of the instrument under which the same were acquired, and to sell, grant, or convey any such property, except that any transfers of real property may be made only with the consent of the Governor;*
16. *Cooperate with the federal government, the Commonwealth, and the localities within its area of operation or adjacent to such authority in the discharge of its enumerated powers;*
17. *Exercise all or any part or combination of powers herein granted;*
18. *Do any and all other acts and things that may be reasonably necessary and convenient to carry out its purposes and powers;*
19. *Adopt by the Board of Trustees of the Authority, or the executive committee thereof, such regulations from time to time, concerning the use and visitation of properties under the control of the Fort Monroe Authority, to protect or secure such properties and the public enjoyment thereof;*
20. *Provide parking and traffic rules and regulations on property owned by the Authority; and*
21. *Provide that any person who knowingly violates a regulation of the Authority may be requested by an agent or employee of the Authority to leave the property and upon the failure of such person so to do, shall be guilty of a trespass, as provided in § [18.2-119](#). § [15.2-7205](#). Payments to Commonwealth or political subdivisions thereof. No locality shall be required to provide proprietary municipal services including, but not limited to, utility services to residents and businesses at Fort Monroe, except in accordance with an agreement between the Authority and such locality. The Authority may agree to make such payments to the Commonwealth, a locality, or any political subdivision thereof, which payments such bodies are hereby authorized to accept, as the Authority finds consistent with the purposes for which the Authority has been created, including but not limited to the municipal services set forth herein. These payments shall adequately and fairly reimburse the Commonwealth, locality, or political subdivision for the cost of providing such services so that the services are provided at no increased, incremental cost to the provider. If the provider makes improvements to its system, the*

*Authority shall only be required to pay its proportionate share of the cost of such improvements. Fees charged pursuant to this agreement shall not be higher than those charged for other, similarly situated residents of the locality or recipients of the proprietary services.*

*§ [15.2-7206](#). Authority may borrow money, accept contributions, etc.*

*In addition to the powers conferred upon the Authority by other provisions of this chapter, the Authority is empowered to:*

- 1. Borrow money or accept contributions, grants, or other financial assistance from the federal government; the Commonwealth; any locality or political subdivision; any agency or instrumentality thereof, including but not limited to the Virginia Resources Authority; or any source, public or private, for or in aid of any project of the Authority, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;*
- 2. Apply for grants from the Urban Public-Private Partnership Redevelopment Fund pursuant to Chapter 24.1 (§ [15.2-2414](#) et seq.). The Authority shall be considered a local government eligible for grants under that chapter. Funds from any source available to the Authority may be used to meet the matching requirement of any such grant;*
- 3. Participate in local group pools authorized pursuant to § [15.2-2703](#) or to participate in the Commonwealth's risk pool administered by the Division of Risk Management;*
- 4. Utilize the provisions of the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) as a qualifying public entity under those statutes; and*
- 5. Apply for and receive enterprise zone designation under the Enterprise Zone Grant Act (§ [59.1-538](#) et seq.). Fort Monroe shall be considered an eligible area for such designation, although the Governor is not obligated to grant such a designation.*

*§ [15.2-7207](#). Authority empowered to issue bonds; additional security; liability thereon. The Authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes, including the issuance of refunding bonds for the payment or retirement of bonds previously issued by it. The Authority may issue such type of bonds as it may determine, including (without limiting the generality of the foregoing):*

- 1. Bonds on which the principal and interest are payable:*
  - a. Exclusively from the income and revenues of the project or facility financed with the proceeds of such bonds;*
  - b. Exclusively from the income and revenues of certain designated projects or facilities whether or not they are financed in whole or in part with the proceeds of such bonds; or*
  - c. From its revenues generally; and*

*2. Bonds on which the principal and interest are payable solely from contributions or grants received from the federal government, the Commonwealth, or any other source, public or private.*

*Any such bonds may be additionally secured by a pledge of any grants or contributions from the federal government, the Commonwealth, any political subdivision of the Commonwealth, or other source, or a pledge of any income or revenues of the Authority, or a mortgage of any particular projects or facilities or other property of the Authority.*

*Neither the Trustees of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the Authority (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof (other than the issuing Authority), and neither the Commonwealth nor any political subdivision thereof (other than the issuing Authority) shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of the Authority. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction. Bonds of the Authority are declared to be issued for an essential public and governmental purpose.*

*§ [15.2-7208](#). Powers and duties of executive director.*

*The executive director shall exercise such of the powers and duties relating to the Authority conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.*

*§ [15.2-7209](#). Legal services.*

*For such legal services as it may require, the Authority may employ its own counsel and legal staff or make use of legal services made available to it by any public body, or both; however, the Authority shall be required to use any legal services provided by the Office of the Attorney General, if such services are made available, since the property at Fort Monroe is an asset of the Commonwealth.*

*§ [15.2-7210](#). Exemption from taxation; authorities to be municipal corporate instrumentalities of Commonwealth.*

*The bonds or other securities issued by the Authority, the interest thereon, and all real and personal property and any interest therein of an authority, and all income derived therefrom by the Authority shall at all times be free from taxation by the Commonwealth, or by any political subdivision thereof. The Authority shall be regarded as a municipal*

*corporate instrumentality of the Commonwealth for the purpose of discharging its functions and exercising its powers under this chapter.*

§ [15.2-7211](#). *Rents, fees, and charges; disposition of revenues.*

*The rents, fees, and charges established by the Authority for the use of its property, projects, and facilities and for any other service furnished or provided by the Authority shall be fixed so that they, together with other revenues of the Authority, shall provide at least sufficient funds to pay the cost of maintaining, repairing, and operating the Authority; its property, projects, and facilities; and the principal and interest of any bonds issued by the Authority or other debts contracted as the same shall become due and payable. A reserve may be accumulated and maintained out of the revenues of the Authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing such bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations issued hereunder, the Authority shall have exclusive control of the revenue derived from the operation of the Authority and the right to use such revenues in the exercise of its powers and duties set forth in this chapter. No person, firm, association, or corporation shall receive any profit or dividend from the revenues, earnings, or other funds or assets of such authority other than for debts contracted, for services rendered, for materials and supplies furnished, and for other value actually received by the Authority.*

*The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representative, and the cost of such audit will be borne by the Authority. Copies of the annual audit shall be distributed to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.*

§ [15.2-7212](#). *Powers conferred additional and supplemental; severability; liberal construction.*

*The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. The powers granted and the duties imposed in this chapter shall be construed to be independent and severable. If any one or more sections, subsections, sentences, or parts of any of this chapter shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held unconstitutional or invalid. This chapter shall be liberally construed to effect the purposes hereof.*

§ [15.2-7213](#). *Chapter controlling over inconsistent laws.*

*Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, including provisions of charters of localities, the provisions of this chapter shall be controlling.*

§ [15.2-7214](#). *Sovereign immunity.*

*No provisions of this chapter nor any act of the Authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.*

§ [15.2-7215](#). *Status of residents.*

*Property at Fort Monroe is owned by the Commonwealth of Virginia and is operated and managed on behalf of the Commonwealth by the Authority. As such, it is deemed to be state property lying within the jurisdictional limits of the City of Hampton. Those residing on Fort Monroe shall have the same rights to vote; precinct assignments; public education; police, fire, and emergency services; and access to courts as if the property at Fort Monroe were privately held property in the City of Hampton.*

2. That the first and third enactments of Chapter 707 of the Acts of Assembly of 2007 and the first and third enactments of Chapter 740 of the Acts of Assembly of 2007 are repealed.

3. That § [15.2-6304.1](#) of the Code of Virginia is repealed.

## **Chapter 339 Aerospace Advisory Council; powers and duties, membership.**

An Act to amend and reenact §§ [2.2-2699.1](#) and [2.2-2699.2](#) of the Code of Virginia and to repeal the second enactment of Chapter 891 of the Acts of Assembly of 2007, relating to the Aerospace Advisory Council.

[\[S 23\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-2699.1](#) and [2.2-2699.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-2699.1](#). Aerospace Advisory Council; purpose; membership; compensation; chairman.

A. The Aerospace Advisory Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Council shall be to advise the Governor, ~~on policy and funding priorities to promote the aerospace and space exploration industry in the Commonwealth.~~ *the Joint Commission on Technology and Science, and the Secretaries of Commerce and Trade, Technology, and Education on policy and funding priorities with respect to aerospace economic development, workforce training, educational programs, and educational curriculum. The Council shall suggest strategies to attract and promote the development of existing aerospace companies, new aerospace companies, federal aerospace agencies, aerospace research, venture and human capital, and applied research and technology that contribute to the growth and development of the aerospace sector in the Commonwealth.*

B. The Council shall have a total membership of ~~14~~ 19 members that shall consist of four legislative members and ~~10~~ 15 nonlegislative citizen members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate, to be appointed by the Senate Committee on Rules and ~~10~~ 15 nonlegislative citizen members, of whom one shall represent the Mid-Atlantic Regional Spaceport, one shall represent Old Dominion University, *one shall represent the University of Virginia, and one shall represent Virginia Tech, and five shall represent aerospace companies or suppliers within the Commonwealth,* to be appointed by the Governor, *and serve with voting privileges.* ~~The Director of Directors of the Department of Aviation, the National Institute of Aerospace, the Virginia Tourism Authority and the Virginia Space Grant Consortium shall serve as an ex officio member members with voting privileges.~~ A representative of NASA Wallops Flight Facility; *and a representative of NASA's Langley Research Center, and a representative of the National Institute of Aerospace, all each* to be appointed by the Governor, shall serve as ex officio ~~liaisons to members the Council~~ with non-voting privileges. Legislative members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in § [30-19.12](#). Nonlegislative citizen members shall serve without compensation *or reimbursement for reasonable and necessary expenses.* All legislative members shall be

reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for compensation and expenses of legislative members shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee. ~~Funding for the costs of expenses of the nonlegislative citizen members and all~~ All other expenses of the Council shall be provided by the ~~Office of the Secretary of Technology~~ *Department of Aviation*.

D. The Council shall elect a chairman and a vice-chairman annually from among its *legislative* membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the ~~Office of the Secretary of Technology~~ *Department of Aviation*. *The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.*

§ [2.2-2699.2](#). Powers and duties of the Council.

The Council shall have the power and duty to:

- ~~1. Identify any federal or state regulatory impediments, including taxation, to the development of the Mid-Atlantic Regional Spaceport;~~
  - ~~2. Identify threats to the spaceport's viability, such as encroachment, zoning, mineral exploration and exploitation, and noncompatible uses of the spaceport;~~
  - ~~3. Advise the Governor on potential economic development opportunities and marketing strategies to attract launch companies to Virginia;~~
  - ~~4. Identify and recommend policy and legislative solutions to potential state legal barriers to human spaceflight, including liability and assumption of risk issues;~~
  - ~~5. Advise the Governor on infrastructure and marketing investments needed to achieve the spaceport's full potential and that of Virginia's aerospace sector as a whole;~~
  - ~~6. Develop a long-term strategic plan to make the Mid-Atlantic Regional Spaceport the premiere commercial hub for space travel in the United States;~~
  - ~~7. Identify and recommend actions to position Virginia's aerospace sector to take advantage of newly emerging opportunities as part of NASA's Vision for Space Exploration; and~~
  - ~~8. Identify and recommend policies to support the critical role of Virginia's universities in providing human capital and research contributions that significantly impact aerospace-related economic development in the Commonwealth.~~
- 1. Identify opportunities and recommend actions to use the economic development engine offered by Virginia's aerospace sector to benefit the sector and the*

*Commonwealth, including the attraction to Virginia of launch and other aerospace companies, as well as federal, national, and international investments, such as the FAA's NextGen initiative and emerging NASA and other federal programs;*

*2. Develop a long-term strategic plan to make the Mid-Atlantic Regional Spaceport the commercial hub for space travel originating or concluding in the United States;*

*3. Contribute to the continued development of the Mid-Atlantic Regional Spaceport.*

*Development efforts shall include, in part:*

*a. Identification of any federal or state regulatory impediments, including taxation, to the development of the Mid-Atlantic Regional Spaceport;*

*b. Identification of threats to the spaceport's viability, such as encroachment, zoning, mineral exploration and exploitation, and noncompatible uses of the spaceport; and*

*c. Identification and recommendation of policy and legislative solutions to potential state legal barriers to human spaceflight;*

*4. Advise the Governor and the General Assembly on infrastructure and marketing investments needed to achieve the full potential of Virginia's aerospace sector as a whole, including, but not limited to, the Mid-Atlantic Regional Spaceport;*

*5. Identify and recommend policies to support the critical role of Virginia's universities in providing human capital and research contributions that significantly impact the economic development of aerospace-related and aerodynamic-dependent industries in the Commonwealth;*

*6. Identify and recommend policies to support aerospace sector needs for workforce development as provided by the Virginia Community College System and precollege educational system, including suggestions for enhanced development of Virginia's high-tech workforce pipeline in engineering, technology, and science; and*

*7. Assist the Governor in any aerospace-related events and conferences hosted by the Commonwealth.*

2. That the second enactment of Chapter 891 of the Acts of Assembly of 2007 is repealed.

## **Chapter 460 Fort Monroe Authority; created.**

An Act to amend and reenact § [15.2-6304](#) of the Code of Virginia; to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered [15.2-7200](#) through [15.2-7215](#); to repeal the first and third enactments of Chapter 707 of the Acts of Assembly of 2007, the first and third enactments of Chapter 740 of the Acts of

Assembly of 2007, and § [15.2-6304.1](#) of the Code of Virginia, relating to the Fort Monroe Authority Act.

[\[S 315\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-6304](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered [15.2-7200](#) through [15.2-7215](#), as follows:

§ [15.2-6304](#). Board of commissioners; appointment of director, agents and employees.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter referred to as board or board of commissioners.

B. In the case of authorities created by proclamation of the Governor pursuant to § [15.2-6302](#), the board shall consist of seven members to be appointed by the Governor, of whom at least five shall be residents of the locality or localities in which the authority is located. The members shall serve for terms of six years each, the initial appointment to be two members for terms of six years, two members for terms of five years, two members for terms of four years and one member for a term of three years, and subsequent appointments to be made for terms of six years, except appointments to fill vacancies which shall be made for the unexpired term.

C. In the case of authorities created by the City of Hampton pursuant to § [15.2-6302](#), ~~other than the Fort Monroe Federal Area Development Authority pursuant to § [15.2-6304.1](#)~~, the board shall consist of up to seven members appointed by the locality in which the authority is located, all of whom shall be residents of such locality. The members shall serve for terms of not more than four years each. If a member resigns, dies, or is otherwise removed from his position on the board, the locality may appoint a new member to fill the vacancy for the remainder of the unexpired term.

D. Members shall receive from the authority their necessary travel and business expenses while on business of the board. Each commissioner shall before entering on his duties take and subscribe the oath prescribed by § [49-1](#).

E. The board shall appoint the chief executive officer of the authority, who shall not be a member thereof, to be known as the director of that authority, hereinafter referred to as director, and whose compensation shall be paid by the authority in the amount determined

by the board. The board shall employ or retain such other agents or employees subordinate to the director as may be necessary, including persons with special qualifications, and shall determine which such agents or employees shall be bonded and the amount of such bonds. The director and other agents and employees so appointed shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. ~~Except as provided in § 15.2-6304.1,~~ *four* Four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.

CHAPTER 72.

FORT MONROE AUTHORITY ACT.

§ [15.2-7200](#). *Short title; declaration of public purpose; Fort Monroe Authority created; successor in interest to Fort Monroe Federal Area Development Authority.*

A. *This chapter shall be known and may be cited as the Fort Monroe Authority Act.*

B. *The General Assembly finds and declares that:*

1. *Fort Monroe, located on a barrier spit at Hampton Roads Harbor and the southern end of Chesapeake Bay where the Old Point Comfort lighthouse has been welcoming ships since 1802, is one of the Commonwealth's most important cultural treasures. Strategically located near Virginia's Historic Triangle of Williamsburg, Yorktown, and Jamestown, the 565-acre site has been designated a National Historic Landmark District;*
2. *As a result of decisions made by the federal Base Realignment and Closure Commission, Fort Monroe will cease to be an army base in 2011, and at that time most of the site will revert to the Commonwealth;*
3. *The planning phase of Fort Monroe's transition from a United States Army base to a village that will be owned by the Commonwealth has been managed by the Fort Monroe Federal Area Development Authority (FMFADA), established by the City of Hampton pursuant to legislation enacted by the General Assembly in 2007. The Fort Monroe Federal Area Development Authority, a partnership between the City and the Commonwealth, has fulfilled its primary purpose of formulating a reuse plan for Fort Monroe;*

4. *It is the policy of the Commonwealth to protect the historic resources at Fort Monroe, provide public access to the Fort's historic resources and recreational opportunities, exercise exemplary stewardship of the Fort's natural resources, and maintain Fort Monroe in perpetuity as a place that is a desirable one in which to reside, do business, and visit, all in a way that is economically sustainable;*

5. *Fort Monroe's status as a Commonwealth-owned village is unique. Municipal services will need to be provided to Fort Monroe's visitors, residents, and businesses. Both the Commonwealth and the FMFADA are signatories to a Programmatic Agreement under Section 106 of the National Historic Preservation Act that requires several specific actions be taken, including the enforcement of Design Standards to be adopted by the FMFADA or its successor to govern any new development or building restoration or renovation at Fort Monroe. There exists a need for an entity that can manage the property for the Commonwealth and ensure adherence to the findings, declarations, and policies set forth in this section; and*

6. *The creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.*

*C. The Fort Monroe Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted as a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this chapter and its public purpose shall be in all respects for the benefit of the inhabitants of the Commonwealth.*

*D. The Fort Monroe Authority is the successor in interest to that political subdivision formerly known as the Fort Monroe Federal Area Development Authority. As such, the Authority stands in the place and stead of, and assumes all rights and duties formerly of, the Fort Monroe Federal Area Development Authority, including but not limited to all leases, contracts, grants-in-aid, and all other agreements of whatsoever nature; holds title to all realty and personalty formerly held by the Fort Monroe Federal Area Development Authority; and may exercise all powers that might at any time past have been exercised by the Fort Monroe Federal Area Development Authority, including the powers and authorities of a Local Redevelopment Authority under the provisions of any and all applicable federal laws, including the Base Relocation and Closure Act of 2005.*

*E. The Fort Monroe Authority shall be subject to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and the Board shall adopt procedures consistent with that Act to govern its procurement processes.*

*F. Employees of the FMFADA shall be eligible for membership in the Virginia Retirement System and participation in health insurance and other benefits programs for employees of local governments established in accordance with § [2.2-1204](#).*

*§ [15.2-7201](#). Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Adjacent to such Authority" means real or personal property that is contiguous, neighboring, or within reasonable proximity of Fort Monroe.*

*"Area of operation" means an area coextensive with the territorial boundaries of the land acquired or to be acquired from the federal government by the Authority.*

*"Authority" means the Fort Monroe Authority.*

*"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.*

*"Facility" means a particular building or structure or particular buildings or structures, including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility.*

*"Project" means any specific enterprise undertaken by an authority, including the facilities as defined in this chapter, and all other property, real or personal, or any interest therein, necessary or appropriate for the operation of such property.*

*"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.*

*"Trustees" means the members of the Board of Trustees of the Authority.*

*§ [15.2-7202](#). Board of Trustees; membership.*

*There is hereby created a political subdivision and public body corporate and politic of the Commonwealth of Virginia to be known as the Fort Monroe Authority, to be governed by a Board of Trustees consisting of 11 voting members appointed as follows: the Secretary of Natural Resources and the Secretary of Commerce and Trade, or their successor positions if those positions no longer exist, from the Governor's cabinet; the member of the Senate of Virginia and the member of the House of Delegates representing the district in which Fort Monroe lies; two members appointed by the Hampton City Council; and five nonlegislative citizen members appointed by the Governor, four of whom shall have expertise relevant to the implementation of the Fort Monroe Reuse*

*Plan, including but not limited to the fields of historic preservation, tourism, environment, real estate, finance, and education, and one of whom shall be a citizen representative from the Hampton Roads region. Cabinet members and elected representatives shall serve terms commensurate with their terms of office. Citizen appointees shall initially be appointed for staggered terms of either one, two, or three years, and thereafter shall serve for four-year terms. Cabinet members shall be entitled to send their deputies or other cabinet member, and legislative members another legislator, to meetings as full voting members in the event that official duties require their presence elsewhere. The Governor's Assistant for Commonwealth Preparedness may serve as an ex officio, non-voting member of the board.*

*The Board so appointed shall enter upon the performance of its duties and shall initially and annually thereafter elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary or secretary-treasurer who need not be a member of the Board. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Board, and in the absence of both the chairman and vice-chairman, the Board shall elect a chairman pro tempore who shall preside at such meetings. Six Trustees shall constitute a quorum, and all action by the Board shall require the affirmative vote of a majority of the Trustees present and voting, except that any action to amend or terminate the existing Reuse Plan, or to adopt a new Reuse Plan, shall require the affirmative vote of 75 percent or more of the Trustees present and voting. The members of the Board shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the Board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority in such manner as shall be prescribed by the Authority.*

*§ [15.2-7203](#). Duties of the Authority.*

*The Authority shall have the following duties to:*

- 1. Do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers as well as the Virginia Indians to the building of our Commonwealth and nation, to commemorate the establishment of the first coastal fortification in the English-speaking New World, to commemorate the lives of prominent Virginians who were connected to the largest moated fortification in the United States, to commemorate the important role of African Americans in the history of the site, including the "Contraband" slave decision in 1861 that earned Fort Monroe the designation as "Freedom's Fortress," to commemorate Old Point Comfort's role in establishing international trade and British Maritime law in Virginia, and to commemorate*

*almost 250 years of continuous service as a coastal defense fortification of the United States of America;*

*2. Provide for the education, safety, and well-being of the residents, businesses and visitors at Fort Monroe;*

*3. Hire and develop a professional staff including an executive director and such other staff as is necessary to discharge the responsibilities of the Authority;*

*4. Establish personnel policies and benefits for staff;*

*5. Oversee the preservation, conservation, protection, and maintenance of the Commonwealth's natural resources and real property interests at Fort Monroe and the renewal of Fort Monroe as a vibrant and thriving community; and*

*6. Adopt an annual budget, which shall be submitted to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and the Department of Planning and Budget by March 1 of each year.*

*§ [15.2-7204](#). Additional declaration of policy; powers of the Authority.*

*A. It is the policy of the Commonwealth that property at Fort Monroe shall not be sold to private interests, but shall be maintained as Commonwealth-owned land that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate public, private, or joint venture entities. If the decision is ever made to sell property at Fort Monroe, it may only be sold with the consent of both the Governor and the General Assembly, and approval as to form of the documents by the Attorney General.*

*B. The Authority shall have the following powers to:*

*1. Sue and be sued; to adopt and use a common seal and to alter the same as may be deemed expedient; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with law, to carry into effect the powers and purposes of the Authority;*

*2. Foster and stimulate the economic and other development of Fort Monroe and its area of influence, including without limitation development for business, employment, housing, commercial, recreational, educational, and other public purposes; to prepare and carry out plans and projects to accomplish such objectives; to provide for the construction, reconstruction, improvement, alteration, maintenance, removal, equipping, or repair of any buildings, structures, or land of any kind; to lease, or rent to others or to develop, operate, or manage with others in a joint venture or other partnering arrangement, on such terms as it deems proper and which are consistent with the provisions of § [15.2-7209](#), any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within Fort Monroe; to establish, collect, and revise the*

*rents charged and terms and conditions of occupancy thereof; to terminate any such lease or rental obligation upon the failure of the lessee or renter to comply with any of the obligations thereof; to arrange or contract for the furnishing by any person or agency, public or private, of works, services, privileges, or facilities in connection with any activity in which the Authority may engage, including the provision of any and all municipal services that may be required at Fort Monroe; to acquire, own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, easement, dedication, or otherwise any real or personal property or any interest therein, which purchase, lease, or acquisition may be made for less than fair market value; to sell, lease, exchange, transfer, assign, or pledge any personal property or any interest therein, which sale, lease, or other transfer or assignment may be made for less than fair market value; to dedicate, make a gift of, or lease for a nominal amount any real or personal property or any interest therein to the Commonwealth or the localities or agencies, public or private, within the area of operation or adjacent to such authority, jointly or severally, for public use or benefit, such as, but not limited to, game preserves, playgrounds, park and recreational areas and facilities, hospitals, clinics, schools, and airports; to acquire, lease, maintain, alter, operate, improve, expand, sell, or otherwise dispose of on-site utility and infrastructure systems or sell any excess service capacity for off-site use; to acquire, lease, construct, maintain, and operate and dispose of tracks, spurs, crossings, terminals, warehouses, and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares, and merchandise; and to insure or provide for the insurance of any real or personal property or operation of the Authority against any risks or hazards. The title to any real property acquired shall be in the name of the Commonwealth;*

*3. Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in property or security in which fiduciaries may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled;*

*4. Undertake and carry out examinations, investigations, studies, and analyses of the business, industrial, agricultural, utility, transportation, and other economic development needs, requirements, and potentialities of its area of operation, or off-site needs, requirements, and potentialities that directly affect the success of the Authority at Fort Monroe, and the manner in which such needs and requirements and potentialities are being met, or should be met, in order to accomplish the purposes for which it is created; to make use of the facts determined in such research and analyses in its own operation; and to make the results of such studies and analyses available to public bodies and to private*

*individuals, groups, and businesses, except as such information may be exempted pursuant to the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.);*

*5. Administer, develop, and maintain at Fort Monroe permanent commemorative cultural and historical museums and memorials;*

*6. Adopt names, flags, seals, and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth;*

*7. Enter into any contracts not otherwise specifically authorized herein to further the purposes of the Authority, after approval as to form by the Attorney General;*

*8. Establish nonprofit corporations as instrumentalities to assist in administering the affairs of the Authority;*

*9. Exercise the power of eminent domain in the manner provided by Chapter 3 (§ [25.1-300](#) et seq.) of Title 25.1; however, eminent domain may only be used to obtain easements across the leasehold interests of lessees of property on Fort Monroe, for the provision of water, sewer, electrical, ingress and egress, and other necessary or useful services to further the purposes of the Authority, unless the Governor has expressly granted authority to obtain interests for other purposes;*

*10. Convey by lease land to any person, association, firm, or corporation for such term and on such conditions as the Authority may determine, after approval as to form by the Attorney General;*

*11. Receive and expend gifts, grants, and donations from whatever source derived for the purposes of the Authority;*

*12. Employ an executive director and such deputies and assistants as may be required;*

*13. Elect any past chairman of the Board of Trustees to the honorary position of chairman emeritus. Chairmen emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected in addition to the at-large positions defined in § [15.2-7202](#);*

*14. Determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired by purchase, gift, or loan, and to exchange or sell the same if not inconsistent with the terms of such purchase, gift, loan, or other acquisition;*

*15. Change the form of investment of any funds, securities, or other property, real or personal, provided the same are not inconsistent with the terms of the instrument under which the same were acquired, and to sell, grant, or convey any such property, except that any transfers of real property may be made only with the consent of the Governor;*

*16. Cooperate with the federal government, the Commonwealth, and the localities within its area of operation or adjacent to such authority in the discharge of its enumerated powers;*

*17. Exercise all or any part or combination of powers herein granted;*

18. Do any and all other acts and things that may be reasonably necessary and convenient to carry out its purposes and powers;

19. Adopt by the Board of Trustees of the Authority, or the executive committee thereof, such regulations from time to time, concerning the use and visitation of properties under the control of the Fort Monroe Authority, to protect or secure such properties and the public enjoyment thereof;

20. Provide parking and traffic rules and regulations on property owned by the Authority; and

21. Provide that any person who knowingly violates a regulation of the Authority may be requested by an agent or employee of the Authority to leave the property and upon the failure of such person so to do, shall be guilty of a trespass, as provided in § [18.2-119](#). § [15.2-7205](#). Payments to Commonwealth or political subdivisions thereof.

No locality shall be required to provide proprietary municipal services including, but not limited to, utility services to residents and businesses at Fort Monroe, except in accordance with an agreement between the Authority and such locality. The Authority may agree to make such payments to the Commonwealth, a locality, or any political subdivision thereof, which payments such bodies are hereby authorized to accept, as the Authority finds consistent with the purposes for which the Authority has been created, including but not limited to the municipal services set forth herein. These payments shall adequately and fairly reimburse the Commonwealth, locality, or political subdivision for the cost of providing such services so that the services are provided at no increased, incremental cost to the provider. If the provider makes improvements to its system, the Authority shall only be required to pay its proportionate share of the cost of such improvements. Fees charged pursuant to this agreement shall not be higher than those charged for other, similarly situated residents of the locality or recipients of the proprietary services.

§ [15.2-7206](#). Authority may borrow money, accept contributions, etc.

In addition to the powers conferred upon the Authority by other provisions of this chapter, the Authority is empowered to:

1. Borrow money or accept contributions, grants, or other financial assistance from the federal government; the Commonwealth; any locality or political subdivision; any agency or instrumentality thereof, including but not limited to the Virginia Resources Authority; or any source, public or private, for or in aid of any project of the Authority, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

2. Apply for grants from the Urban Public-Private Partnership Redevelopment Fund pursuant to Chapter 24.1 (§ [15.2-2414](#) et seq.). The Authority shall be considered a local government eligible for grants under that chapter. Funds from any source available to the Authority may be used to meet the matching requirement of any such grant;

3. Participate in local group pools authorized pursuant to § [15.2-2703](#) or to participate in the Commonwealth's risk pool administered by the Division of Risk Management;

4. Utilize the provisions of the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ [56-575.1](#) et seq.) as a qualifying public entity under those statutes; and

5. Apply for and receive enterprise zone designation under the Enterprise Zone Grant Act (§ [59.1-538](#) et seq.). Fort Monroe shall be considered an eligible area for such designation, although the Governor is not obligated to grant such a designation.

§ [15.2-7207](#). Authority empowered to issue bonds; additional security; liability thereon. The Authority shall have power to issue bonds from time to time in its discretion, for any of its corporate purposes, including the issuance of refunding bonds for the payment or retirement of bonds previously issued by it. The Authority may issue such type of bonds as it may determine, including (without limiting the generality of the foregoing):

1. Bonds on which the principal and interest are payable:

a. Exclusively from the income and revenues of the project or facility financed with the proceeds of such bonds;

b. Exclusively from the income and revenues of certain designated projects or facilities whether or not they are financed in whole or in part with the proceeds of such bonds; or

c. From its revenues generally; and

2. Bonds on which the principal and interest are payable solely from contributions or grants received from the federal government, the Commonwealth, or any other source, public or private.

Any such bonds may be additionally secured by a pledge of any grants or contributions from the federal government, the Commonwealth, any political subdivision of the Commonwealth, or other source, or a pledge of any income or revenues of the Authority, or a mortgage of any particular projects or facilities or other property of the Authority.

Neither the Trustees of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the Authority (and such bonds and obligations shall so state on their face) shall not be a debt of the Commonwealth or any political subdivision thereof (other than the issuing Authority), and neither the Commonwealth nor any political subdivision thereof (other than the issuing Authority) shall be liable thereon, nor shall such bonds or

*obligations be payable out of any funds or properties other than those of the Authority. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction. Bonds of the Authority are declared to be issued for an essential public and governmental purpose.*

§ [15.2-7208](#). *Powers and duties of executive director.*

*The executive director shall exercise such of the powers and duties relating to the Authority conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.*

§ [15.2-7209](#). *Legal services.*

*For such legal services as it may require, the Authority may employ its own counsel and legal staff or make use of legal services made available to it by any public body, or both; however, the Authority shall be required to use any legal services provided by the Office of the Attorney General, if such services are made available, since the property at Fort Monroe is an asset of the Commonwealth.*

§ [15.2-7210](#). *Exemption from taxation; authorities to be municipal corporate instrumentalities of Commonwealth.*

*The bonds or other securities issued by the Authority, the interest thereon, and all real and personal property and any interest therein of an authority, and all income derived therefrom by the Authority shall at all times be free from taxation by the Commonwealth, or by any political subdivision thereof. The Authority shall be regarded as a municipal corporate instrumentality of the Commonwealth for the purpose of discharging its functions and exercising its powers under this chapter.*

§ [15.2-7211](#). *Rents, fees, and charges; disposition of revenues.*

*The rents, fees, and charges established by the Authority for the use of its property, projects, and facilities and for any other service furnished or provided by the Authority shall be fixed so that they, together with other revenues of the Authority, shall provide at least sufficient funds to pay the cost of maintaining, repairing, and operating the Authority; its property, projects, and facilities; and the principal and interest of any bonds issued by the Authority or other debts contracted as the same shall become due and payable. A reserve may be accumulated and maintained out of the revenues of the Authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing such bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations issued*

*hereunder, the Authority shall have exclusive control of the revenue derived from the operation of the Authority and the right to use such revenues in the exercise of its powers and duties set forth in this chapter. No person, firm, association, or corporation shall receive any profit or dividend from the revenues, earnings, or other funds or assets of such authority other than for debts contracted, for services rendered, for materials and supplies furnished, and for other value actually received by the Authority.*

*The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representative, and the cost of such audit will be borne by the Authority. Copies of the annual audit shall be distributed to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.*

*§ [15.2-7212](#). Powers conferred additional and supplemental; severability; liberal construction.*

*The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law. The powers granted and the duties imposed in this chapter shall be construed to be independent and severable. If any one or more sections, subsections, sentences, or parts of any of this chapter shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held unconstitutional or invalid. This chapter shall be liberally construed to effect the purposes hereof.*

*§ [15.2-7213](#). Chapter controlling over inconsistent laws.*

*Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, including provisions of charters of localities, the provisions of this chapter shall be controlling.*

*§ [15.2-7214](#). Sovereign immunity.*

*No provisions of this chapter nor any act of the Authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.*

*§ [15.2-7215](#). Status of residents.*

*Property at Fort Monroe is owned by the Commonwealth of Virginia and is operated and managed on behalf of the Commonwealth by the Authority. As such, it is deemed to be state property lying within the jurisdictional limits of the City of Hampton. Those residing on Fort Monroe shall have the same rights to vote; precinct assignments; public education; police, fire, and emergency services; and access to courts as if the property at Fort Monroe were privately held property in the City of Hampton.*

2. That the first and third enactments of Chapter 707 of the Acts of Assembly of 2007 and the first and third enactments of Chapter 740 of the Acts of Assembly of 2007 are repealed.

3. That § [15.2-6304.1](#) of the Code of Virginia is repealed.

## **Chapter 490 Constitutional amendment; localities to establish either income or financial worth limitations.**

An Act to provide for the submission to the voters of a proposed amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax relief for persons not less than sixty-five years of age or persons permanently and totally disabled.

[\[H 16\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law ~~who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth.~~ *A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.*

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law

may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

§ 2. The ballot shall contain the following question:

"Question: Shall Section 6 of Article X of the Constitution of Virginia be amended to authorize legislation that will permit localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners not less than 65 years of age or permanently and totally disabled?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 60 Graduation requirements; delayed implementation.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, relating to the delayed implementation of graduation requirements.

[\[H 196\]](#)

Approved March 9, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009 is amended and reenacted as follows:

§ 1. That ~~no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § 22.1-253.13:3~~ of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, 2010, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § ~~22.1-253.13:4~~ of the Code of Virginia, shall become effective before July 1, ~~2010~~ 2011, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, ~~the passing rates required for full accreditation in 2010-2011 based on assessments administered during the 2009-2010 school year~~

~~shall be the same passing rates required for full accreditation during the 2008-2009 school year.~~

## **Chapter 130 Norfolk/Virginia Beach light rail project; funds will be expended in accordance with FTA.**

An Act to amend and reenact § 1 of Chapter 6 of the Acts of Assembly of 2008 Special Session II, relating to the extension of the proposed light rail system in the City of Norfolk to the beachfront in the City of Virginia Beach.

[\[H 564\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 6 of the Acts of Assembly of 2008 Special Session II is amended and reenacted as follows:

§ 1. The General Assembly determines that expansion of the Norfolk Light Rail system, including extension from its current terminus at Newtown Road in the City of Norfolk to the Oceanfront in the City of Virginia Beach, along the Interstate 264 corridor on the right-of-way of the Norfolk Southern Railway, is in the public interest and qualifies for public funding, to the extent that any may be required, from the Transportation Partnership Opportunity Fund, established by § [33.1-221.1:8](#) of the Code of Virginia, or other funding available to the Commonwealth. *Notwithstanding any contrary provision of law, the funds provided to the City of Virginia Beach under the Transportation Partnership Opportunity Fund to purchase railroad right-of-way from the Norfolk Southern Railroad shall be expended and used subject to such requirements as the Federal Transit Administration shall determine to be most effective for the construction of the public transportation project.*

## **Chapter 137 Stormwater management regulations; changes effective date that establishes local program criteria.**

An Act to amend and reenact the second enactment of Chapter 18 of the Acts of Assembly of 2009, relating to stormwater management regulations.

[\[H 1220\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 18 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. That the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of § [10.1-603.3](#) of this act, shall ~~not~~ become effective ~~prior to July 1, 2010~~ *within 280 days after the establishment by the United States Environmental Protection Agency of a Chesapeake Bay-wide Total Maximum Daily Load (TMDL) but in any event no later than December 1, 2011.*

2. That the Virginia Soil and Water Conservation Board shall convene an advisory panel of stakeholders to review the regulation and to make recommendations to the Board on revisions to the regulations necessary to, among other things, comply with such TMDL.

## **Chapter 178 Menhaden fisheries; extends sunset provision for harvest.**

An Act to amend and reenact the second enactment of Chapter 41 of the Acts of Assembly of 2007, relating to the harvest cap on menhaden.

[\[H 142\]](#)

Approved March 29, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 41 of the Acts of Assembly of 2007 is amended and reenacted as follows:

2. ~~The~~ *That the provisions of this act shall expire on* ~~December 31, 2010~~ *January 1, 2014.*

## **Chapter 192 Children; Governor and DSS to develop and implement plan to reduce number in foster care.**

An Act to require a plan to reduce the number of children in foster care by 25 percent within 10 years.

[\[H 718\]](#)

Approved April 7, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor and the Department of Social Services, together with other appropriate executive branch agencies, shall develop a plan to increase the safe and permanent placement of children with families to reduce the number of children in foster care by 25 percent by 2020. The plan shall provide for the placement of children currently in foster care or children entering foster care in safe, appropriate, permanent living arrangements.*

## **Chapter 126 Hampton Roads Bridge-Tunnel; VDOT to accept for review unsolicited proposals to add capacity.**

An Act to require the Virginia Department of Transportation to accept for review unsolicited proposals to add physical capacity to the Hampton Roads Bridge-Tunnel.

[\[H 402\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Unsolicited proposals to add capacity to the Hampton Roads Bridge-Tunnel to be accepted for review by the Virginia Department of Transportation; procedure.*

*A. The Virginia Department of Transportation is hereby directed to accept for review unsolicited proposals under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) to add physical capacity to the Interstate 64 Hampton*

*Roads Bridge-Tunnel between Hampton and Norfolk. Unsolicited proposals shall be filed with the Department no later than September 30, 2010.*

*B. Upon enactment of this act, the Department shall make available on its website the following: (i) any and all information about the existing Hampton Roads Bridge-Tunnel, including traffic counts, maintenance records, and current plans and specifications and (ii) any and all information, studies, and reports analyzing potential scenarios for the physical expansion of the Hampton Roads Bridge-Tunnel. The Department may take such measures as necessary to protect confidential information or to protect vital state and national security interests that may be contained in such information.*

*C. Unsolicited proposals filed pursuant to this act shall provide information regarding team qualifications and experience, project structure, a schedule for project development, the proposed cost and outline public benefits of the project. The Department shall develop a process that would permit a private entity that is part of a proposal team to assist with the development of state or federally mandated environmental reviews or permits required to complete the project. Completion of such reviews or permits shall not be necessary prior to a decision by the Department to advance consideration of conceptual proposals.*

*D. Within 30 days of the receipt of unsolicited proposals, the Department shall post a public notice of the unsolicited proposals and provide 120 days for any competing proposals. Following an internal analysis of the proposals to determine the financial and technical merit of the proposals and the proposal teams, the Department shall make a recommendation no later than May 1, 2011, to the Commonwealth Transportation Board whether to advance no more than two proposals to an Independent Review Panel. The Panel, which shall be appointed by the Secretary of Transportation, shall afford opportunities for public comment on the proposals and provide additional review and analysis of the remaining proposals.*

*E. No later than September 1, 2011, the Department shall make a recommendation to the Commonwealth Transportation Commissioner whether to execute an interim agreement to continue design, environmental reviews, and preliminary right-of-way acquisitions and to take any other steps necessary to advance the development of the project. Moneys in the Transportation Partnership Opportunity Fund may be made available to carry out the provisions of the interim agreement. The interim agreement shall also provide a schedule for the completion of the necessary reviews and approvals for construction of the project.*

2. The Virginia Department of Transportation shall promptly inform the Joint Commission on Transportation Accountability, as authorized by Chapter 43 (§ [30-282](#) et seq.) of Title 30 of the Code of Virginia, by written update, of its completion of each requirement of this act.

## **Chapter 201 Route 711; Buchanan County may enter into an agreement with Pike County, Kentucky to improve.**

An Act to authorize certain expenditures of coal and gas road improvement funds by Buchanan County.

[\[H 848\]](#)

Approved April 7, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing body of Buchanan County may enter into an agreement with Pike County, Kentucky, to improve U.S. Route 711, including the acquisition of property for said improvement to U.S. Route 711, and may use coal and gas road improvement funds for such land acquisition and improvements. The Virginia Department of Transportation is authorized to maintain such improvements on U.S. Route 711 after construction of same.*

## **Chapter 203 Eminent domain; applicability of requirements to acquisition of property by City of Norfolk, etc.**

An Act to amend and reenact the fourth enactment of Chapters 882, 901, and 926 of the Acts of Assembly of 2007, relating to the applicability of certain requirements to the acquisition of property by the Norfolk Redevelopment and Housing Authority or the City of Norfolk through the use of eminent domain.

[\[H 997\]](#)

Approved April 7, 2010

Be it enacted by the General Assembly of Virginia:

1. That the fourth enactment of Chapters 882, 901, and 926 of the Acts of Assembly of 2007 is amended and reenacted as follows:

4. Nothing contained in this act shall prohibit the Norfolk Redevelopment and Housing Authority or the City of Norfolk to acquire property *located at Map Number 24488500 and Map Number 41138940, both located in the City of Norfolk*, through the use of eminent domain for the location of a recreational facility open to the public to be owned or operated by a not-for-profit entity, provided such acquisitions are instituted prior to ~~July 1,~~ *January 1, 2011*.

### **Chapter 153 Water safety zones; authorizes marine patrol divisions of police in Tidewater localities to patrol.**

An Act to amend and reenact § [28.2-106.1](#) of the Code of Virginia and to repeal the second enactment of Chapter 554 of the Acts of Assembly of 2007, relating to enforcement of federal security and safety zones.

[\[S 398\]](#)

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [28.2-106.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [28.2-106.1](#). Patrol and enforcement of federal safety zones and restricted areas. Pursuant to federal authorization *or upon request from a federal agency*, the Virginia Marine Police, *conservation police officers of the Department of Game and Inland Fisheries, and the marine patrol divisions of police departments located in Tidewater Virginia* may patrol and enforce all federal security zones, federal safety zones, and federal restricted areas located within the tidal waters of the Commonwealth.

2. That the second enactment of Chapter 554 of the Acts of Assembly of 2007 is repealed.

### **Chapter 167 Manufactured Housing Licensing & Transaction Recovery Fund Law; dealer may retain damages.**

An Act to amend and reenact § [36-85.28](#) of the Code of Virginia and to amend and reenact the second enactment of Chapter 141 of the Acts of Assembly of 2009, relating to the

Manufactured Housing Licensing and Transaction Recovery Fund Law.

[\[H 1374\]](#)

Approved March 12, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [36-85.28](#) of the Code of Virginia is amended and reenacted as follows:

§ [36-85.28](#). Limitation on damages; disclosure to buyer.

A. If a buyer fails to accept delivery of a manufactured home, the manufactured home dealer may retain actual damages according to the following terms:

1. If the manufactured home is *a single section unit and is* in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000.

2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$2,000.

3. If the manufactured home is larger than a single section unit in the dealer's stock and is not specially ordered for the buyer, the maximum retention shall be \$4,000.

4. If the manufactured home is larger than a single section unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be \$7,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer, as listed in subsection A, for failure to take delivery of the manufactured home as purchased.

2. That the second enactment of Chapter 141 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. That the provisions of this act ~~amending~~*adding subsection D of* § [36-85.31](#) of the Code of Virginia shall expire on July 1, 2011.

**Chapter 254 No Child Left Behind Act; school divisions shall administer limited English proficiency assessment.**

An Act to provide local school divisions flexibility with regard to the assessment used to evaluate limited English proficient students.

[\[S 354\]](#)

Approved April 8, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That local school divisions in the Commonwealth shall administer a limited English proficiency assessment mandated for students pursuant to the federal No Child Left Behind Act that may be locally developed or selected and has been approved by the Board of Education in accordance with federal requirements.*

## **Chapter 287 Virginia Military Family Relief Fund; State policy to exclude from taxation payments made from Fund.**

An Act to express the policy of the Commonwealth relating to the exclusion from taxation income of distributions from the Virginia Military Family Relief Fund.

[\[H 1118\]](#)

Approved April 8, 2010

Whereas, the Virginia Military Family Relief Fund was established to assist members of the Virginia National Guard and Virginia residents who are members of the United States armed forces reserves who have been called to extended active duty for periods in excess of 90 days, and their families, with living expenses, including but not limited to, food, utilities, housing, and medical services.

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That it shall be the policy of the Commonwealth to exclude from taxation, all benefits paid in accordance with the provisions of the Virginia Military Family Relief Fund, as established in § [44-102.2](#), to the extent included in federal adjusted gross income.*

## **Chapter 200 Richmond, City of; tax amnesty program established.**

An Act to establish the City of Richmond tax amnesty program.

[\[H 796\]](#)

Approved April 7, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. City of Richmond tax amnesty program established.*

*A. There is hereby established the City of Richmond tax amnesty program. The program shall be administered by the director of finance, and any person, individual, corporation, estate, trust, or partnership required to file a personal property or machinery and tools tax return or to pay any local personal property tax, machinery and tools tax or real property tax shall be eligible to participate, subject to the requirements set forth below and guidelines established by the director of finance. The director of finance may require participants in the program to complete an amnesty application and such other forms as he may prescribe, and to furnish any additional information he deems necessary to make a determination regarding the validity of such amnesty application.*

*B. The tax amnesty program may have the following features:*

*1. Civil penalties assessed or assessable, as provided for in Title 58.1, which are the result of nonpayment, underpayment, nonreporting or underreporting of personal property, machinery and tools, or real property tax liabilities, may be waived upon receipt of the payment of the amount of those taxes and interest owed with the following exceptions:*

*a. No person, individual, corporation, estate, trust, or partnership currently, or at the inception of this program, under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.*

*b. Any other parameters as deemed reasonable and fiscally responsible by the Mayor and the City Council.*

*C. For purposes of computing the outstanding balance due to the nonpayment, underpayment, nonreporting or underreporting of any personal property, machinery and tools, or real property tax liability which has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under [§ 58.1-3916](#) shall be applicable.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 279 Va. Recreational Facilities Authority & Roanoke County; delays reversion of title to real property.**

An Act to amend and reenact § 1 of Chapter 655 of the Acts of Assembly of 2008, as amended by Chapter 739 of the Acts of Assembly of 2009, relating to delaying the

reversion of property owned by the Virginia Recreational Facilities Authority.

[\[H 774\]](#)

Approved April 8, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 655 of the Acts of Assembly of 2008, as amended by Chapter 739 of the Acts of Assembly of 2009, is amended and reenacted as follows:

§ 1. That the provisions in § [10.1-1618](#) of the Code of Virginia requiring a reversion of title to real property from the Virginia Recreational Facilities Authority to the Commonwealth, in the event that the Authority ceases to operate a project, shall not be enforceable until July 1, ~~2010~~ 2011.

2. That the Virginia Recreational Facilities Authority and Roanoke County shall work with other stakeholders to develop an alternate plan for the appropriate utilization and management of the property. The plan shall be consistent with the mission of the Explore Park and shall include conservation, outdoor recreation, environmental awareness, and public access and utilization of the property. The plan shall also provide ways for the park to become financially independent. The plan shall be completed and transmitted to the Governor and the General Assembly by December 31, 2010.

## **Chapter 355 Physicians, license; DBHDS to require presence thereof in any state training center.**

An Act to require the presence of a licensed physician at all times for any certified skilled nursing beds in any state training center.

[\[S 538\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall require a licensed physician to be on duty at all times for any certified skilled nursing beds in any state training center as defined in § [37.2-100](#) of the Code of Virginia.*

## **Chapter 370 Stormwater management regulations; changes effective date that establishes local program criteria.**

An Act to amend and reenact the second enactment of Chapter 18 of the Acts of Assembly of 2009, relating to stormwater management regulations.

[\[S 395\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 18 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. That the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria, and that is referenced in subsections A and B of § [10.1-603.3](#) of this act, shall ~~not become effective prior to July 1, 2010~~ *within 280 days after the establishment by the United States Environmental Protection Agency of a Chesapeake Bay-wide Total Maximum Daily Load (TMDL) but in any event no later than December 1, 2011.*

2. That the Virginia Soil and Water Conservation Board shall convene an advisory panel of stakeholders to review the regulation and to make recommendations to the Board on revisions to the regulations necessary to, among other things, comply with such TMDL.

## **Chapter 307 Autism Spectrum Disorders; expand employment programs for individuals therewith.**

An Act to expand employment programs for certain individuals with autism spectrum disorders.

[\[H 1099\]](#)

Approved April 9, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That the Department of Behavioral Health and Developmental Services, in*

*coordination with the Department of Rehabilitative Services and other partner agencies, including local community services boards and behavioral health authorities, shall establish specific goals for programs to assist individuals with autism spectrum disorders (ASDs) to obtain and sustain employment. The goals of the program shall include:*

- 1. Providing skills training for individuals with ASDs in order to help them obtain employment;*
- 2. Providing behavioral supports necessary to ensure success in the workplace;*
- 3. Providing training to reduce behaviors that interfere with successful employment;*
- 4. Offering education and training on ASDs to employers, in order to increase understanding of these disorders and common behaviors associated with them; and*
- 5. Ensuring that individuals with ASDs receive the ongoing behavioral and social support needed to retain successful employment status.*

*By November 1, 2010, the Department of Behavioral Health and Developmental Services shall include in its report to the Joint Legislative Audit and Review Commission a detailed summary outlining the plan for inclusion of specific goals for ASD employment programs.*

## **Chapter 391 Income tax, state; excludes from taxation benefits paid into Virginia Military Family Relief Fund.**

An Act to express the policy of the Commonwealth relating to the exclusion from taxation income of distributions from the Virginia Military Family Relief Fund.

[\[S 619\]](#)

Approved April 10, 2010

Whereas, the Virginia Military Family Relief Fund was established to assist members of the Virginia National Guard and Virginia residents who are members of the United States armed forces reserves who have been called to extended active duty for periods in excess of 90 days and their families with living expenses, including but not limited to food, utilities, housing, and medical services; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That it shall be the policy of the Commonwealth to exclude from taxation all benefits paid in accordance with the provisions of the Virginia Military Family Relief Fund, as*

established in § [44-102.2](#) of the Code of Virginia, to the extent included in federal adjusted gross income.

## **Chapter 398 Schools; delayed implementation of statutes and regulations upon which full accreditation is based.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, relating to the delayed implementation of certain regulations and state statutes related to the accreditation of schools.

[\[H 111\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009 is amended and reenacted as follows:

§ 1. That no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2010~~ 2011, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, ~~2010~~ 2011, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in ~~2010-2011~~ 2011 - 2012 based on assessments administered during the ~~2009-2010~~ 2010 - 2011 school year shall be the same passing rates required for full accreditation during the 2008 - 2009 school year. *Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011 - 2012.*

## **Chapter 400 Aerospace Advisory Council; removes July 1, 2010, sunset provision.**

An Act to repeal the second enactment of Chapter 891 of the Acts of Assembly of 2007, relating to the Aerospace Advisory Council.

[\[H 193\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 891 of the Acts of Assembly of 2007 is repealed.

## **Chapter 426 Protective orders; coordination with other states.**

An Act to require the Supreme Court of Virginia to consult and coordinate with adjacent states regarding protective order forms.

[\[H 931\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Executive Secretary of the Supreme Court shall, on an annual basis, consult with the appropriate judicial authorities of adjacent states, and may consult with the appropriate judicial authorities of any other state, concerning the forms used in connection with the issuance of protective orders under the laws of the other states and pursuant to Title 16.1, § [20-103](#), or Chapter 9.1 (§ [19.2-152.8](#) et seq.) of Title 19.2 of the Code of Virginia. The Executive Secretary shall, to the extent feasible under the laws of the Commonwealth, coordinate the contents of such protective order forms with other states in order to facilitate the enforcement of foreign protective orders in the Commonwealth and the enforcement of Virginia protective orders in other states.*

## Chapter 358 Constitutional amendment; property tax exemption for certain veterans.

An Act to provide for the submission to the voters of a proposed amendment to the Constitution of Virginia by adding in Article X a section numbered 6-A, relating to a property tax exemption for certain veterans.

[\[H 149\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-A as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.*

§ 2. The ballot shall contain the following question:

"Question: Shall the Constitution be amended to require the General Assembly to provide a real property tax exemption for the principal residence of a veteran, or his or her surviving spouse, if the veteran has a 100 percent service-connected, permanent, and total disability?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 467 Protective orders; coordination with other states.**

An Act to require the Supreme Court of Virginia to consult and coordinate with adjacent states regarding protective order forms.

[\[S 467\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That The Executive Secretary of the Supreme Court shall, on an annual basis,*

*consult with the appropriate judicial authorities of adjacent states, and may consult with the appropriate judicial authorities of any other state, concerning the forms used in connection with the issuance of protective orders under the laws of the other states and pursuant to Title 16.1, § [20-103](#), or Chapter 9.1 (§ [19.2-152.8](#) et seq.) of Title 19.2 of the Code of Virginia. The Executive Secretary shall, to the extent feasible under the laws of the Commonwealth, coordinate the contents of such protective order forms with other states in order to facilitate the enforcement of foreign protective orders in the Commonwealth and the enforcement of Virginia protective orders in other states.*

## **Chapter 491 Space flight liability and immunity; repeals sunset provision.**

An Act to repeal the second enactment of Chapter 893 of the Acts of Assembly of 2007, relating to space flight liability and immunity; sunset.

[\[H 21\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 893 of the Acts of Assembly of 2007 is repealed.

## **Chapter 379 State Tax Expenditure Report; State Tax Commissioner to issue annually and post on its website.**

An Act to amend and reenact § [58.1-202](#) of the Code of Virginia and to repeal the second enactment of Chapter 874 of the Acts of Assembly of 1996, relating to a tax benefit report.

[\[H 355\]](#)

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-202](#) of the Code of Virginia is amended and reenacted as follows:  
§ [58.1-202](#). General powers and duties of Tax Commissioner.

In addition to the powers conferred and the duties imposed elsewhere by law upon the Tax Commissioner, he shall:

1. Supervise the administration of the tax laws of the Commonwealth, insofar as they relate to taxable state subjects and assessments thereon, with a view to ascertaining the best methods of reaching all such property, of effecting equitable assessments and of avoiding conflicts and duplication of taxation of the same property.
2. Recommend to the Governor and the General Assembly measures to promote uniform assessments, just rates and harmony and cooperation among all officials connected with the revenue system of the Commonwealth.
3. Exercise general supervision over all commissioners of the revenue so far as the duties of such officers pertain to state revenues, and confer with, instruct and advise all such officers in the performance of their duties to the extent stated.
4. Investigate at any time the assessment and collection of state taxes in any county or city and when the assessment is found unreasonable and unjust take steps to correct the same in the manner provided by law.
5. Institute proceedings by motion in writing in the proper court for the removal or suspension of commissioners of the revenue for incompetency, neglect or other official misconduct and order the Comptroller to withhold compensation from any commissioner of the revenue who fails to comply with any law governing the duties or any lawful instruction of the Tax Commissioner, until such commissioner of the revenue complies with such law or instruction.
6. Provide commissioners of the revenue with information and assistance in the assessment of personal property, including the maintenance of a reference library and the conduct of instructional programs.
7. Prescribe the forms of books, schedules and blanks to be used in the assessment and collection of state taxes and call for and prescribe the forms of such statistical reports, notices and other papers as he may deem necessary to the proper administration of the law, and prescribe and install uniform systems to be used by assessing officials.
8. Direct such proceedings, actions and prosecutions to be instituted as may be needful to enforce the revenue laws of the Commonwealth and call on the Attorney General or other proper officer to prosecute such actions and proceedings.
9. Intervene, by petition or otherwise, whenever deemed advisable in any action or proceeding pending in any court wherein the constitutionality or construction of any state tax or revenue statute or the validity of any state tax is in question. The court wherein such action or proceeding is pending may, by order entered therein, make the Tax Commissioner a party thereto whenever deemed necessary.

10. Upon request by any local governing body, local board of equalization or any ten citizens and taxpayers of the locality, render advisory aid and assistance to such board in the matter of equalizing the assessments of real estate and tangible personal property as among property owners of the locality.

11. Annually make available to every county and city and, where appropriate, towns, a general reassessment procedures manual which provides the legal requirements for conducting general reassessments, and guidelines suggesting the broad range of factors in addition to market data that are appropriate for consideration in the determination of fair market value of both rural and urban land and structures.

12. Issue an annual report to the members of the House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee detailing procedures used in the collections process and how the Virginia Taxpayer Bill of Rights (§ [58.1-1845](#)) is implemented to assist with such collections.

13. Ensure that employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers.

14. Issue an annual report to the members of the ~~House Appropriations Committee, the House Finance Committee, and the Senate Finance Committee~~ detailing *General Assembly and post such report on the Department's website that details* the total amount of corporate income tax relief provided in the Commonwealth during the second preceding tax year. The report shall (i) include the total dollar amount of income tax subtractions, deductions, exclusions, and exemptions claimed cumulatively by corporations; (ii) identify all tax credits claimed; ~~and~~ (iii) provide an analysis of the fiscal impact of the corporate tax relief; *and (iv) provide summary information regarding the types of taxpayers who claim the tax relief. The report shall also provide information on the number of companies that have qualified for the major business facility job tax credit established under § [58.1-439](#) and the amount of such credits.* The report shall be submitted by October 1 of each year.

15. Obtain information from each income tax taxpayer as to whether the taxpayer claimed a federal earned income tax credit and the amount claimed, unless such information can be calculated based on other information in the taxpayer's return.

2. That the second enactment of Chapter 874 of the Acts of Assembly of 1996 is repealed.

## **Chapter 408 Certificate of public need; relocation of nursing home beds from one facility to another facility.**

An Act to require the Commissioner of Health to accept applications and to authorize the Commissioner to issue certificates of public need for certain nursing home beds.

[\[H 415\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [32.1-102.1](#) of the Code of Virginia, the relocation of 10 or fewer nursing home beds or 10 percent of the beds, whichever is less, from one facility to another facility under common ownership or control that is located in an adjacent planning district shall not constitute a "project" for purposes of Article 1.1 (§ [32.1-102.1](#) et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, and any regulations of the Board of Health adopted pursuant thereto, provided that the facility to which the beds will be transferred is in compliance with all other laws governing such facilities and, as of December 31 of the year preceding the year in which relocation is proposed, the following criteria are met:*

- 1. The occupancy rate of the facility from which beds are to be relocated was, based upon the total number of beds for which the facility is licensed, less than 90 percent for that preceding year;*
- 2. The average occupancy rate of the facility to which beds are to be relocated was, based upon the total number of beds for which the facility is licensed, 95 percent or more over the previous two years; and*
- 3. Prior to the transfer, the facility to which the beds are to be relocated was licensed for 50 or fewer nursing home beds.*

## **Chapter 828 Governor; shall initiate an operational and programmatic performance review of state agencies.**

An Act to provide for an operational and programmatic performance review of certain public agencies.

[\[H 485\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Governor shall initiate on July 1, 2010, an operational and programmatic performance review of the state agencies and programs identified in § 2, which review shall be concluded by December 1, 2011. The purpose of this review shall be to provide an objective and independent cost savings assessment of the Commonwealth's organizational structure and its programs in order to provide information to the Governor and the General Assembly to effect savings in expenditures, a reduction in duplication of effort, and programmatic efficiencies in the operation of state government. The review shall be conducted by a United States-based private management consulting firm with experience in conducting statewide performance reviews.*

*§ 2. The review shall focus on (i) the agencies under the Secretary of Health and Human Resources and the Secretary of Public Safety, (ii) the Department of Education, including primary and secondary education funded by the Commonwealth, and (iii) any other department, agency, or program of the Commonwealth in the executive branch of state government that the Governor deems necessary to effect savings in expenditures, a reduction in duplication of effort, and programmatic efficiencies in the operation of state government.*

*§ 3. The review shall take into consideration the results of any prior studies, audits, or reviews conducted by (i) the General Assembly, the Joint Legislative Audit and Review Commission, or the Auditor of Public Accounts; (ii) any Governor-appointed commission or like entity; and (iii) any other independent entity that addressed the structure and operation of state government, and identified monetary savings or efficiencies leading to a reduction in costs or reduced duplication of effort.*

*§ 4. The Governor shall ensure that the review is completed, and the results are reported to the General Assembly within 14 days of the completion of the review.*

*The review under this act shall be conducted only pursuant to a fixed price contract, and the contract shall not provide for any payment resulting from the implementation of any recommendations of the review. Savings resulting from the recommendations that are accepted by the Governor or General Assembly shall be used first to reimburse the general fund or the applicable program or agency for the cost of the review.*

## **Chapter 444 Relief for purchaser of property sold at treasurers' sales; Charles L. Kingrea.**

An Act for the relief of Charles L. Kingrea.

[\[S 1\]](#)

Approved April 11, 2010

Whereas, under the provisions of former §§ 58-1029 through 58-1117 of the Code of Virginia, real property as to which local property taxes were delinquent could be sold to satisfy such delinquent taxes at a "treasurer's sale" convened by the city or county treasurer annually in December; and

Whereas, pursuant to these provisions, the purchaser of property at a treasurer's sale was required to pay the delinquent taxes, and further to continue to pay future real estate taxes on the property as they came due for a period of years established by law; and

Whereas, upon payment of both the delinquent taxes and the annual real property taxes for the requisite period of years, the purchaser would become eligible to make application to the circuit court of the city or county to receive a deed, thereby conveying to him clear title to the property, subject to certain limited redemption rights of the owners of the tax-delinquent property prior to the treasurer's sale; and

Whereas, Charles L. Kingrea (Mr. Kingrea) in 1970 and 1971 purchased a total of four parcels of real property located in Floyd County at a "treasurer's sale"; and

Whereas, in 1973, the General Assembly repealed the statutory provisions establishing this procedure for the sale of tax-delinquent property, substituting for it the process of judicial sale of tax-delinquent property now codified in Article 4 (§ [58.1-3965](#) et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia; and

Whereas, at the time of the repeal of the prior procedures for treasurers' sales, the General Assembly provided a savings provision in former § 58-1117.11 of the Code of Virginia to make clear the entitlement of persons who had purchased properties at treasurers' sales prior to June 1, 1973, to obtain deeds for the properties they had purchased under the prior procedures, notwithstanding the repeal of the former statutes; and

Whereas, in 1984, during the recodification of Title 58 of the Code of Virginia, the savings provision in former § 58-1117.11 of the Code of Virginia was repealed because it was considered "obsolete" according to the recodification report; and

Whereas, Mr. Kingrea purchased the four parcels of real property at treasurers' sales in good faith, paid the taxes due with respect to such properties, and has not yet received deeds to the properties purchased; and

Whereas, but for the repeal of § 58-1117.11 of the Code of Virginia, he would have a clear statutory entitlement to obtain deeds to the properties he purchased; and

Whereas, the General Assembly passed, during its 2005 Session and its 2006 Session, relief bills, Chapter 10 of the Acts of Assembly of 2005 and Chapter 588 of the Acts of Assembly of 2006, respectively, to provide a clear legal right for certain purchasers of parcels of real property to obtain a deed, but it has become clear that there are other purchasers similarly situated; and

Whereas, it is appropriate to provide a general legal right for such purchasers to obtain the deeds to which they were entitled under prior law and would to this day remain entitled, but for the inadvertent repeal of the savings provision contained in former § 58-1117.11; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Charles L. Kingrea who, prior to June 1, 1973, purchased real property as described in § 2 under the provisions of former §§ 58-1029 through 58-1117 of the Code of Virginia, regarding the disposition and sale of delinquent lands, and who has not received any deeds for the properties so purchased, may institute a proceeding in the circuit court of Floyd County within which such real property is located to obtain deeds to such properties in accordance with the provisions of former § 58-1027 or former §§ 58-1029 through 58-1117.*

*§ 2. The provisions of this act shall apply to those parcels of real property located in Floyd County described generally as follows:*

*a. Tax map number 45-52, consisting of approximately 5 acres lying within the Little River Magisterial District, titled in the name of George O. M. Atkins and purchased by Charles L. Kingrea at a treasurer's sale held on December 13, 1971;*

*b. Tax map number 7-83, consisting of approximately 12 acres lying within the Locust Grove Magisterial District, titled in the name of William T. Howard and purchased by Charles L. Kingrea at a treasurer's sale held on December 14, 1970;*

*c. Tax map number 31-83, consisting of approximately 8 acres lying within the Little River Magisterial District, titled in the name of Creed W. Janney and purchased by Charles L. Kingrea at a treasurer's sale held on December 13, 1971; and*

*d. Tax map number 77-10, consisting of approximately 28.75 acres lying within the Burks Fork Magisterial District, titled in the name of Zeb Nester and purchased by Charles L. Kingrea at a treasurer's sale held on December 14, 1970.*

2. That the provisions of this act shall expire on July 1, 2014, but such expiration date shall not in any way affect or nullify any court proceeding commenced prior to such date regardless of the date of final disposition of such proceeding.

3. That an emergency exists and this act is in effect from its passage.

### **Chapter 462 Route 711; Buchanan County may enter into an agreement with Pike County, Kentucky to improve.**

An Act to authorize certain expenditures of coal and gas road improvement funds by Buchanan County.

[\[S 371\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing body of Buchanan County may enter into an agreement with Pike County, Kentucky, to improve U.S. Route 711, including the acquisition of property for said improvement to U.S. Route 711, and may use coal and gas road improvement funds for such land acquisition and improvements. The Virginia Department of Transportation is authorized to maintain such improvements on U.S. Route 711 after construction of same.*

### **Chapter 500 Water safety zones; authorizes marine patrol divisions in Tidewater localities to patrol.**

An Act to amend and reenact § [28.2-106.1](#) of the Code of Virginia and to repeal the second enactment of Chapter 554 of the Acts of Assembly of 2007, relating to enforcement of federal security and safety zones.

[\[H 296\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § [28.2-106.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [28.2-106.1](#). Patrol and enforcement of federal safety zones and restricted areas. Pursuant to federal authorization *or upon request from a federal agency*, the Virginia Marine Police, *conservation police officers of the Department of Game and Inland Fisheries, and the marine patrol divisions of police departments located in Tidewater Virginia* may patrol and enforce all federal security zones, federal safety zones, and federal restricted areas located within the tidal waters of the Commonwealth.

2. That the second enactment of Chapter 554 of the Acts of Assembly of 2007 is repealed.

## **Chapter 535 Virginia Free File program; Tax Commissioner to establish and model after IRS Free File program.**

An Act to establish a Virginia Free File tax program.

[\[H 1349\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That no later than December 31, 2010, the Tax Commissioner shall establish a Virginia Free File program based on the Internal Revenue Service (IRS) Free File program, as established by the IRS under public rulemaking and set forth in the Federal Register, Vol. 67, No. 213, Monday, November 4, 2002, pages 67247-67251, as other states have done. Such program shall be effective for the filing period for the 2010 calendar year individual income tax returns and every calendar year thereafter.*

*To implement the Virginia Free File program, the Commonwealth shall enter into a non-monetary agreement with companies in the electronic tax preparation and filing industry (the Consortium for Virginia) to work together to offer free, online tax return preparation and filing services to 70 percent of Virginia taxpayers with the lowest incomes, the same as the IRS Free File program for federal taxpayers. The Consortium for Virginia shall offer these free tax services to certain Virginia taxpayers at no cost to the Commonwealth. The Commonwealth shall provide eligible taxpayers with links through the*

*Department of Taxation's website to the free services offered by the Consortium for Virginia participants.*

*The Virginia Free File agreement to be established between the Commonwealth and the Consortium of Virginia shall be based upon the agreement between the IRS and the Consortium of Virginia that was signed by the IRS Commissioner on October 30, 2002, and that was most recently modified and extended on November 5, 2009, and the bilateral commitments, rules, and requirements contained therein, and shall be consistent with IRS Publications 1345 and 3112.*

*The Commonwealth shall, using available resources, coordinate efforts with the IRS Free File program, the Free File Alliance, and the Internal Revenue Service to maximize among eligible Virginia taxpayers (a) awareness of the Virginia Free File program and (b) the claiming of the federal earned income tax credit.*

## **Chapter 549 Cash proffers; collected or accepted by locality after completion of final inspection.**

An Act to delay collection or acceptance of a cash proffer by a locality until issuance of a certificate of occupancy.

[\[H 374\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § [15.2-2298](#), [15.2-2303](#), or [15.2-2303.1](#) of the Code of Virginia for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.*

2. The provisions of this act shall expire on July 1, 2014.

## **Chapter 613 Cash proffers; delays collection or acceptance by locality until completion of final inspection.**

An Act to delay collection or acceptance of a cash proffer by a locality until issuance of a certificate of occupancy.

[\[S 632\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § [15.2-2298](#), [15.2-2303](#), or [15.2-2303.1](#) of the Code of Virginia for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.*

2. The provisions of this act shall expire on July 1, 2014.

## **Chapter 618 Claims; Victor Anthony Burnette.**

An Act for the relief of Victor Anthony Burnette.

[\[H 5\]](#)

Approved April 11, 2010

Whereas, in August 1979, Victor Anthony Burnette (Mr. Burnette) was charged in an indictment with rape and breaking and entering with the intent to commit rape; and  
Whereas, at trial the victim testified that on August 3, 1979, a male entered her apartment and raped her; and

Whereas, the victim described the individual as being five feet eight inches tall, with long blond hair, a mustache and beard and wearing blue jeans; and

Whereas, the victim did not contact law-enforcement officials until August 5, 1979, two days later, despite reportedly seeing the individual outside of her apartment again the night after the alleged rape; and

Whereas, as a result of the rape reported by the victim, a physical evidence recovery kit (PERK) was performed on her; and

Whereas, in addition to the PERK test, a bed sheet and other physical evidence from the scene were submitted to the Virginia Bureau of Forensic Science for analysis; and

Whereas, forensic testing produced three pubic hairs, two of which were consistent with that of the victim, and one of which was consistent with an individual of the characteristics similar to Mr. Burnette's; and

Whereas, it was subsequently determined by Bureau personnel that Mr. Burnette does not secrete the blood type factor in bodily secretions and was therefore a nonsecretor; and

Whereas, since Mr. Burnette is a nonsecretor, technology available in 1979 could not eliminate him as a contributor of the seminal fluid found on the vaginal swab recovered from the victim; and

Whereas, at trial Mr. Burnette produced evidence that on the night of August 3, 1979, he was socializing with two other individuals at the Rainbow Inn located in the Oregon Hill neighborhood of Richmond, Virginia; and

Whereas, upon leaving the establishment, Mr. Burnette went home to care for his invalid grandmother and prepare for work in the morning; and

Whereas, despite consistently maintaining his innocence throughout the trial, on October 23, 1979, Mr. Burnette was convicted in the Circuit Court for the City of Richmond of rape in violation of § [18.2-61](#) of the Code of Virginia and burglary in violation of § [18.2-90](#) of the Code of Virginia; and

Whereas, Mr. Burnette was sentenced to a total of twenty years in the state penitentiary and was subsequently incarcerated; and

Whereas, on August 22, 1980, the Supreme Court of Virginia denied Mr. Burnette's Petition for Appeal; and

Whereas, Mr. Burnette proceeded to serve the sentence and in November 1987, he was released on parole; and

Whereas, on July 25, 1993, Mr. Burnette was discharged from parole; and

Whereas, in 2006, the Commonwealth's Attorney for the City of Richmond conducted a review of the 1979 convictions for rape and burglary; and

Whereas, using previously unavailable forensic testing technology Mr. Burnette was excluded as a contributor to the seminal fluid found in the vaginal swabs recovered from the victim; and

Whereas, the results of this completely reliable scientific method of testing corroborates Mr. Burnette's consistent claims of innocence; and

Whereas, Mr. Burnette has unsuccessfully pursued vindication through the Courts; and  
Whereas, on November 1, 2006, the Court of Appeals issued an order stating, in pertinent part, that it lacked jurisdiction because subsection A of § [19.2-327.11](#) of the Code of Virginia provides that human biological evidence may not be used as the sole basis for seeking relief; and

Whereas, on April 17, 2007, the Virginia Supreme Court issued an opinion rejecting Mr. Burnette's petition for relief based only on the fact that Mr. Burnette was no longer incarcerated; and

Whereas, Mr. Burnette subsequently filed a Petition for Absolute Clemency with the Governor; and

Whereas, on April 6, 2009, the Governor granted Mr. Burnette an absolute pardon; and

Whereas, Mr. Burnette spent eight years of his life incarcerated for crimes that he did not commit during which time he lost the opportunity to earn potential income from employment and participate in other pursuits; and

Whereas, in addition, the effects of being branded a convicted felon and rapist for over twenty years still reside with him daily; and

Whereas, Victor Anthony Burnette has suffered severe physical, emotional, and psychological damage as a result of this wrongful incarceration and has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1

*. § 1. That there is hereby appropriated from the general fund of the state treasury a compensation award in the amount of \$226,065 for the relief of Victor Anthony Burnette upon execution of a release by Mr. Burnette from any present or future claims he may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof and any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia.*

*The award shall be paid as follows: (i) an initial lump sum of \$45,213 paid to Victor Anthony Burnette on or before August 1, 2010, by check issued by the State Treasurer on warrant of the Comptroller and (ii) the sum of \$180,852 to purchase an annuity for the primary benefit of Victor Anthony Burnette providing for equal monthly payments, for a period certain of 25 years commencing on or before August 1, 2011. The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide*

*that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of the death of the person awarded compensation.*

*§ 2. That Victor Anthony Burnette shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on July 1, 2016.*

*§ 3. That Victor Anthony Burnette shall immediately be ineligible to receive any unpaid amounts from the compensation award and his beneficiaries shall be ineligible to receive any payments under the annuity purchased pursuant to § 1 of this act upon any subsequent conviction by Mr. Burnette of any felony. Any unpaid amounts remaining under any annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury. In addition, Victor Anthony Burnette shall be ineligible to receive any unused portion of the tuition for career and technical training provided pursuant to § 2 of this act within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000.*

## **Chapter 678 Constitutional amendment; localities to establish either income or financial worth limitations.**

An Act to provide for the submission to the voters of a proposed amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax relief for persons not less than sixty-five years of age or persons permanently and totally disabled.

[\[S 547\]](#)

Approved April 12, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law ~~who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth.~~ *A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.*

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

§ 2. The ballot shall contain the following question:

"Question: Shall Section 6 of Article X of the Constitution of Virginia be amended to authorize legislation that will permit localities to establish their own income or financial worth limitations for purposes of granting property tax relief for homeowners not less than 65 years of age or permanently and totally disabled?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 776 License plates, special; issuance to supporters of Virginia Kids Eat Free program, etc.**

An Act to authorize the issuance of special license plates; fees.

[\[S 18\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Virginia Kids Eat Free program; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates to supporters of the Virginia Kids Eat Free program.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Kids Eat Free Fund established within the Department of Accounts. These funds shall be paid annually to Virginia Kids Eat Free, Inc., and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 2. Special license plates for supporters of the Professor Garfield Foundation; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates to supporters of the Professor Garfield Foundation.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Professor Garfield Foundation Fund established within the Department of Accounts. These funds shall be paid annually to the Professor Garfield Foundation and used to support its programs related to the Virginia Department of Education. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 3. Special license plates bearing the legend TRUST WOMEN/RESPECT CHOICE; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend TRUST WOMEN/RESPECT CHOICE.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia League for Planned Parenthood Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia League for Planned Parenthood and used to provide women's health services in Virginia, but shall not be used to provide abortion services. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 4. Special license plates bearing the legend BUY LOCAL; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates bearing the legend BUY LOCAL.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Retail Alliance Foundation Fund established within the Department of Accounts. These funds shall be paid annually to the Retail Alliance Foundation and used to support its program and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*§ 5. Special license plates for members and supporters of the Virginia Recycling Association; fees.*

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for members and supporters of the Virginia Recycling Association.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Recycling Association Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Recycling Association and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

§ 6. Special license plates for supporters of the Washington Capitals hockey team; fees.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates to supporters of the Washington Capitals hockey team.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Washington Capitals Charities Fund established within the Department of Accounts. These funds shall be paid annually to the Washington Capitals Charities for its use in community programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

§ 7. Special license plates bearing the legend FRIENDS OF COAL.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates bearing the legend FRIENDS OF COAL.

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Coal Worker Safety Fund established within the Department of Accounts. These funds shall be paid annually to the Department of Mines, Minerals and Energy to support coal worker safety programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 588 Constitutional amendment; property tax exemption for certain veterans.**

An Act to provide for the submission to the voters of a proposed amendment to the Constitution of Virginia by adding in Article X a section numbered 6-A, relating to a property tax exemption for certain veterans.

[\[S 31\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-A as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.*

§ 2. The ballot shall contain the following question:

"Question: Shall the Constitution be amended to require the General Assembly to provide a real property tax exemption for the principal residence of a veteran, or his or her surviving spouse, if the veteran has a 100 percent service-connected, permanent, and total disability?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 604 Schools; delayed implementation of statutes and regulations upon which accreditation is based.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, relating to the delayed implementation of certain regulations and state statutes related to the accreditation of schools.

[\[S 352\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009 is amended and reenacted as follows:

§ 1. That no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2010~~ 2011, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, ~~2010~~ 2011, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in ~~2010-2011~~ 2011 - 2012 based on assessments administered during the ~~2009-2010~~ 2010 - 2011 school year shall be the same passing rates required for full accreditation during the 2008 - 2009 school year. *Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011-2012.*

## **Chapter 606 Constitutional amendment; limit on taxes or revenues and Revenue Stabilization Fund.**

An Act to provide for the submission to the voters of a proposed amendment to Section 8 of Article X of the Constitution of Virginia, relating to limit of tax or revenue and the Revenue Stabilization Fund.

[\[S 362\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 8 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 8. Limit of tax or revenue; *Revenue Stabilization Fund*.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

The General Assembly shall establish the Revenue Stabilization Fund. The Fund shall consist of an amount not to exceed ~~ten~~ *fifteen* percent of the Commonwealth's average annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts for the three fiscal years immediately preceding. The Auditor of Public Accounts shall compute the ~~ten~~ *fifteen* percent limitation of such fund annually and report to the General Assembly not later than the first day of December. "Certified tax revenues" means the Commonwealth's annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts.

The General Assembly shall make deposits to the Fund to equal at least fifty percent of the product of the certified tax revenues collected in the most recently ended fiscal year times the difference between the annual percentage increase in the certified tax revenues collected for the most recently ended fiscal year and the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year. However, growth in certified tax revenues, which is the result of either increases in tax rates on income or retail sales or the repeal of exemptions therefrom, may be excluded, in whole or in part, from the

computation immediately preceding for a period of time not to exceed six calendar years from the calendar year in which such tax rate increase or exemption repeal was effective. Additional appropriations may be made at any time so long as the ~~ten~~ *fifteen* percent limitation established herein is not exceeded. All interest earned on the Fund shall be part thereof; however, if the Fund's balance exceeds the limitation, the amount in excess of the limitation shall be paid into the general fund after appropriation by the General Assembly.

The General Assembly may appropriate an amount for transfer from the Fund to compensate for no more than one-half of the difference between the total general fund revenues appropriated and a revised general fund revenue forecast presented to the General Assembly prior to or during a subsequent regular or special legislative session. However, no transfer shall be made unless the general fund revenues appropriated exceed such revised general fund revenue forecast by more than two percent of certified tax revenues collected in the most recently ended fiscal year. Furthermore, no appropriation or transfer from such fund in any fiscal year shall exceed more than one-half of the balance of the Revenue Stabilization Fund. The General Assembly may enact such laws as may be necessary and appropriate to implement the Fund.

§ 2. The ballot shall contain the following question:

"Question: Shall Section 8 of Article X of the Constitution of Virginia be amended to increase the permissible size of the Revenue Stabilization Fund (also known as the "rainy day fund") from 10 percent to 15 percent of the Commonwealth's average annual tax revenues derived from income and retail sales taxes for the preceding three fiscal years?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in

the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 623 Certificate of public need; establishment of psychiatric services.**

An Act to require the Commissioner of Health to accept applications and to authorize the Commissioner to issue certificates of public need to establish a psychiatric service.

[\[H 371\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding (i) the provisions of §§ [32.1-102.3](#) and [32.1-102.3:2](#) of the Code of Virginia, (ii) any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, and (iii) any current Requests for Applications issued pursuant to § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health shall accept and review applications in any certificate of public need Batch Group G review cycle and may issue certificates of public need for the establishment of a psychiatric service as the result of a relocation of psychiatric beds from one hospital in Planning District 5 to another hospital in Planning District 5. No psychiatric beds relocated from one hospital to another hospital in Planning District 5 to establish a new psychiatric service shall be converted to any use other than inpatient psychiatric care.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 647 Roanoke River Rails-to-Trails, Inc.; conveyance of certain property in Town of Lawrenceville.

An Act to convey certain real property to Roanoke River Rails-to-Trails, Inc.

[\[H 1302\]](#)

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Corrections is hereby authorized to sell and convey, in its "as is" condition and for the nominal monetary consideration of \$1, to Roanoke River Rails-to-Trails, Inc., approximately 1.833 acres of property with improvements thereon being bounded on the north by the right-of-way of the Southern Railway, on the east by Beach Street, on the south by Fourth Street, and on the west by Belt Road, and being all of block 16, (containing lots 57, 59, 61, 62, 63, 64, and 65) as shown on the map of the Town of Lawrenceville recorded in Deed Book 2, Page 35, in the Office of the Clerk of the Circuit Court of the County of Brunswick.*

*§ 2. Roanoke River Rails-to-Trails, Inc., shall pay all costs and expenses incurred in the transfer of the property and shall be responsible for all costs related to the abatement, in accordance with applicable law, of any existing environmental contamination of the property.*

*§ 3. Such property is for the use of Roanoke River Rails-to-Trails, Inc. In the event Roanoke River Rails-to-Trails, Inc., or a successor organization ceases to use the property primarily for the management and operation of a trail for public park purposes, all of the property or interests therein shall revert to the Department of Conservation and Recreation.*

*§ 4. Such sale and conveyance shall be approved by the Governor pursuant to [§ 2.2-1150](#) of the Code of Virginia and made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the sale and conveyance.*

## **Chapter 659 Space flight liability and immunity; repeals sunset provision.**

An Act to repeal the second enactment of Chapter 893 of the Acts of Assembly of 2007, relating to space flight liability and immunity; sunset.

[\[S 189\]](#)

Approved April 12, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 893 of the Acts of Assembly of 2007 is repealed.

## **Chapter 679 Geospatial Health Research; Secretaries of Health and Human Resources and Technology to evaluate.**

An Act to require the Secretaries of Health and Human Resources and Technology to evaluate opportunities for developing a network for geospatial health research.

[\[S 549\]](#)

Approved April 12, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretaries of Health and Human Resources and Technology shall evaluate opportunities to partner with nonprofit organizations and institutions of higher education in the Commonwealth to develop a network for geospatial health research. Such evaluation shall include consideration of opportunities for:*

*1. Establishing relationships with academic programs throughout the Commonwealth that use geospatial analysis to understand and assess environmental health, public health, and health care issues, to strengthen programs through technical assistance, provide support for graduate research, and facilitate sharing of education opportunities across institutions, including (i) developing a network of experts and a system of peer review that does not limit individual institution's academic freedom; (ii) supporting*

*educational advancement; (iii) providing a conduit for seeking grant funding for research and practice; (iv) supplying technical geographic information system infrastructure support; and (v) assisting state health agencies, policy makers, and health administrators in understanding optimal targeting and utilization of resources;*

*2. Supporting and coordinating academic, state agency, and private sector expertise in geospatial analysis, health policy, health planning, environmental health analysis, and epidemiology and facilitating the development of new approaches and methodologies to sustain effective public health and health care interventions across all health-related state agencies throughout the Commonwealth;*

*3. Coordinating, with the Virginia Geographic Information Network Division, the development of a clearinghouse for geospatially referenced health and health systems' relevant data through a web-based geospatial data-sharing system;*

*4. Expanding research opportunities and increasing potential funding opportunities for relevant public health research in Virginia by seeking private sector grants and other funding to the benefit of health and health care stakeholders throughout the Commonwealth;*

*5. Providing a broad array of private and public entities with the requisite data to develop appropriate environmental health analysis, health care delivery models, and assessment within the health and health care system in Virginia and providing technical assistance in analyzing such data;*

*6. Functioning as a service organization to cost-effectively leverage existing hardware, software, data, applications, and personnel to support new research projects within its partner organizations; and*

*7. Making geospatial services and data available to faculty and students from educational institutions as well as to the Department of Health, public health officials and researchers, and other appropriate persons, with the goal of improving existing public health programs, developing new evidence-based initiatives, and better informing the health policy decision-making process through health-related assessment activities.*

*§ 2. That the Secretaries of Health and Human Resources and Technology shall report their findings to the Governor; the Senate Committees on Education and Health, Finance, and General Laws and Technology; and the House Committees on Appropriations, Health, Welfare and Institutions, and Science and Technology no later than December 1, 2010.*

## **Chapter 688 Certificate of public need; Commissioner of Health to accept & approve request to amend conditions.**

An Act to amend certain certificate of public need.

[\[S 653\]](#)

Approved April 12, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subsection E of § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health may accept and approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 of the Code of Virginia in which nursing facility or extended care services are provided to allow such continuing care provider to continue to admit community patients, other than contract holders, to its nursing facility beds through December 31, 2013, if the following conditions are met: (i) the facility is located within the City of Norfolk and operated as a not-for-profit and (ii) the facility's contract holder occupancy rate is less than 85 percent at the time of such application.*

## **Chapter 728 Menhaden fisheries; extends sunset provision for harvest.**

An Act to amend and reenact the second enactment of Chapter 41 of the Acts of Assembly of 2007, relating to the harvest cap on menhaden; sunset date.

[\[S 47\]](#)

Approved April 13, 2010

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 41 of the Acts of Assembly of 2007 is amended and reenacted as follows:

2. That the provisions of this act shall expire on ~~December 31, 2010~~ *January 1, 2014*.

**Chapter 771 Constitutional amendment; property tax exemption for certain veterans (second reference).**

HOUSE JOINT RESOLUTION NO. 33

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 6-A, relating to a property tax exemption for certain veterans.

Agreed to by the House of Delegates, February 2, 2010

Agreed to by the Senate, February 26, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-A as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-*

*connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.*

## **Chapter 874 Budget Bill.**

An Act for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § [2.2-1509](#), Code of Virginia, and to provide a portion of revenues for the two years ending respectively on the thirtieth day of June, 2011, and the thirtieth day of June, 2012, and to amend and reenact §§ [15.2-1627.3](#), [16.1-69.48:1](#), [16-1.48:2](#), [17.1-275](#), [46.2-878.3](#) and [58.1-301](#) of the Code of Virginia, and to repeal § [58.1-615.1](#) of the Code of Virginia.

[\[H 30\]](#)

Approved May 17, 2010

Be it enacted by the General Assembly of Virginia:

## **Chapter 744 Constitutional amendment; limit on taxes or revenues and Revenue Stabilization Fund.**

An Act to provide for the submission to the voters of a proposed amendment to Section 8 of Article X of the Constitution of Virginia, relating to limit of tax or revenue and the Revenue Stabilization Fund.

[\[H 147\]](#)

Approved April 13, 2010

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2010, at the places appointed for

holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 8 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 8. Limit of tax or revenue; *Revenue Stabilization Fund*.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

The General Assembly shall establish the Revenue Stabilization Fund. The Fund shall consist of an amount not to exceed ~~ten~~ *fifteen* percent of the Commonwealth's average annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts for the three fiscal years immediately preceding. The Auditor of Public Accounts shall compute the ~~ten~~ *fifteen* percent limitation of such fund annually and report to the General Assembly not later than the first day of December. "Certified tax revenues" means the Commonwealth's annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts.

The General Assembly shall make deposits to the Fund to equal at least fifty percent of the product of the certified tax revenues collected in the most recently ended fiscal year times the difference between the annual percentage increase in the certified tax revenues collected for the most recently ended fiscal year and the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year. However, growth in certified tax revenues, which is the result of either increases in tax rates on income or retail sales or the repeal of exemptions therefrom, may be excluded, in whole or in part, from the computation immediately preceding for a period of time not to exceed six calendar years from the calendar year in which such tax rate increase or exemption repeal was effective. Additional appropriations may be made at any time so long as the ~~ten~~ *fifteen* percent limitation established herein is not exceeded. All interest earned on the Fund shall be part thereof; however, if the Fund's balance exceeds the limitation, the amount in excess of the limitation shall be paid into the general fund after appropriation by the General Assembly.

The General Assembly may appropriate an amount for transfer from the Fund to compensate for no more than one-half of the difference between the total general fund revenues appropriated and a revised general fund revenue forecast presented to the General Assembly prior to or during a subsequent regular or special legislative session. However, no transfer shall be made unless the general fund revenues appropriated exceed such revised general fund revenue forecast by more than two percent of certified tax revenues collected in the most recently ended fiscal year. Furthermore, no appropriation or transfer from such fund in any fiscal year shall exceed more than one-half of the balance of the Revenue Stabilization Fund. The General Assembly may enact such laws as may be necessary and appropriate to implement the Fund.

§ 2. The ballot shall contain the following question:

"Question: Shall Section 8 of Article X of the Constitution of Virginia be amended to increase the permissible size of the Revenue Stabilization Fund (also known as the "rainy day fund") from 10 percent to 15 percent of the Commonwealth's average annual tax revenues derived from income and retail sales taxes for the preceding three fiscal years?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2011.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 770 Constitutional amendment; localities to establish either income or financial worth limitations.**

HOUSE JOINT RESOLUTION NO. 11

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax relief for persons not less than sixty-five years of age or persons permanently and totally disabled.

Agreed to by the House of Delegates, February 2, 2010

Agreed to by the Senate, February 26, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law ~~who are deemed by the General Assembly to be bearing an extraordinary tax burden on said property in relation to their income and financial worth.~~ *A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.*

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law

may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

## **Chapter 772 Constitutional amendment; limit on taxes or revenues and Revenue Stabilization Fund.**

HOUSE JOINT RESOLUTION NO. 34

Proposing an amendment to Section 8 of Article X of the Constitution of Virginia, relating to limit of tax or revenue and the Revenue Stabilization Fund.

Agreed to by the House of Delegates, February 2, 2010

Agreed to by the Senate, February 26, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 8 of Article X of the Constitution of Virginia as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

#### Section 8. Limit of tax or revenue; *Revenue Stabilization Fund*.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

The General Assembly shall establish the Revenue Stabilization Fund. The Fund shall consist of an amount not to exceed ~~ten~~ *fifteen* percent of the Commonwealth's average annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts for the three fiscal years immediately preceding. The Auditor of Public Accounts shall compute the ~~ten~~ *fifteen* percent limitation of such fund annually and report to the General Assembly not later than the first day of December. "Certified tax revenues" means the Commonwealth's annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts.

The General Assembly shall make deposits to the Fund to equal at least fifty percent of the product of the certified tax revenues collected in the most recently ended fiscal year

times the difference between the annual percentage increase in the certified tax revenues collected for the most recently ended fiscal year and the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year. However, growth in certified tax revenues, which is the result of either increases in tax rates on income or retail sales or the repeal of exemptions therefrom, may be excluded, in whole or in part, from the computation immediately preceding for a period of time not to exceed six calendar years from the calendar year in which such tax rate increase or exemption repeal was effective. Additional appropriations may be made at any time so long as the ~~ten~~ *fifteen* percent limitation established herein is not exceeded. All interest earned on the Fund shall be part thereof; however, if the Fund's balance exceeds the limitation, the amount in excess of the limitation shall be paid into the general fund after appropriation by the General Assembly.

The General Assembly may appropriate an amount for transfer from the Fund to compensate for no more than one-half of the difference between the total general fund revenues appropriated and a revised general fund revenue forecast presented to the General Assembly prior to or during a subsequent regular or special legislative session. However, no transfer shall be made unless the general fund revenues appropriated exceed such revised general fund revenue forecast by more than two percent of certified tax revenues collected in the most recently ended fiscal year. Furthermore, no appropriation or transfer from such fund in any fiscal year shall exceed more than one-half of the balance of the Revenue Stabilization Fund. The General Assembly may enact such laws as may be necessary and appropriate to implement the Fund.

### **Chapter 773 Constitutional amendment; property tax exemption for certain veterans (second reference).**

SENATE JOINT RESOLUTION NO. 13

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 6-A, relating to a property tax exemption for certain veterans.

Agreed to by the Senate, February 1, 2010

Agreed to by the House of Delegates, March 2, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-A as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-A. Property tax exemption for certain veterans.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.*

**Chapter 814 Civics education; teachers training to include local government and civics specific to State.**

An Act to require that civics education training for educators include local government information specific to Virginia.

[\[S 715\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall amend its regulations to require that all teacher education preparation programs in early/primary preK-3, elementary education preK-6, middle education 6-8, and history and social sciences include local government and civics instruction specific to Virginia.*

*§ 2. That the Board of Education shall amend its regulations to require any individual seeking renewal of a license with an endorsement in early/primary preK-3, elementary education preK-6, middle education 6-8, history and social sciences, history, or political science to complete study of the structures, function, and powers of state and local government of Virginia and the importance of citizen participation in the political process in state and local government of Virginia. The study may be satisfactorily completed using any applicable option described in the Virginia Licensure Renewal Manual. This requirement shall be met one time for the individual's next renewal after July 1, 2012.*

2. That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective by July 1, 2011.

## **Chapter 774 Constitutional amendment; limit on taxes or revenues and Revenue Stabilization Fund.**

SENATE JOINT RESOLUTION NO. 81

Proposing an amendment to Section 8 of Article X of the Constitution of Virginia, relating to limit of tax or revenue and the Revenue Stabilization Fund.

Agreed to by the Senate, February 8, 2010

Agreed to by the House of Delegates, March 2, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the

General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 8 of Article X of the Constitution of Virginia as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

##### Section 8. Limit of tax or revenue; *Revenue Stabilization Fund*.

No other or greater amount of tax or revenues shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the Commonwealth.

The General Assembly shall establish the Revenue Stabilization Fund. The Fund shall consist of an amount not to exceed ~~ten~~ *fifteen* percent of the Commonwealth's average annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts for the three fiscal years immediately preceding. The Auditor of Public Accounts shall compute the ~~ten~~ *fifteen* percent limitation of such fund annually and report to the General Assembly not later than the first day of December. "Certified tax revenues" means the Commonwealth's annual tax revenues derived from taxes on income and retail sales as certified by the Auditor of Public Accounts.

The General Assembly shall make deposits to the Fund to equal at least fifty percent of the product of the certified tax revenues collected in the most recently ended fiscal year times the difference between the annual percentage increase in the certified tax revenues collected for the most recently ended fiscal year and the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year. However, growth in certified tax revenues, which is the result of either increases in tax rates on income or retail sales or the repeal of exemptions therefrom, may be excluded, in whole or in part, from the computation immediately preceding for a period of time not to exceed six calendar years from the calendar year in which such tax rate increase or exemption repeal was effective. Additional appropriations may be made at any time so long as the ~~ten~~ *fifteen* percent limitation established herein is not exceeded. All interest earned on the Fund shall be

part thereof; however, if the Fund's balance exceeds the limitation, the amount in excess of the limitation shall be paid into the general fund after appropriation by the General Assembly.

The General Assembly may appropriate an amount for transfer from the Fund to compensate for no more than one-half of the difference between the total general fund revenues appropriated and a revised general fund revenue forecast presented to the General Assembly prior to or during a subsequent regular or special legislative session. However, no transfer shall be made unless the general fund revenues appropriated exceed such revised general fund revenue forecast by more than two percent of certified tax revenues collected in the most recently ended fiscal year. Furthermore, no appropriation or transfer from such fund in any fiscal year shall exceed more than one-half of the balance of the Revenue Stabilization Fund. The General Assembly may enact such laws as may be necessary and appropriate to implement the Fund.

## **Chapter 775 Constitutional amendment; localities to establish either income or financial worth limitations.**

SENATE JOINT RESOLUTION NO. 97

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax relief for persons not less than sixty-five years of age or persons permanently and totally disabled.

Agreed to by the Senate, February 8, 2010

Agreed to by the House of Delegates, March 2, 2010

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2009 and referred to this, the next regular session held after the 2009 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in

conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

## ARTICLE X

### TAXATION AND FINANCE

#### Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law ~~who are deemed by the General Assembly to be bearing an extraordinary tax burden on~~

~~said property in relation to their income and financial worth.~~ *A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.*

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any

other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

## **Chapter 786 JLARC; shall administer an operational/programmatic performance audit on transportation programs.**

An Act to require the Joint Legislative Audit and Review Commission to administer an audit of transportation programs.

[\[S 201\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Joint Legislative Audit and Review Commission shall administer an operational and programmatic performance audit focusing on the agencies within the Transportation Secretariat, with primary emphasis on the transportation planning and programming divisions within the Department of Transportation and the Department of Rail and Public Transportation. The purpose of this audit shall be to provide an objective and independent cost savings assessment of the Commonwealth's organizational structure and the efficiency, level of adherence to federal regulations, and effectiveness of the Commonwealth's transportation planning and programming procedures in order to provide information to the Governor and the General Assembly on ways to reduce duplication of effort and implement cost savings measures and programmatic efficiencies in the operation of state transportation programs. In order to achieve its overall purpose, the audit may consist of a series of concurrent audits concentrating on specified categories or groupings. A final report on the findings of the performance audit shall be submitted to the Joint Commission on Transportation Accountability and the Governor no later than December 31, 2010.*

*§ 2. At a minimum, the report shall identify any deficiencies in the current processes for distributing staffing; in the levels of, and effectiveness of, state and regional collaboration*

*and coordination in the transportation planning and programming process; and in the degree to which statewide and regional processes adhere to and align with federally prescribed transportation planning and programming procedures.*

*§ 3. The report shall consist of detailed findings and recommendations, including but not limited to the following subject areas:*

*1. Improvements that may result in both increased efficiency and cost savings in programs and services, including organization structure and staffing levels;*

*2. Identification and recognition of best practices, to include an assessment of:*

*a. The adequacy of statutory language that recognizes, describes, and supports the Commonwealth's 14 Metropolitan Planning Organizations and that codifies at the state level the federally required minimum level of state-metropolitan collaboration and coordination procedures;*

*b. The merits of, and effectiveness of, the Commonwealth's development of and sustained maintenance of two different state-level transportation programs, namely the federally required State Transportation Improvement Program (STIP) and the State Six-Year Improvement Program (SYIP);*

*c. Statewide transportation planning and programming procedures that may be enhanced, consolidated, reduced, or developed at the regional level, or eliminated;*

*d. The validity of the Virginia Department of Transportation organizational structure that places the Commonwealth's transportation planning and programming functions at the division level rather than at the department level; and*

*e. A list of recommendations to the newly formed Virginia Association of Metropolitan Planning Organizations (VAMPO) to provide direction in facilitating improved levels of statewide and regional coordination;*

*3. Funding for programs and services that may be eliminated or reduced;*

*4. Analysis of current transportation planning and programming management activities that are less financially advantageous to the Commonwealth than maintenance of effort approaches;*

*5. Programs and services that may be enhanced, consolidated, reduced, eliminated, or transferred to the private sector;*

*6. Identification of gaps and overlaps in programs and services and suggestions for improving, blending, or separating of functions to correct any identified gaps or overlaps and reduce duplication of effort;*

*7. Changes to the definition of activities undertaken by the departments, particularly with respect to the definition of maintenance of transportation infrastructure;*

*8. Methods to verify the reliability and validity of performance data, self-assessments, and performance-measurement systems used by the departments; and*

*9. Adoption, amendment, or repeal of statutes, regulations, rules, and policy directives necessary to ensure that the departments carry out their statutory responsibilities.*

*§ 4. The audit shall take into consideration results of any prior studies, audits, or reviews conducted by (i) the General Assembly, the Joint Legislative Audit and Review Commission, or the Auditor of Public Accounts; (ii) any Governor-appointed commission or other like entity; or (iii) any other independent entity that addressed the structure and operation of state government and identified monetary savings, reduced duplication of effort, or efficiencies leading to a reduction in costs.*

## **Chapter 819 Transportation programs; JLARC to administer a performance audit, report.**

An Act to require the Joint Legislative Audit and Review Commission to administer an audit of transportation programs.

[\[H 42\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Joint Legislative Audit and Review Commission shall administer an operational and programmatic performance audit focusing on the agencies within the Transportation Secretariat, with primary emphasis on the transportation planning and programming divisions within the Department of Transportation and the Department of Rail and Public Transportation. The purpose of this audit shall be to provide an objective and independent cost savings assessment of the Commonwealth's organizational structure and the efficiency, level of adherence to federal regulations, and effectiveness of the Commonwealth's transportation planning and programming procedures in order to provide information to the Governor and the General Assembly on ways to reduce duplication of effort and implement cost savings measures and programmatic efficiencies in the operation of state transportation programs. In order to achieve its overall purpose, the audit may consist of a series of concurrent audits concentrating on specified categories or groupings. A final report on the findings of the performance audit shall be submitted to*

*the Joint Commission on Transportation Accountability and the Governor no later than December 31, 2010.*

*§ 2. At a minimum, the report shall identify any deficiencies in the current processes for distributing staffing; in the levels of, and effectiveness of, state and regional collaboration and coordination in the transportation planning and programming process; and in the degree to which statewide and regional processes adhere to and align with federally prescribed transportation planning and programming procedures.*

*§ 3. The report shall consist of detailed findings and recommendations, including but not limited to the following subject areas:*

*1. Improvements that may result in both increased efficiency and cost savings in programs and services, including organization structure and staffing levels;*

*2. Identification and recognition of best practices, to include an assessment of:*

*a. The adequacy of statutory language that recognizes, describes, and supports the Commonwealth's 14 Metropolitan Planning Organizations and that codifies at the state level the federally required minimum level of state-metropolitan collaboration and coordination procedures;*

*b. The merits of, and effectiveness of, the Commonwealth's development of and sustained maintenance of two different state-level transportation programs, namely the federally required State Transportation Improvement Program (STIP) and the State Six-Year Improvement Program (SYIP);*

*c. Statewide transportation planning and programming procedures that may be enhanced, consolidated, reduced, or developed at the regional level, or eliminated;*

*d. The validity of the Virginia Department of Transportation organizational structure that places the Commonwealth's transportation planning and programming functions at the division level rather than at the department level; and*

*e. A list of recommendations to the newly formed Virginia Association of Metropolitan Planning Organizations (VAMPO) to provide direction in facilitating improved levels of statewide and regional coordination;*

*3. Funding for programs and services that may be eliminated or reduced;*

*4. Analysis of current transportation planning and programming management activities that are less financially advantageous to the Commonwealth than maintenance of effort approaches;*

*5. Programs and services that may be enhanced, consolidated, reduced, eliminated, or transferred to the private sector;*

6. *Identification of gaps and overlaps in programs and services and suggestions for improving, blending, or separating of functions to correct any identified gaps or overlaps and reduce duplication of effort;*
  7. *Changes to the definition of activities undertaken by the departments, particularly with respect to the definition of maintenance of transportation infrastructure;*
  8. *Methods to verify the reliability and validity of performance data, self-assessments, and performance-measurement systems used by the departments; and*
  9. *Adoption, amendment, or repeal of statutes, regulations, rules, and policy directives necessary to ensure that the departments carry out their statutory responsibilities.*
- § 4. *The audit shall take into consideration results of any prior studies, audits, or reviews conducted by (i) the General Assembly, the Joint Legislative Audit and Review Commission, or the Auditor of Public Accounts; (ii) any Governor-appointed commission or other like entity; or (iii) any other independent entity that addresses the structure and operation of state government and has identified monetary savings, reduced duplication of effort, or efficiencies leading to a reduction in costs.*

## **Chapter 836 Aerospace Advisory Council; adds five members, powers and duties.**

An Act to amend and reenact §§ [2.2-2699.1](#) and [2.2-2699.2](#) of the Code of Virginia and to repeal the second enactment of Chapter 891 of the Acts of Assembly of 2007, relating to the Aerospace Advisory Council.

[\[H 676\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-2699.1](#) and [2.2-2699.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-2699.1](#). Aerospace Advisory Council; purpose; membership; compensation; chairman.

A. The Aerospace Advisory Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Council shall be to advise the Governor, ~~on policy and funding priorities to promote the aerospace and space exploration industry in the Commonwealth.~~ *the Joint*

*Commission on Technology and Science, and the Secretaries of Commerce and Trade, Technology, and Education on policy and funding priorities with respect to aerospace economic development, workforce training, educational programs, and educational curriculum. The Council shall suggest strategies to attract and promote the development of existing aerospace companies, new aerospace companies, federal aerospace agencies, aerospace research, venture and human capital, and applied research and technology that contribute to the growth and development of the aerospace sector in the Commonwealth.*

B. The Council shall have a total membership of ~~14~~ 19 members that shall consist of four legislative members and ~~10~~ 15 nonlegislative citizen members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate, to be appointed by the Senate Committee on Rules and ~~10~~ 15 nonlegislative citizen members, of whom one shall represent the Mid-Atlantic Regional Spaceport, one shall represent Old Dominion University, *one shall represent the University of Virginia, and one shall represent Virginia Tech, and five shall represent aerospace companies or suppliers within the Commonwealth,* to be appointed by the Governor, *and serve with voting privileges.* ~~The Director of Directors of the Department of Aviation, the National Institute of Aerospace, the Virginia Tourism Authority and the Virginia Space Grant Consortium shall serve as an ex officio member members with voting privileges.~~ A representative of NASA Wallops Flight Facility; *and a representative of NASA's Langley Research Center, and a representative of the National Institute of Aerospace, all each* to be appointed by the Governor, shall serve as ex officio liaisons to ~~member~~ the Council with non-voting privileges. Legislative members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in [§ 30-19.12](#). Nonlegislative citizen members shall serve without compensation *or reimbursement for reasonable and necessary expenses.* ~~All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#).~~ Funding for compensation and expenses of legislative members shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee.-

~~Funding for the costs of expenses of the nonlegislative citizen members and all other expenses of the Council shall be provided by the Office of the Secretary of Technology Department of Aviation.~~

D. The Council shall elect a chairman and a vice-chairman annually from among its *legislative* membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the ~~Office of the Secretary of Technology Department of Aviation~~. *The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.*

§ [2.2-2699.2](#). Powers and duties of the Council.

The Council shall have the power and duty to:

- ~~1. Identify any federal or state regulatory impediments, including taxation, to the development of the Mid-Atlantic Regional Spaceport;~~
  - ~~2. Identify threats to the spaceport's viability, such as encroachment, zoning, mineral exploration and exploitation, and noncompatible uses of the spaceport;~~
  - ~~3. Advise the Governor on potential economic development opportunities and marketing strategies to attract launch companies to Virginia;~~
  - ~~4. Identify and recommend policy and legislative solutions to potential state legal barriers to human spaceflight, including liability and assumption of risk issues;~~
  - ~~5. Advise the Governor on infrastructure and marketing investments needed to achieve the spaceport's full potential and that of Virginia's aerospace sector as a whole;~~
  - ~~6. Develop a long-term strategic plan to make the Mid-Atlantic Regional Spaceport the premiere commercial hub for space travel in the United States;~~
  - ~~7. Identify and recommend actions to position Virginia's aerospace sector to take advantage of newly emerging opportunities as part of NASA's Vision for Space Exploration; and~~
  - ~~8. Identify and recommend policies to support the critical role of Virginia's universities in providing human capital and research contributions that significantly impact aerospace-related economic development in the Commonwealth.~~
- 1. Identify opportunities and recommend actions to use the economic development engine offered by Virginia's aerospace sector to benefit the sector and the Commonwealth, including the attraction to Virginia of launch and other aerospace companies, as well as federal, national, and international investments, such as the FAA's NextGen initiative and emerging NASA and other federal programs;*

- 2. Develop a long-term strategic plan to make the Mid-Atlantic Regional Spaceport the commercial hub for space travel originating or concluding in the United States;*
  - 3. Contribute to the continued development of the Mid-Atlantic Regional Spaceport. Development efforts shall include, in part:*
    - a. Identification of any federal or state regulatory impediments, including taxation, to the development of the Mid-Atlantic Regional Spaceport;*
    - b. Identification of threats to the spaceport's viability, such as encroachment, zoning, mineral exploration and exploitation, and noncompatible uses of the spaceport; and*
    - c. Identification and recommendation of policy and legislative solutions to potential state legal barriers to human spaceflight;*
  - 4. Advise the Governor and the General Assembly on infrastructure and marketing investments needed to achieve the full potential of Virginia's aerospace sector as a whole, including, but not limited to, the Mid-Atlantic Regional Spaceport;*
  - 5. Identify and recommend policies to support the critical role of Virginia's universities in providing human capital and research contributions that significantly impact the economic development of aerospace-related and aerodynamic-dependent industries in the Commonwealth;*
  - 6. Identify and recommend policies to support aerospace sector needs for workforce development as provided by the Virginia Community College System and precollege educational system, including suggestions for enhanced development of Virginia's high-tech workforce pipeline in engineering, technology, and science; and*
  - 7. Assist the Governor in any aerospace-related events and conferences hosted by the Commonwealth.*
2. That the second enactment of Chapter 891 of the Acts of Assembly of 2007 is repealed.

## **Chapter 872 Budget Bill.**

An Act to amend and reenact Chapter 781 of the 2009 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2009, and the thirtieth day of June, 2010, and to amend and reenact § [58.1-301](#) of the Code of Virginia and to repeal § [58.1-615.1](#) of the Code of Virginia.

[\[H 29\]](#)

Approved May 7, 2010

Be it enacted by the General Assembly of Virginia:

## **Chapter 845 Immediate sanction probation program; established.**

An Act to establish up to two pilot immediate sanction probation programs.

[\[H 927\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there may be established in the Commonwealth up to two immediate sanction probation programs in accordance with the following provisions:*

*A. As a condition of a sentence suspended pursuant to § [19.2-303](#) of the Code of Virginia, a court may order a defendant convicted of a crime, other than a violent crime as defined in subsection C of § [17.1-805](#) of the Code of Virginia, to participate in an immediate sanction probation program.*

*B. If a participating offender fails to comply with any term or condition of his probation and the alleged probation violation is not that the offender committed a new crime or infraction, (i) his probation officer shall immediately issue a noncompliance letter pursuant to § [53.1-149](#) of the Code of Virginia authorizing his arrest at any location in the Commonwealth and (ii) his probation violation hearing shall take priority on the court's docket. The probation officer may, in any event, exercise any other lawful authority he may have with respect to the offender.*

*C. When a participating offender is arrested pursuant to subsection B, the court shall conduct an immediate sanction hearing unless (i) the alleged probation violation is that the offender committed a new crime or infraction; (ii) the alleged probation violation is that the offender absconded for more than seven days; or (iii) the offender, attorney for the Commonwealth, or the court objects to such immediate sanction hearing. If the court conducts an immediate sanction hearing, it shall proceed pursuant to subsection D. Otherwise, the court shall proceed pursuant to § [19.2-306](#) of the Code of Virginia.*

*D. At the immediate sanction hearing, the court shall receive the noncompliance letter, which shall be admissible as evidence, and may receive other evidence. If the court finds good cause to believe that the offender has violated the terms or conditions of his probation, it may (i) revoke no more than 30 days of the previously suspended sentence and (ii) continue or modify any existing terms and conditions of probation. If the court*

*does not modify the terms and conditions of probation or remove the defendant from the program, the previously ordered terms and conditions of probation shall continue to apply. The court may remove the offender from the immediate sanction probation program at any time.*

2. That the Virginia Criminal Sentencing Commission shall report to the Chairmen of the House and Senate Courts of Justice Committees on or before January 12, 2012, on the operation and costs of any established immediate sanction probation program, including statistics on the characteristics of the participants and the outcomes of their participation.

3. That the Virginia Criminal Sentencing Commission may calculate the impact of a revocation of a suspended sentence for a participant in an immediate sanction probation program differently than the revocation of a sentence pursuant to § [19.2-306](#) of the Code of Virginia.

4. That the provisions of this act shall expire on July 1, 2012.

## **Chapter 870 Medical Assistance Services, Department of; establishing pilot program for use of biometric data.**

An Act to require the Department of Medical Assistance Services to develop a pilot program for the use of biometric data to improve quality of care and efficiency and reduce waste, fraud, and abuse in the Commonwealth's Medicaid program.

[\[H 1378\]](#)

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Medical Assistance Services (Department) shall design and develop a plan for a pilot program to (i) increase the quality of care provided to recipients of medical assistance services; (ii) improve the accuracy and efficiency in billing for medical assistance services by providers; (iii) reduce the potential for identity theft and the unlawful use of recipients' identifying information; and (iv) reduce waste, fraud, and abuse in the state's Medicaid program.*

*§ 2. The design of such pilot program shall include (i) implementation of a system that utilizes biometric data such as fingerprints to immediately verify a recipient's identity and*

*eligibility for services and to create, store, and use electronic records that contain information about the type, nature, and duration of services rendered to a recipient by a provider; (ii) participation by all medical assistance services recipients in at least one urban, one suburban, and one rural county of the Commonwealth, to ensure participation of a sufficient number of persons to allow for collection of meaningful data and information; (iii) distribution of necessary equipment, including biometric readers and any cards or other materials or documents, to recipients and providers at no cost by the Department; and (iv) regular monitoring and review of individual service recipients' electronic records by the Department to identify and address inaccurate charges and instances of waste, fraud, or abuse.*

*§ 3. The design of such pilot program shall also include provisions (i) to ensure that all devices and systems utilized as part of the pilot program comply with standards for biometric data developed by the American National Standards Institute/National Institute of Standards and Technology and all state and federal requirements relating to interoperability and information security, including all requirements of the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.); (ii) to ensure that service recipients' personal identifying, health, and other information is protected from unauthorized disclosure; (iii) for the development of procedures and guidelines for the use of biometric readers and other equipment to verify a recipient's identity and eligibility for services; (iv) to ensure that every medical assistance services provider and recipient participating in the pilot program is informed as to the purpose of the program, the processes for capturing, enrolling, and verifying biometric data, the manner in which biometric data will be used, and steps that will be taken to protect personal identifying, health, and other information from unauthorized disclosure; (v) to allow for actual demonstration of the data capture and verification processes for every medical assistance services provider and recipient participating in the pilot program; (vi) for addressing problems related to the loss, theft, or malfunction of or damage to equipment and any identifying documents or materials provided by the Department; and (vii) for development of a hotline or other means by which providers and recipients may contact the Department for assistance.*

*§ 4. The Department shall report to the General Assembly on the design and development of the plan for the pilot program, costs of the pilot program, savings associated with the pilot program, and any other pertinent information no later than 90 days after federal funding for the plan has been received.*

2. That the plan for the pilot program developed pursuant to the provisions of this act shall be implemented and carried out by the Department of Medical Assistance Services upon funding for the same being provided under a federal appropriations law.

# Uncodified Acts of Assembly - 2011

## Chapter 2 State's tax code; advances conformity with federal law.

An Act to amend and reenact § [58.1-301](#) of the Code of Virginia and to repeal the third enactment of Chapter 874 of the Acts of Assembly of 2010, relating to conformity of the Commonwealth's tax system with the federal Internal Revenue Code.

[\[H 1874\]](#)

Approved February 16, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-301](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-301](#). Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on ~~January 22~~ *December 31*, 2010, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;

3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108 (i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108 (i) of the Internal Revenue Code) reacquired in ~~taxable year 2009~~ *the taxable year* shall be fully included in the taxpayer's Virginia taxable income for ~~taxable year 2009~~ *the taxable year*, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a 3-taxable-year period beginning with taxable year 2009 *for*

*transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010.* For purposes of such election, all other provisions of § 108 (i) shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument";

5. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010; *and*

6. For taxable years beginning on or after January 1, ~~2010~~ 2011, the provisions of § 32 (b)(3) of the Internal Revenue Code relating to the earned income tax credit; ~~and~~

~~7. For taxable years beginning on or after January 1, 2010, the deduction for qualified motor vehicle taxes pursuant to § 164(a)(6) of the Internal Revenue Code.~~

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

2. That the modifications to subdivisions B 6 and B 7 of § [58.1-301](#) shall be retroactive to taxable years beginning on and after January 1, 2010.

3. That the third enactment of Chapter 874 of the Acts of Assembly of 2010 is repealed and that § 4-12.00 of such act shall not be applicable with respect to the conflict between the third enactment of such act and the provisions of this act, and that the provisions of this act shall prevail over any conflict with the third enactment of Chapter 874 of the Acts of Assembly of 2010.

4. That an emergency exists and this act is in force from its passage.

## **Chapter 11 Higher Educational Institutions Bond Act of 2011; created.**

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$64,579,000 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[H 1505\]](#)

Approved February 24, 2011

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on

that

portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2011."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs and reserve*

*funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>Virginia Commonwealth University</i>	<i>Construct West Grace Street Housing North</i>	<i>17896</i>	<i>\$33,763,000</i>
<i>Virginia State University</i>	<i>Construct Quad, Phase II</i>	<i>17895</i>	<i>\$30,816,000</i>
<i>Total</i>			<i>\$64,579,000</i>

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the construction of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and*

*BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond*

*or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may*

*contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12. Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 13 Personal Property Tax Relief Act; transmission of certain information by DMV.**

An Act to require the Department of Motor Vehicles to transmit certain information regarding vehicles under the Personal Property Tax Relief Act.

[\[H 2244\]](#)

Approved February 24, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Motor Vehicles shall include in the information furnished to commissioners of the revenue pursuant to § [58.1-3534](#) regarding vehicles qualifying for personal property tax relief, whether the vehicle is held in a private trust for nonbusiness*

*purposes by an individual beneficiary.*

## **Chapter 21 License plates, special; repeals references to those with expired authorizations.**

An Act to repeal §§ [46.2-742.1:1](#), [46.2-749.16:1](#), [46.2-749.61](#), [46.2-749.108](#), and [46.2-749.112](#) of the Code of Virginia and to repeal §§ 2, 4, and 5 of Chapter 776 of the Acts of Assembly of 2010, relating to special license plates whose authorizations have expired.

[\[H 1454\]](#)

Approved March 8, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ [46.2-742.1:1](#), [46.2-749.16:1](#), [46.2-749.61](#), [46.2-749.108](#), and [46.2-749.112](#) of the Code of Virginia and §§ 2, 4, and 5 of Chapter 776 of the Acts of Assembly of 2010 are repealed.

## **Chapter 3 Primary schedule in 2011; moves primary date to August 23, 2011, in anticipation of redistricting.**

An Act to provide for a revised primary and filing schedule for the November 2011 election and to schedule the 2011 primary for August 23, 2011.

[\[H 1507\]](#)

Approved February 17, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The provisions of this act shall apply to the November 8, 2011, elections for members of the Senate of Virginia and the House of Delegates of Virginia, for members of county and municipal governing bodies and school boards, for directors of soil and water conservation districts, and, notwithstanding the provisions of § [24.2-515.1](#) of the Code of Virginia, for elective officers subject to the provisions of § [24.2-217](#) of the Code of Virginia.*

§ 2. *The regular primary date for the selection of candidates for such elections shall be Tuesday, August 23, 2011, and not Tuesday, June 14, 2011. There shall be no primary on June 14, 2011, and the primary date for any special election on November 8, 2011, shall be August 23, 2011.*

§ 3. *For purposes of § [24.2-516](#) of the Code of Virginia, the State Board of Elections shall make inquiry of each party chairman by Friday, May 27, 2011, as to whether a direct primary has been adopted, and the Board must receive notification as provided in § [24.2-516](#) not later than Friday, June 3, 2011.*

§ 4. *The declaration of candidacy, petitions, and receipts indicating the payment of filing fees for a primary election required by § [24.2-522](#) of the Code of Virginia shall be filed not earlier than noon on Tuesday, June 7, 2011, and not later than 5:00 p.m. on Wednesday, June 15, 2011.*

§ 5. *The statements required to be filed by primary candidates under § [24.2-503](#) of the Code of Virginia shall be filed not later than 5:00 p.m. on Wednesday, June 15, 2011. The extension of any deadline requested under § [24.2-503](#) shall be no longer than 48 hours.*

§ 6. *The chairman or chairmen required to furnish names of candidates for a primary under § [24.2-527](#) of the Code of Virginia shall do so no later than Friday, June 17, 2011.*

§ 7. *Ballots for the August 23, 2011, primary shall be sent to qualified absentee voters who are eligible for an absentee ballot under subdivision 2 of § [24.2-700](#) and made available to all other qualified absentee voters on or before Friday, July 8, 2011, pursuant to the provisions of § [24.2-612](#) of the Code of Virginia. Absentee ballots shall be delivered to the registrar and secretary of the electoral board pursuant to § [24.2-612](#) on or before Thursday, July 7, 2011. The deadlines in this section may be extended at the discretion of the Secretary of the State Board of Elections.*

§ 8. *The costs of any primary shall be paid for by the treasurer of the county or city in which such election is held.*

§ 9. *With respect to independent candidates and party nominees selected by any means other than a primary, the provisions of Title 24.2 of the Code of Virginia shall be applicable except that (i) Tuesday, August 23, 2011, shall be deemed to be the regular primary date in lieu of Tuesday, June 14, 2011; (ii) a party selecting a nominee by any method other than the direct primary shall do so only within the period beginning Friday, July 1, 2011, and ending at 7:00 p.m. on Tuesday, August 23, 2011; (iii) the statements required to be filed under § [24.2-503](#) of the Code of Virginia shall be filed not later than 7:00 p.m. on Tuesday, August 23, 2011; (iv) the certification of party candidates required pursuant to § [24.2-511](#) of the Code of Virginia shall be completed not later than Friday, August 26, 2011; and (v) for any special election held November 8, 2011, the notice of candidacy*

*shall be filed and party nominations shall be completed on or before 7:00 p.m. on Tuesday, August 23, 2011.*

*§ 10. Ballots for the November 2011 election shall be sent to qualified absentee voters who are eligible for an absentee ballot under subdivision 2 of § [24.2-700](#) and made available to all other qualified absentee voters on or before Friday, September 23, 2011, pursuant to the provisions of § [24.2-612](#) of the Code of Virginia. Absentee ballots shall be delivered to the registrar and secretary of the electoral board pursuant to § [24.2-612](#) on or before Thursday, September 22, 2011.*

*§ 11. The State Board of Elections shall promulgate instructions to implement the provisions of this section.*

2. With the exception of the primary date of August 23, 2011, and general election date of November 8, 2011, the State Board of Elections shall be authorized to postpone dates and modify deadlines set forth in this act if the necessary 2011 reapportionment or redistricting, including preclearance from the appropriate United States authority under § 5 of the United States Voting Rights Act of 1965, will not be completed in time for the dates and deadlines set forth in this act to be complied with.

3. That an emergency exists and this act is in force from its passage.

4. That the provisions of this act shall expire on January 1, 2012.

## **Chapter 19 Certificate of public need; addition of nursing facility beds in Planning District 11, etc.**

An Act to authorize a certain certificate of public need in Planning District 11.

[\[H 2453\]](#)

Approved March 7, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding the provisions of § [32.1-102.3:2](#) of the Code of Virginia, any regulations of the Board of Health, or provisions of any current Request for Applications, the Commissioner of Health shall accept applications for, including applications filed prior to the passage of this act, and may issue a certificate of public need authorizing an increase of no more than 50 nursing home beds for the establishment of a new 90-bed nursing home in Planning District 11, provided that (i) any such application to establish a*

*new 90-bed nursing home in Planning District 11 shall also propose the replacement and relocation of all nursing home beds of an existing nursing home located in Planning District 11, licensed as of December 31, 2010, of no more than 45 licensed beds, all of which shall be relocated to the new 90-bed nursing home; (ii) Virginia Health Information shall have reported that the fiscal year 2009 occupancy rate of the nursing home to be replaced was at least 85 percent; and (iii) such new 90-bed nursing home shall be located in the city or county that is adjacent to the city or county of the nursing home that shall be replaced and relocated.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 20 Certificate of public need; addition of nursing facility beds in Planning District 11, etc.**

An Act to authorize a certain certificate of public need in Planning District 11.

[\[S 1434\]](#)

Approved March 7, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding the provisions of § [32.1-102.3:2](#) of the Code of Virginia, any regulations of the Board of Health, or provisions of any current Request for Applications, the Commissioner of Health shall accept applications for, including applications filed prior to the passage of this act, and may issue a certificate of public need authorizing an increase of no more than 50 nursing home beds for the establishment of a new 90-bed nursing home in Planning District 11, provided that (i) any such application to establish a new 90-bed nursing home in Planning District 11 shall also propose the replacement and relocation of all nursing home beds of an existing nursing home located in Planning District 11, licensed as of December 31, 2010, of no more than 45 licensed beds, all of which shall be relocated to the new 90-bed nursing home; (ii) Virginia Health Information shall have reported that the fiscal year 2009 occupancy rate of the nursing home to be replaced was at least 85 percent; and (iii) such new 90-bed nursing home shall be located in the city or county that is adjacent to the city or county of the nursing home that shall be replaced and relocated.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 28 Blue Star Memorial Highway; designates entire length of Route 3 in Lancaster County.**

An Act to designate the entire length of Route 3 in Lancaster County as the "Blue Star Memorial Highway."

[\[H 1735\]](#)

Approved March 9, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the entire length of Route 3 in Lancaster County is hereby designated the "Blue Star Memorial Highway." The Department of Transportation shall place and maintain appropriate signs indicating the designation of this highway. This designation shall not affect any other designations heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 122 Payroll Services Bureau; DPB to require participation of executive branch state agencies.**

An Act to expand the participation of executive branch state agencies in the Payroll Services Bureau.

[\[H 2201\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Planning and Budget, in consultation with the Department of Accounts, shall require all executive branch state agencies of the Commonwealth to participate to the fullest extent feasible, in the Payroll Service Bureau operated by the Department of Accounts. Any executive branch state agency identified by the Department of Planning and Budget not participating in the Payroll Service Bureau as of July 1, 2011, may be exempted from such participation if it can demonstrate to the satisfaction of*

*the Department of Planning and Budget that participation is not feasible or fiscally advantageous.*

## **Chapter 130 Certificate of public need; Commissioner of Health to approve request to amend certain conditions.**

An Act to amend a certain certificate of public need.

[\[H 2427\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of subsection E of § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health shall accept and may approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 of the Code of Virginia in which nursing facility or extended care services are provided to allow such continuing care provider to continue to admit community patients, other than contract holders, to its nursing facility beds through December 31, 2014, if the following conditions are met: (i) the facility is located within the County of Botetourt and operated as a not-for-profit and (ii) the facility's contract holder occupancy rate is less than 85 percent at the time of such application.*

## **Chapter 33 License plates, special; issuance to those marking bicentennial of American War of 1812.**

An Act to authorize the issuance of special license plates marking the bicentennial of the American War of 1812; fees.

[\[H 1603\]](#)

Approved March 10, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates marking the bicentennial of the American War of 1812; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates marking the bicentennial of the American War of 1812.*

*B. For each set of license plates issued pursuant to this act, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a one-time fee of \$15 at the time the plates are issued. For each such \$15 fee collected, \$5 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Bicentennial of the American War of 1812 Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Bicentennial of the American War of 1812 Commission and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

*C. The provisions of subdivisions 1 and 2 of subsection B of § [46.2-725](#) of the Code of Virginia shall not apply to license plates issued pursuant to this act.*

*D. The provisions of this act shall expire on July 1, 2015.*

## **Chapter 43 Agency mandates; DSS to eliminate those related to office space, etc., of local social services.**

An Act to require the Department of Social Services to eliminate certain mandates.

[\[H 2376\]](#)

Approved March 10, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall eliminate the mandate, imposed on local departments of social services pursuant to SHHR.DSS014 in the 2010 edition of the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government, related to office space and facilities requirements. This mandate has been recommended for elimination by the Department pursuant to § [15.2-2903](#) of the Code of Virginia.*

## **Chapter 91 Speed limits; City of Va. Beach may, by ordinance, change on any highway in its jurisdiction.**

An Act to grant authority to the governing body of the City of Virginia Beach to change certain speed limits.

[\[H 1692\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the governing body of the City of Virginia Beach may by ordinance decrease the speed limits set forth in § [46.2-870](#) of the Code of Virginia and may increase or decrease the speed limits set forth in §§ [46.2-873](#) through [46.2-875](#) of the Code of Virginia on any highway within its jurisdiction. The governing body of the City of Virginia Beach is expressly authorized to establish and indicate variable speed limits on such structures or roadways to be effective under such conditions as would, in its judgment, warrant such variable speed limits, including, but not limited to, darkness, traffic conditions, atmospheric conditions, weather emergencies, and like conditions that may affect driving safety. Any speed limits, whether fixed or variable, shall be prominently posted in such proximity to such structure or road as deemed appropriate by the City of Virginia Beach subsequent to a traffic engineering study and analysis of available and appropriate accident and law-enforcement data. The findings of the City shall be conclusive evidence of the maximum safe speed that can be maintained on such structure or roadway. It shall be unlawful to operate any motor vehicle in excess of speed limits established and posted as provided in this act. Whenever the speed limit on any highway has been increased or decreased or a variable speed limit has been established, and such speed limit is properly posted, there shall be a rebuttable presumption that the change in speed limit was properly established in accordance with the provisions of this act. The authority granted to the governing body of the City of Virginia Beach under this act shall not extend to any portion of the Interstate Highway System.*

## **Chapter 97 Victims of domestic violence; expands Address Confidentiality Program to all jurisdictions in State.**

An Act to amend and reenact § [2.2-515.2](#) of the Code of Virginia, to amend and reenact the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, and to repeal the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, relating to address confidentiality for victims of domestic violence.

[\[H 1757\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-515.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-515.2](#). (Contingent scope of application - See Editor's notes) Address confidentiality program established; victims of domestic violence; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence.

"Domestic violence" means an act as defined in § [38.2-508](#) and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian

acting on behalf of an incapacitated person, or an emancipated minor may apply in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant declaring to be true and correct under penalty of perjury that the applicant has good reason to believe that:
  - a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence;
  - b. The applicant fears further violent acts from the applicant's assailant; and
  - c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.
2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;
3. The applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;
4. A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and
5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the ~~institution of the program~~ *approval*, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the Attorney General and to those employees involved in the operation of the Address Confidentiality Program and to law-enforcement officers. A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so

that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;
2. The program participant obtains a name change through an order of the court;
3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;
4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable;
5. Any information contained in the application is false;
6. The program participant has been placed on parole or probation while a participant in the address confidentiality program; and
7. The applicant is required to register as a sex offender pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1.

For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, except when the program participant is purchasing a firearm from a dealer in firearms.

The agency shall accept the address designated by the Office of the Attorney General as a program participant's address, unless the agency has received a written exemption from the Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant;
2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency; and
3. A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an

agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

A program participant's actual address shall be disclosed pursuant to a court order.

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) to the extent such records contain information identifying a past or current program participant, including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

2. That the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is amended and reenacted as follows:

~~2. That the provisions of this act shall be limited to and implemented solely within the Counties of Albemarle, Arlington, Augusta, Dickenson, Fairfax, Henry, Lee, Rockbridge, Russell, Scott, Washington, and Wise as well as the Cities of Buena Vista, Charlottesville, Lexington, Martinsville, Norfolk, and Roanoke. An~~ evaluation of the *statewide implementation of the* program shall be prepared by the Office of the Attorney General and the results forwarded to the members of the Senate Committee on General Laws and the House Committee on General Laws by December 31, ~~2010~~ 2012.

3. That the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is repealed.

## **Chapter 102 Compton Road; designating as Virginia byway in Fairfax County.**

An Act to designate Compton Road in Fairfax County a *Virginia byway*.

[\[H 1900\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.1-62](#) of the Code of Virginia, Compton Road in Fairfax County is hereby designated a Virginia byway.*

## **Chapter 142 George Washington Toll Road Authority; adds Stafford County as participating locality.**

An Act to amend and reenact §§ 1 and 3 of Chapter 801 of the Acts of Assembly of 2009, relating to the George Washington Toll Road Authority.

[\[S 874\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 and 3 of Chapter 801 of the Acts of Assembly of 2009 are amended and reenacted as follows:

§ 1. Definitions.

As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

"Authority" means the George Washington Toll Road Authority created by this act, or if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this act to the Authority shall be conferred by law.

"Authority facility" means any or all transportation facilities purchased, constructed or otherwise acquired by the Authority pursuant to the provisions of this act, and all extensions, improvements and betterments thereof.

"Bonds" or "revenue bonds" means revenue bonds or revenue refunding bonds of the Authority issued under the provisions of this act.

"Commonwealth" means the Commonwealth of Virginia.

"Cost" as applied to any Project includes the cost of construction, landscaping and conservation; the cost of acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Authority for such construction, landscaping and conservation, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period of time after completion of construction as deemed advisable by the Authority; the cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Project, administrative expenses, initial working capital, debt service reserves; and such other expenses as may be necessary or incident to the construction of the Project, the financing of such construction and the placing of the Project in operation. Any obligation or expense incurred by the Department of Transportation or by a participating locality before or after the effective date of this act, for surveys, engineering, borings, plans and specifications, legal and other professional and technical services, reports, studies and data in connection with the construction of a Project shall be repaid or reimbursed by the Authority and the amounts thereof shall be included as a part of the cost of the Project.

"George Washington Region" or "Region" means the areas encompassed by the George Washington Toll Road Authority.

"Highways" includes public highways, roads and streets, whether maintained by the Commonwealth, or a participating locality.

"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air or access to by reason of the fact that their property abuts upon such limited access highway.

"Owner" includes all individuals, partnerships, associations, organizations and corporations, the participating localities and all public agencies and instrumentalities having any title or interest in any property, rights, easements and interests authorized to be acquired by this act.

"Participating locality" means the City of Fredericksburg and the ~~County~~ *Counties* of Spotsylvania and Stafford.

"Project" means any single facility constituting an Authority facility, as described in the resolution or trust agreement providing for the construction thereof, including extensions, improvements and betterments thereof.

"Revenues" means any or all fees, tolls, rents, rates, receipts, moneys and income derived by the Authority through the ownership and operation of Authority facilities, and shall include any cash contributions made to the Authority by the Commonwealth or any agency or department thereof, and a participating locality not specifically dedicated by the contributor for a capital improvement. However, the Authority may receive no contribution from the Commonwealth for the payment of bonds.

### § 3. Powers of the Authority.

In order to alleviate highway congestion, promote highway safety, expand highway construction, increase the utility and benefits and extend the services of public highways, including bridges, tunnels and other highway facilities, both free and toll, and otherwise contribute to the economy, industrial and agricultural development and welfare of the Commonwealth and the George Washington Region, the Authority shall have the following powers ~~in the Virginia Route 3 corridor~~:

1. To contract and be contracted with; to sue and be sued; and to adopt and use a seal and to alter the same at its pleasure;
2. To acquire and hold real or personal property necessary for its purposes;
3. To sell, lease or otherwise dispose of any personal or real property or rights, easements or estates therein deemed by the Authority not necessary for its purposes;
4. To purchase, construct or otherwise acquire, maintain, repair and operate, or cause to be repaired, maintained and operated, highways and limited access highways, within the boundaries of the Virginia Route 3 corridor, including all bridges, tunnels, overpasses, underpasses, grade separations, interchanges, entrance plazas, approaches, approach roads, tollhouses and administration, storage and other buildings and facilities that the Authority may deem necessary for the operation of such highways and limited access highways. Title to any property acquired by the Authority shall be taken in the name of the Authority;
5. To acquire, own, operate and maintain rapid transit facilities for the transportation of the public, and to enter into contracts with any public service corporations doing business as common carriers of passengers and property for the use of Authority facilities for such purpose;

6. To determine, after appropriate public hearings, the location of any highways or limited access highways constructed or acquired by the Authority, subject to the approval of the Commonwealth Transportation Board and, if required, applicable federal review and approval; and to determine the design standards and materials of construction of such highways based on applicable federal or state engineering and safety standards;
7. To designate with the approval of the Commonwealth Transportation Board the location in the Region, and to establish, limit and control such points of ingress to and egress from any limited access highway constructed by the Authority within the Region as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such highway; to prohibit entrance to and exit from such highway from any point or points not so designated; and to construct, maintain, repair and operate service roads connecting with points of ingress to and egress from such highway at such locations in the Region as may be designated by the Authority;
8. To connect any highway constructed or acquired by the Authority with other highways or toll roads with the approval of the Department of Transportation and the owner of such other toll roads, at such location or locations as shall be mutually agreed upon;
9. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, including contracts or agreements authorized by this act with the Department of Transportation and any locality;
10. To enter into agreements pursuant to the Public-Private Transportation Act of 1995 ([§ 56-556](#) of the Code of Virginia);
11. To construct grade separations at intersections of any limited access highway constructed by the Authority with public highways, streets or other public ways or places, and to change and adjust the lines and grades thereof so as to accommodate the same to the design of the grade separation; the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places shall be ascertained and paid by the Authority as part of the cost of such highway;
12. To vacate or change the location of any portion of any public highway, street or other public way or place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole and other equipment and appliances of the Commonwealth, or a participating locality, and to reconstruct the same in such new location as shall be designated by the Authority, and of substantially the same type and in as good condition as the original highway, street, way, place, public utility, sewer, pipe, main, conduit, cable, wire, tower, pole, equipment or appliance; the cost of such reconstruction and any damage incurred in vacating or

changing the location thereof shall be ascertained and paid by the Authority as a part of the cost of the Project in connection with which such expenditures are made; and any public highway, street, or other public way or place vacated or relocated by the Authority shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of the Project; any changes or modifications to any highway under the jurisdiction or supervision of the Commonwealth Transportation Board or the Department of Transportation are subject to the approval of the Commonwealth Transportation Board or the Department of Transportation, as applicable;

13. To enter upon any lands, waters and premises for the purpose of making such surveys, soundings, borings and examinations as the Authority may deem necessary for its purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry upon any condemnation proceedings; however, the Authority shall pay any actual damage resulting to such lands, water and premises as a result of such entry and activities;

14. To operate or permit the operation of vehicles for the transportation of persons or property for compensation on any limited access highway constructed or acquired by the Authority, provided the State Corporation Commission or the Interstate Commerce Commission shall not be divested of jurisdiction to authorize or regulate the operation of such carriers;

15. Within the Route 3 corridor property owned by the Authority, to establish reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances, herein referred to as "public utility facilities," of a participating locality and of public utility and public service corporations and of any person, firm or other corporation rendering similar services, owning or operating public utility facilities in, on, along, over or under highways constructed by the Authority; and whenever the Authority shall determine that it is necessary that any public utility facilities should be relocated or removed, the Authority may relocate or remove the public utility facilities in accordance with the regulations of the Authority and the cost and expense of such relocation or removal, including the cost of installing the public utility facilities in a new location or locations and the cost of any lands or any rights or interests in lands and any other rights acquired to accomplish such relocation or removal shall be paid by the Authority as a part of the costs of such highway, and the owner or operator of the public utility facilities may maintain and operate the public utility facilities with the necessary appurtenances in the new location or locations for as long a period and upon the same

terms and conditions as it had the right to maintain and operate the public utility facilities in their former location or locations;

16. To borrow money and issue bonds, notes or other evidences of indebtedness for any of its corporate purposes as provided in this act payable solely from the revenues pledged for the payment of such bonds, notes or other evidences of indebtedness;

17. To fix, charge and collect fees, tolls, rents, rates and other charges for the use of Authority facilities and the several parts or sections thereof;

18. To establish rules and regulations for the use of any of the Authority facilities as may be necessary or expedient in the interest of public safety with respect to the use of Authority facilities and property under the control of the Authority;

19. To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, trustees, depositories, paying agents and such other employees and agents as may be necessary in the discretion of the Authority to construct, acquire, maintain and operate Authority facilities and to fix their compensation;

20. To receive and accept from any federal agency for or in aid of the construction of any Authority facility, and to receive and accept from the Commonwealth, or a participating locality and from any other source, grants, contributions or other aid in such construction, or for operation and maintenance, either in money, property, labor, materials or other things of value. However, the Authority may receive no contribution from the Commonwealth for the payment of bonds; and

21. To do all other acts and things necessary to carry out the powers expressly granted in this act.

## **Chapter 172 Victims of domestic violence; expands Address Confidentiality Program to all jurisdictions in State.**

An Act to amend and reenact § [2.2-515.2](#) of the Code of Virginia, to amend and reenact the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, and to repeal the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, relating to address confidentiality for victims of domestic violence.

[\[S 1199\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-515.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-515.2](#). (Contingent scope of application - See Editor's notes) Address confidentiality program established; victims of domestic violence; application; disclosure of records.

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence.

"Domestic violence" means an act as defined in § [38.2-508](#) and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant declaring to be true and correct under penalty of perjury that the applicant has good reason to believe that:

a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence;

b. The applicant fears further violent acts from the applicant's assailant; and

c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.

2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;

3. The applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;

4. A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and

5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the ~~institution of the program~~ *approval*, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the Attorney General and to those employees involved in the operation of the Address Confidentiality Program and to law-enforcement officers. A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;

2. The program participant obtains a name change through an order of the court;

3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;

4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable;

5. Any information contained in the application is false;

6. The program participant has been placed on parole or probation while a participant in the address confidentiality program; and

7. The applicant is required to register as a sex offender pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1.

For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, except when the program participant is purchasing a firearm from a dealer in firearms.

The agency shall accept the address designated by the Office of the Attorney General as a program participant's address, unless the agency has received a written exemption from the Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant;
2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency; and
3. A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

A program participant's actual address shall be disclosed pursuant to a court order.

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) to the extent such records contain information identifying a past or current program participant, including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an

incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

2. That the second enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is amended and reenacted as follows:

~~2. That the provisions of this act shall be limited to and implemented solely within the Counties of Albemarle, Arlington, Augusta, Dickenson, Fairfax, Henry, Lee, Rockbridge, Russell, Scott, Washington, and Wise as well as the Cities of Buena Vista, Charlottesville, Lexington, Martinsville, Norfolk, and Roanoke. An *an* evaluation of the *statewide implementation of the* program shall be prepared by the Office of the Attorney General and the results forwarded to the members of the Senate Committee on General Laws and the House Committee on General Laws by December 31, 2010 2012.~~

3. That the third enactment of Chapter 599 of the Acts of Assembly of 2007, as amended by Chapter 649 of the Acts of Assembly of 2008, is repealed.

## **Chapter 203 Virginia War of 1812 Heritage Trail; established.**

An Act to establish The Virginia War of 1812 Heritage Trail.

[\[H 1602\]](#)

Approved March 16, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established The Virginia War of 1812 Heritage Trail, a heritage trail of historical markers and sites in the Commonwealth significant to the American War of 1812, "America's Second War of Independence," to highlight and commemorate Virginia's role, participation, and contributions to the successful outcome of the war. The*

*Trail shall consist of the following historical highway markers designating historical sites and places associated with the War of 1812 in Virginia and significant individuals who provided leadership for the nation before and during the war, including but not limited to:*

*Chesconessex Creek at Accomack County;*

*Pungoteague Creek at Accomack County;*

*Tangier Island at Accomack County;*

*Elizabeth Kortright Monroe's Ash Lawn-Highland at Albemarle County;*

*James Monroe's Ash Lawn-Highland at Albemarle County;*

*Thomas Jefferson's Monticello at Albemarle County;*

*Christ Church at Alexandria;*

*First Presbyterian Church at Alexandria;*

*Trinity United Methodist Church at Alexandria;*

*Chain Bridge-Hiding of the Declaration of Independence at Arlington County;*

*Old Providence Church at Augusta County;*

*Lt. Colonel George Armistead's birthplace at Caroline County;*

*Camp Carter at Charles City County;*

*Hill Carter's Shirley Plantation at Charles City County;*

*John Tyler's Sherwood Forest Plantation at Charles City County;*

*William Henry Harrison's birthplace at Charles City County;*

*War of 1812 Opposition-John Randolph's Roanoke Plantation at Charlotte County;*

*General Winfield Scott's Laurel Branch Plantation at Dinwiddie County;*

*Bowlers Wharf at Essex County;*

*Capture of Tappahannock at Essex County;*

*Fort Belvoir at Fairfax County;*

*Belle Grove at Frederick County;*

*Fredericksburg City Cemetery at Fredericksburg;*

*Masonic Cemetery at Fredericksburg;*

*Gloucester Point at Gloucester County;*  
*Admiral of the Fleet Sir George Cockburn on the Chesapeake at Hampton;*  
*Fort Monroe at Hampton;*  
*Hampton History Museum at Hampton;*  
*Hampton River at Hampton;*  
*Landing at Indian Creek at Hampton;*  
*Old Point Comfort Lighthouse at Hampton;*  
*St. John's Episcopal Church at Hampton;*  
*Bottom's Bridge at Henrico County;*  
*Camp Holly at Henrico County;*  
*Richmond's War of 1812 Defensive Camps at Henrico County;*  
*St. Luke's Church at Isle of Wight County;*  
*Belle Grove at King George County;*  
*Corrotoman River Carters Creek at Lancaster County;*  
*North Point at Lancaster County;*  
*White Stone at Lancaster County;*  
*Windmill Point at Lancaster County;*  
*Union Cemetery at Leesburg;*  
*Goose Creek Burying Ground at Loudoun County;*  
*Ketocin Baptist Church Cemetery at Loudoun County;*  
*Sharon Cemetery at Loudoun County;*  
*Old Methodist Church (formerly Old City) Cemetery at Lynchburg;*  
*Mobjack Bay at Mathews County;*  
*New Point Comfort Lighthouse at Mathews County;*  
*Capture of the Dolphin at Middlesex County;*  
*Piankatank River at Middlesex County;*  
*Stingray Point at Middlesex County;*

*John Tyler's Cedar Grove Plantation at New Kent County;*  
*Denbigh Plantation at Newport News;*  
*Endview Plantation at Newport News;*  
*Newport News Point at Newport News;*  
*Allmand-Archer House at Norfolk;*  
*Cedar Grove Cemetery at Norfolk;*  
*Elizabeth River Defenses at Norfolk;*  
*Elmwood Cemetery at Norfolk;*  
*Fort Barbour at Norfolk;*  
*Fort Norfolk at Norfolk;*  
*Fort Tar at Norfolk;*  
*Hampton Roads Naval Museum at Norfolk;*  
*Moses Myers House at Norfolk;*  
*Norfolk History Museum at the Willoughby-Baylor House at Norfolk;*  
*Sargeant Memorial Room Norfolk Main Public Library at Norfolk;*  
*St. Paul's Episcopal Churchyard Cemetery at Norfolk;*  
*Cherrystone Inlet at Northampton County;*  
*African Americans in the War of 1812 at Northumberland County;*  
*Coan River at Northumberland County;*  
*Great Wicomico River at Northumberland County;*  
*Munday Point at Northumberland County;*  
*Sandy Point at Northumberland County;*  
*Governor James Barbour at Orange County;*  
*Dolley Madison's Montpelier at Orange County;*  
*James Madison's Montpelier at Orange County;*  
*Zachary Taylor's Montebello at Orange County;*  
*Centre Hill Mansion at Petersburg;*

*Poplar Lawn Park at Petersburg;*  
*The Ball House at Portsmouth;*  
*Cedar Grove Cemetery at Portsmouth;*  
*Craney Island at Portsmouth;*  
*Fort Nelson Park at Portsmouth;*  
*Glasgow Street Park at Portsmouth;*  
*Gosport Park at Portsmouth;*  
*Hoffler Creek at Portsmouth;*  
*Norfolk Naval Shipyard Museum at Portsmouth;*  
*Trinity Episcopal Church at Portsmouth;*  
*Hollywood Cemetery at Richmond;*  
*Mason's Hall at Richmond;*  
*Shockoe Hill Cemetery at Richmond;*  
*St. John's Church Cemetery at Richmond;*  
*North Farnham Church at Richmond County;*  
*Sharps Point at Richmond County;*  
*Potomac Creek at Stafford County;*  
*First Landing State Park at Virginia Beach;*  
*Lynhaven Bay at Virginia Beach;*  
*Naval Amphibious Base Little Creek Training Center at Virginia Beach;*  
*Old Cape Henry Lighthouse at Virginia Beach;*  
*President-Little Belt Affair at Virginia Beach;*  
*James Monroe's birthplace at Westmoreland County;*  
*Kinsale at Westmoreland County;*  
*Mattox Creek at Westmoreland County;*  
*Nomini Ferry at Westmoreland County;*  
*Ragged Point at Westmoreland County;*

*Rosier Creek at Westmoreland County;  
Yeocomico River at Westmoreland County; and  
Jamestown Island at Williamsburg.*

*§ 2. The Virginia Department of Transportation shall erect historical highway markers approved by the Board of Historic Resources as a part of The Virginia War of 1812 Heritage Trail in the Department of Transportation right-of-way at the request of the Department of Historic Resources.*

*Directional signage for travelers to sites may be erected by the Department of Transportation at the request of the governing body of a local government or historical organization or foundation with custodial responsibilities for the site. Directional signage shall be placed at the nearest intersection to each site in the Department of Transportation right-of-way if there is no conflict with other Department signage. All directional signage shall consist of a common sign design developed by a committee established by and under the direction of the Virginia Bicentennial of the American War of 1812 Commission (the Commission). The committee shall include, but not be limited to, the Director of the Department of Historic Resources or her designee, the Commissioner of the Department of Transportation or his designee, and one representative of each historical organization, foundation, or local governing body in proximity to the site of the sign. Directional sign panels and posts shall meet Virginia Department of Transportation specifications. All costs associated with manufacturing, erection, and maintenance of directional signs under this section shall be borne by the requesting party. Directional signs erected by the Virginia Department of Transportation under this section shall be developed in accordance with applicable provisions of § [10.1-2209](#) of the Code of Virginia and placed in accordance with all applicable Virginia Department of Transportation regulations.*

*§ 3. The Commission shall add to The Virginia War of 1812 Heritage Trail other historical highway markers and historical sites that may be subsequently identified as related to the War of 1812 in Virginia. Upon the expiration of the Commission, the Department of Historic Resources shall add to The Virginia War of 1812 Heritage Trail other historical highway markers and historical sites identified as related to the War of 1812 in Virginia.*

## Chapter 303 Extended unemployment benefits; clarifies expiration of provisions that expanded certain criteria.

An Act to amend and reenact §§ [60.2-610](#) and [60.2-611](#), as they are currently effective and as they may become effective, of the Code of Virginia and to repeal the third enactment of Chapter 789 of the Acts of Assembly of 2009, relating to extended unemployment benefits.

[\[S 791\]](#)

Approved March 20, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ [60.2-610](#) and [60.2-611](#), as they are currently effective and as they may become effective, of the Code of Virginia are amended and reenacted as follows:

§ [60.2-610](#). (~~Contingent expiration date, June 12, 2010 – see Editor's notes~~) Extended benefits defined.

A. As used in this article, unless the context clearly requires otherwise, "extended benefit period" means a period which:

1. Begins with the third week following a week for which there is a state "on" indicator; and

2. Ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator; or

b. The thirteenth consecutive week of such period; however, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this Commonwealth.

B. "Rate of insured unemployment," for purposes of subsections H and I of this section, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular compensation in this Commonwealth for weeks of unemployment with respect to the most recent, ~~thirteen~~ 13 consecutive week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by

2. The average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such ~~thirteen-week~~ 13-week period.

C. "Regular benefits" means benefits, other than extended benefits, payable to an individual under this title or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code.

D. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, payable to an individual under the provisions of § [60.2-611](#) for weeks of unemployment in his eligibility period.

E. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

F. 1. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, in his current benefit year that includes such week;

b. His benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he could establish a new benefit year that would include such week; and

c. (i) Has no right to unemployment benefits or allowances, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.), the Automotive Products Trade Act of 1965 (19 U.S.C. § 2001 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. However, if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

2. For the purposes of subdivision 1 a of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment.

G. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C. § 3304.

H. There is a "state 'on' indicator" for this Commonwealth for a week if:

1. The Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this title:

a. Equaled or exceeded 120 percent of the average of such rates for the corresponding ~~thirteen-week~~ 13-week period ending in each of the preceding two calendar years;; and

b. Equaled or exceeded five percent, provided that the determination of whether there has been a state trigger "on" indicator shall be made as if this subsection did not contain subdivision 1 a, if the rate of insured unemployment as defined in this subsection equaled or exceeded six percent, except that any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator; or

2. With respect to weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, *or by an extension thereof or amendment thereto*, the United States Secretary of Labor determines that, for the period consisting of the most recent three months for which data for all states are published before the close of such week, the average rate of total unemployment in this Commonwealth, seasonally adjusted:

a. Equaled or exceeded 110 percent of the average of such rates for either or both of the corresponding three month periods ending in the two preceding calendar years;; and

b. Equaled or exceeded a six and one half percent.

I. There is a "state 'off' indicator" for this Commonwealth for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks the requirements of subsection H of this section have not been satisfied.

§ [60.2-610](#). (~~Contingent effective date, June 12, 2010 -- see Editor's notes~~) Extended benefits defined.

A. As used in this article, unless the context clearly requires otherwise, "extended benefit period" means a period which:

1. Begins with the third week following a week for which there is a state "on" indicator; and

2. Ends with either of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator; or  
b. The thirteenth consecutive week of such period; however, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this Commonwealth.

B. "Rate of insured unemployment," for purposes of subsections H and I of this section, means the percentage derived by dividing:

1. The average weekly number of individuals filing claims for regular compensation in this Commonwealth for weeks of unemployment with respect to the most recent, ~~thirteen~~ 13 consecutive week period, as determined by the Commission on the basis of its reports to the United States Secretary of Labor, by

2. The average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such ~~thirteen-week~~ 13-week period.

C. "Regular benefits" means benefits, other than extended benefits, payable to an individual under this title or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code.

D. "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, payable to an individual under the provisions of § [60.2-611](#) for weeks of unemployment in his eligibility period.

E. "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

F. 1. "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

a. Has received, prior to such week, all of the regular benefits that were available to him under this title or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 (5 U.S.C. § 8501 et seq.) of Title 5 of the United States Code, in his current benefit year that includes such week;

b. His benefit year having expired prior to such week, has no, or insufficient, wages or employment on the basis of which he could establish a new benefit year that would include such week; and

c. (i) Has no right to unemployment benefits or allowances, under the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.), the Automotive Products Trade Act of 1965 (19 U.S.C. § 2001 et seq.) and such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada. However, if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

2. For the purposes of subdivision 1 a of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment.

G. "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under 26 U.S.C. § 3304.

H. There is a "state 'on' indicator" for this Commonwealth for a week if ~~the~~:

1. *The Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this title:*

~~1 a.~~ *Equaled or exceeded 120 percent of the average of such rates for the corresponding ~~thirteen-week~~ 13-week period ending in each of the preceding two calendar years;; and*

~~2-a~~ *b. Equaled or exceeded five percent, provided that the determination of whether there has been a state trigger "on" indicator shall be made as if this subsection did not contain subdivision 1 a, if the rate of insured unemployment as defined in this subsection equaled or exceeded six percent, and*

~~b. Except~~ *except that any week for which there would otherwise be a state "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator; or*

*2. With respect to weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, the United States Secretary of Labor determines that, for the period consisting of the most recent three months for which data for all states are published*

*before the close of such week, the average rate of total unemployment in this Commonwealth, seasonally adjusted:*

*a. Equaled or exceeded 110 percent of the average of such rates for either or both of the corresponding three month periods ending in the two preceding calendar years; and*

*b. Equaled or exceeded a six and one half percent.*

I. There is a "state 'off' indicator" for this Commonwealth for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding ~~twelve~~ 12 weeks the requirements of subsection H of this section have not been satisfied.

§ [60.2-611](#). Receipt of extended benefits.

A. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

B. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that for such week:

1. He is an "exhaustee" as defined in subsection F of § [60.2-610](#);

2. He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

3. He had during his base period 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this subdivision, "or the equivalent in insured wages" means more than 40 times the individual's most recent weekly benefit amount.

C. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall equal the weekly benefit amount payable to him during his applicable benefit year.

D. The total extended benefit amount payable to any eligible individual for his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

2. Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

3. Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this title for the benefit year.

E. 1. Whenever an extended benefit period is to become effective in this Commonwealth as a result of a state "on" indicator, or an extended benefit period is to be terminated in this Commonwealth as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection B of § [60.2-610](#) shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.

3. An "on" or "off" indicator for this Commonwealth shall be determined without regard to subdivision 1 of subsection H of § [60.2-610](#) for any period that waiver of such provisions is authorized under § 203 (d) of the Federal-State Extended Unemployment Compensation Act (26 U.S.C. § 3304) and any amendments thereto, or as authorized by any provision of federal law.

F. 1. Notwithstanding the provisions of subsection A of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commission finds that during such period:

a. He failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subdivision 3 of this subsection, to which he was referred by the Commission; or

b. He failed to actively engage in seeking work as prescribed under subdivision 5 of this subsection.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision 1 of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. a. For purposes of this subsection, "suitable work" means, with respect to any individual, any work which is within the individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of:

(1) The individual's average weekly benefit amount as determined under subsection C of this section, plus

(2) Any amount of supplemental unemployment benefits, as defined in § 501 (c) (17) (D) of the Internal Revenue Code, payable to the individual for such week.

b. Such gross average weekly remuneration shall pay wages equal to the higher of:

(1) The minimum wages provided by § 6 (a) (1) of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), without regard to any exemption; or

(2) The state or local minimum wage.

c. No individual, however, shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitable work as described in subdivision 3a of this subsection if:

(1) The position was not offered to such individual in writing or was not listed with the Job Service;

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision 3 of § [60.2-618](#) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(3) The individual furnishes satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision 3 of § [60.2-618](#) without regard to the definition specified by this subdivision.

4. Notwithstanding the provisions of this subsection, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304 (a) 5 of the Internal Revenue Code and set forth under subdivision 3 of § [60.2-618](#).

5. For the purposes of subdivision 1 b of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The Job Service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in subdivision 3 of this subsection.

7. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

8. No claim for extended benefits shall be subject to subdivisions 1, 2, 3 or 6 of this subsection for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. If the Federal-State Extended Unemployment Compensation Act of 1970 is at any time amended to preclude enforcement of any provision of this section, such provision shall not apply to any claim for weeks beginning on the date said amendment becomes effective.

G. 1. Except as provided in subdivision 2 of this subsection, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit plan; and

b. No extended benefit period is in effect for such week in such state.

2. Subdivision 1 of this subsection shall not apply to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

H. (~~Contingent expiration date, June 12, 2010 – see notes~~) Effective with respect to weeks beginning in a high unemployment period *that commenced on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto*, subsection D shall be applied by substituting (i) "eighty percent" for "fifty percent" in subdivision D 1; (ii) "twenty" for "thirteen" in subdivision D 2; and (iii) "forty-six" for "thirty-nine" in subdivision D 3. As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subdivision H 2 b of § [60.2-610](#) were applied by substituting "eight percent" for "six and one-half percent."

§ [60.2-611](#). Receipt of extended benefits.

A. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the Commission, the provisions of this title which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

B. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Commission finds that for such week:

1. He is an "exhaustee" as defined in subsection F of § [60.2-610](#);

2. He has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

3. He had during his base period 20 weeks of full-time insured employment, or the equivalent in insured wages. For purposes of this subdivision, "or the equivalent in insured wages" means more than 40 times the individual's most recent weekly benefit amount.

C. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall equal the weekly benefit amount payable to him during his applicable benefit year.

D. The total extended benefit amount payable to any eligible individual for his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this title in his applicable benefit year;

2. Thirteen times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year; or

3. Thirty-nine times his weekly benefit amount which was payable to him under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this title for the benefit year.

E. 1. Whenever an extended benefit period is to become effective in this Commonwealth as a result of a state "on" indicator, or an extended benefit period is to be terminated in this Commonwealth as a result of state "off" indicators, the Commission shall make an appropriate public announcement.

2. Computations required by the provisions of subsection B of § [60.2-610](#) shall be made by the Commission, in accordance with regulations prescribed by the United States Secretary of Labor.

3. An "on" or "off" indicator for this Commonwealth shall be determined without regard to subdivision 1 of subsection H of § [60.2-610](#) for any period that waiver of such provisions is authorized under § 203 (d) of the Federal-State Extended Unemployment Compensation Act (26 U.S.C. § 3304) and any amendments thereto, or as authorized by any provision of federal law.

F. 1. Notwithstanding the provisions of subsection A of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the Commission finds that during such period:

a. He failed to accept any offer of suitable work or failed to apply for any suitable work, as defined under subdivision 3 of this subsection, to which he was referred by the Commission; or

b. He failed to actively engage in seeking work as prescribed under subdivision 5 of this subsection.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions in subdivision 1 of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount.

3. a. For purposes of this subsection, "suitable work" means, with respect to any individual, any work which is within the individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of:

(1) The individual's average weekly benefit amount as determined under subsection C of this section, plus

(2) Any amount of supplemental unemployment benefits, as defined in § 501 (c) (17) (D) of the Internal Revenue Code, payable to the individual for such week.

b. Such gross average weekly remuneration shall pay wages equal to the higher of:

(1) The minimum wages provided by § 6 (a) (1) of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.), without regard to any exemption; or

(2) The state or local minimum wage.

c. No individual, however, shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitable work as described in subdivision 3a of this subsection if:

(1) The position was not offered to such individual in writing or was not listed with the Job Service;

(2) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision 3 of § [60.2-618](#) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subdivision; or

(3) The individual furnishes satisfactory evidence to the Commission that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision 3 of § [60.2-618](#) without regard to the definition specified by this subdivision.

4. Notwithstanding the provisions of this subsection, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by § 3304 (a) 5 of the Internal Revenue Code and set forth under subdivision 3 of § [60.2-618](#).

5. For the purposes of subdivision 1 b of this subsection, an individual shall be treated as actively engaged in seeking work during any week if:

a. The individual has engaged in a systematic and sustained effort to obtain work during such week;; and

b. The individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The Job Service shall refer any claimant entitled to extended benefits under this title to any suitable work which meets the criteria prescribed in subdivision 3 of this subsection.

7. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

8. No claim for extended benefits shall be subject to subdivisions 1, 2, 3 or 6 of this subsection for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. If the Federal-State Extended Unemployment Compensation Act of 1970 is at any time amended to preclude enforcement of any provision of this section, such provision shall not apply to any claim for weeks beginning on the date said amendment becomes effective.

G. 1. Except as provided in subdivision 2 of this subsection, an individual shall not be eligible for extended benefits for any week if:

a. Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit plan;; and

b. No extended benefit period is in effect for such week in such state.

2. Subdivision 1 of this subsection shall not apply to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

*H. Effective with respect to weeks beginning in a high unemployment period that commenced on or after February 1, 2009, and thereafter until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, or by an extension thereof or amendment thereto, subsection D shall be applied by substituting (i) "eighty percent" for "fifty percent" in subdivision D 1; (ii) "twenty" for "thirteen" in subdivision D 2; and (iii) "forty-six" for "thirty-nine" in subdivision*

*D 3. As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subdivision H 2 b of § [60.2-610](#) were applied by substituting "eight percent" for "six and one-half percent."*

2. That the third enactment of Chapter 789 of the Acts of Assembly of 2009 is repealed.

## **Chapter 550 Higher Educational Institutions Bond Act of 2011; created.**

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$64,579,000 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[S 801\]](#)

Approved March 25, 2011

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on

that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2011."*

**§ 2. Authorization of bonds and BANs.**

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs and reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>A-</i>
<i>mount</i>			
<i>Virginia Commonwealth</i>	<i>Construct West Grace</i>	<i>17896</i>	<i>\$33-</i>
<i>,763,000</i>			
<i>University</i>	<i>Street Housing North</i>		
<i>Virginia State</i>	<i>Construct Quad,</i>	<i>17895</i>	<i>\$30-</i>
<i>,816,000</i>			
<i>University</i>	<i>Phase II</i>		
<i>Total</i>			<i>\$64-</i>
<i>,579,000</i>			

*§ 3. Application of proceeds.*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the construction of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to*

*Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge and collect rates, fees and charges for or in connection with the use, occupancy and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be*

*invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

**§ 9. Security for bonds and BANs.**

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or*

*BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 578 Virginia Commonwealth University; board of visitors to convey certain property to City of Richmond.

An Act to authorize the board of visitors of Virginia Commonwealth University to convey certain real property to the City of Richmond to be used for the official Slave Trail.

[\[H 2209\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any law to the contrary, the board of visitors of Virginia Commonwealth University, with the approval of the Governor pursuant to § [2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the City of Richmond all interest in those certain lots, pieces or parcels of land, lying and being in the City of Richmond, Virginia, acquired by Virginia Commonwealth University by Deed dated January 30, 2008, recorded as Instrument Number 080005212 in the City of Richmond Circuit Court on February 26, 2008, and further described as lying on the northern line of Broad Street, on the western line of 16th Street, on the northern and southern lines of Marshall Street and the eastern line of the Richmond Petersburg Turnpike (Interstate 95) and being more particularly described on plat of survey made by Potts, Minter & Associates, P.C., Engineers, Land Surveyors, Land Planners, dated November 17, 1989, revised November 28, 1990, and reinspected and revised December 10, 1990, entitled "PLAT SHOWING IMPROVEMENTS ON FOUR PARCELS OF LAND SITUATED NORTHWEST OF 16th Street AT MARSHALL STREET, IN THE CITY OF RICHMOND, VIRGINIA", which plat is recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Plat Book 41, page 70, and which parcels are more particularly described as follows:*

*Parcel A*

*Beginning at a rod set at the intersection of the north line of Broad Street and the east line of Interstate 95, thence along the east line of Interstate 95 North 37 degrees 06 minutes 30 seconds East 100.00 feet to a point, thence leaving the east line of Interstate 95 South 52 degrees 53 minutes 30 seconds East 112.86 feet to a point, thence North 36 degrees 29 minutes 00 seconds East 39.92 feet to a point, thence South 52 degrees 53 minutes 30 seconds East 72.06 feet to a point on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 104.54*

*feet to a stone found, thence along a curve to the right having a radius of 35.00 feet and a length of 55.36 feet to a rod set on the north line of Broad Street, thence along the north line of Broad Street North 52 degrees 53 minutes 30 seconds West 150.63 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 0.486 acres, located in the City of Richmond, Virginia.*

*Parcel B*

*Beginning at a point on the east line of Interstate 95 100.00 feet north of the intersection of the east line of Interstate 95 and the north line of Broad Street, thence along the east line of Interstate 95 North 37 degrees 06 minutes 30 seconds East 16.00 feet to a point, thence leaving the east line of Interstate 95 South 52 degrees 53 minutes 30 seconds East 70.76 feet to a point, thence North 36 degrees 29 minutes 00 seconds East 38.92 feet to a point, thence South 52 degrees 53 minutes 30 seconds East 113.99 feet to a point on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 15.00 feet to a point, thence leaving the West line of 16th Street North 52 degrees 53 minutes 30 seconds West 72.06 feet to a point, thence South 36 degrees 29 minutes 00 seconds West 39.92 feet to a point, thence North 52 degrees 53 minutes 30 seconds West 112.86 feet to a point on the east line of Interstate 95 being the point and place of beginning and containing 0.104 acres located in the City of Richmond, Virginia.*

*Parcel C*

*Beginning at a rod set on the east line of Interstate 95 116.00 feet north of the intersection of the east line of Interstate 95 and the north line of Broad Street, thence along the east line of Interstate 95 North 52 degrees 53 minutes 30 seconds West 37.70 feet to a rod set, thence North 36 degrees 39 minutes 30 seconds East 216.64 feet to a rod set on the south line of Marshall Street, thence along the south line of Marshall Street South 53 degrees 48 minutes 00 seconds East 216.75 feet to a stone found, thence along a curve to the right having a radius of 5.00 feet and a length of 7.88 feet to a stone found on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 176.22 feet to a point, thence leaving the West line of 16th Street North 52 degrees 53 minutes 30 seconds West 113.99 feet to a point, thence South 36 degrees 29 minutes 00 seconds West 38.92 feet to a point, thence North 52 degrees 53 minutes 30 seconds West 70.76 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 1.012 acres located in the City of Richmond, Virginia.*

*Parcel D*

*Beginning at a rod set at the intersection of the north line of Marshall Street and the east line of Interstate 95 thence along the east line of Interstate 95 North 36 degrees 25 minutes 30 seconds East 106.00 feet to a rod set, thence South 53 degrees 38 minutes 30 seconds East 17.00 feet to a rod set, thence North 36 degrees 29 minutes 34 seconds East 223.40 feet to a rod set, thence North 45 degrees 22 minutes 34 seconds East 30.59 feet to a rod set, thence leaving the east line of Interstate 95 South 73 degrees 14*

*minutes 03 seconds East 98.66 feet to a rod set, thence South 14 degrees 08 minutes 12 seconds West 92.26 feet to a pk nail set, thence South 3 degrees 55 minutes 39 seconds East 27.03 feet to a pk nail set, thence along a curve to the right having a radius of 631.30 feet and a length of 189.82 feet to a rod set on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 07 minutes 08 seconds West 100.49 feet to a pk nail set at the intersection with the north line of Marshall Street, thence along the north line of Marshall Street North 53 degrees 52 minutes 09 seconds West 205.62 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 1.470 acres, located in the City of Richmond, Virginia. BEING the same real estate conveyed to Chavez Urban Land Associates-Broad Street, Richmond, a Georgia General Partnership, by deed from CSX Transportation, Inc., a Virginia corporation, dated December 12, 1990, recorded December 28, 1990, in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Deed Book 255, page 1972, all as shown on plat of survey made by Potts, Minter and Associates, P.C., Richmond, Virginia, dated November 29, 1990, which plat is attached to and recorded with that certain deed into Chavez Urban Land Associates-Broad Street, Richmond, a Georgia General Partnership, dated December 12, 1990, recorded December 28, 1990, in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Deed Book 255, page 1972 (plat in Plat Book 41, page 70).*

*§ 2. That, notwithstanding any law to the contrary, the board of visitors of Virginia Commonwealth University, with the approval of the Governor pursuant to § [2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the City of Richmond all interest in that certain lot, piece or parcel of land, lying and being in the City of Richmond, Virginia, acquired by Virginia Commonwealth University by Quitclaim Deed dated October 8, 2008, recorded as Instrument Number 080029969 in the City of Richmond Circuit Court on November 25, 2008, and further described as set forth and described as Parcel E (0.321 acres) on that certain plat of survey made by Draper Aden Associates, dated June 13, 2007, entitled "PLAT SHOWING IMPROVEMENTS: A PARCEL OF LAND,*

*FORMERLY A PORTION OF E. MARSHALL ST., BETWEEN N. 16th ST. AND INTERSTATE 95, CITY OF RICHMOND, VIRGINIA."*

*§ 3. The deed conveying the property shall provide that the property must be used for the official Richmond Slave Trail located in Richmond, Virginia, and that such use must commence within five years of the conveyance. If these conditions are not met, the property shall revert to the board of visitors of Virginia Commonwealth University.*

*§ 4. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 582 Virginia Commonwealth University; board of visitors to convey certain property to City of Richmond.**

An Act to authorize the board of visitors of Virginia Commonwealth University to convey certain real property to the City of Richmond to be used for the official Slave Trail.

[\[S 971\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any law to the contrary, the board of visitors of Virginia Commonwealth University, with the approval of the Governor pursuant to § [2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the City of Richmond all interest in those certain lots, pieces or parcels of land, lying and being in the City of Richmond, Virginia, acquired by Virginia Commonwealth University by Deed dated January 30, 2008, recorded as Instrument Number 080005212 in the City of Richmond Circuit Court on February 26, 2008, and further described as lying on the northern line of Broad Street, on the western line of 16th Street, on the northern and southern lines of Marshall Street and the eastern line of the Richmond Petersburg Turnpike (Interstate 95) and being more particularly described on plat of survey made by Potts, Minter & Associates, P.C., Engineers, Land Surveyors, Land Planners, dated November 17, 1989, revised November 28, 1990, and reinspected and revised December 10, 1990, entitled "PLAT SHOWING IMPROVEMENTS ON FOUR PARCELS OF LAND SITUATED NORTHWEST OF*

*16TH STREET AT MARSHALL STREET, IN THE CITY OF RICHMOND, VIRGINIA", which plat is recorded in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Plat Book 41, page 70, and which parcels are more particularly described as follows:*

*Parcel A*

*Beginning at a rod set at the intersection of the north line of Broad Street and the east line of Interstate 95, thence along the east line of Interstate 95 North 37 degrees 06 minutes 30 seconds East 100.00 feet to a point, thence leaving the east line of Interstate 95 South 52 degrees 53 minutes 30 seconds East 112.86 feet to a point, thence North 36 degrees 29 minutes 00 seconds East 39.92 feet to a point, thence South 52 degrees 53 minutes 30 seconds East 72.06 feet to a point on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 104.54 feet to a stone found, thence along a curve to the right having a radius of 35.00 feet and a length of 55.36 feet to a rod set on the north line of Broad Street, thence along the north line of Broad Street North 52 degrees 53 minutes 30 seconds West 150.63 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 0.486 acres, located in the City of Richmond, Virginia.*

*Parcel B*

*Beginning at a point on the east line of Interstate 95 100.00 feet north of the intersection of the east line of Interstate 95 and the north line of Broad Street, thence along the east line of Interstate 95 North 37 degrees 06 minutes 30 seconds East 16.00 feet to a point, thence leaving the east line of Interstate 95 South 52 degrees 53 minutes 30 seconds East 70.76 feet to a point, thence North 36 degrees 29 minutes 00 seconds East 38.92 feet to a point, thence South 52 degrees 53 minutes 30 seconds East 113.99 feet to a point on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 15.00 feet to a point, thence leaving the West line of 16th Street North 52 degrees 53 minutes 30 seconds West 72.06 feet to a point, thence South 36 degrees 29 minutes 00 seconds West 39.92 feet to a point, thence North 52 degrees 53 minutes 30 seconds West 112.86 feet to a point on the east line of Interstate 95 being the point and place of beginning and containing 0.104 acres located in the City of Richmond, Virginia.*

*Parcel C*

*Beginning at a rod set on the east line of Interstate 95 116.00 feet north of the intersection of the east line of Interstate 95 and the north line of Broad Street, thence along the east line of Interstate 95 North 52 degrees 53 minutes 30 seconds West 37.70 feet to a rod set, thence North 36 degrees 39 minutes 30 seconds East 216.64 feet to a rod set*

*on the south line of Marshall Street, thence along the south line of Marshall Street South 53 degrees 48 minutes 00 seconds East 216.75 feet to a stone found, thence along a curve to the right having a radius of 5.00 feet and a length of 7.88 feet to a stone found on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 29 minutes 00 seconds West 176.22 feet to a point, thence leaving the West line of 16th Street North 52 degrees 53 minutes 30 seconds West 113.99 feet to a point, thence South 36 degrees 29 minutes 00 seconds West 38.92 feet to a point, thence North 52 degrees 53 minutes 30 seconds West 70.76 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 1.012 acres located in the City of Richmond, Virginia.*

*Parcel D*

*Beginning at a rod set at the intersection of the north line of Marshall Street and the east line of Interstate 95 thence along the east line of Interstate 95 North 36 degrees 25 minutes 30 seconds East 106.00 feet to a rod set, thence South 53 degrees 38 minutes 30 seconds East 17.00 feet to a rod set, thence North 36 degrees 29 minutes 34 seconds East 223.40 feet to a rod set, thence North 45 degrees 22 minutes 34 seconds East 30.59 feet to a rod set, thence leaving the east line of Interstate 95 South 73 degrees 14*

*minutes 03 seconds East 98.66 feet to a rod set, thence South 14 degrees 08 minutes 12 seconds West 92.26 feet to a pk nail set, thence South 3 degrees 55 minutes 39 seconds East 27.03 feet to a pk nail set, thence along a curve to the right having a radius of 631.30 feet and a length of 189.82 feet to a rod set on the west line of 16th Street, thence along the west line of 16th Street South 36 degrees 07 minutes 08 seconds West 100.49 feet to a pk nail set at the intersection with the north line of Marshall Street, thence along the north line of Marshall Street North 53 degrees 52 minutes 09 seconds West 205.62 feet to a rod set on the east line of Interstate 95 being the point and place of beginning and containing 1.470 acres, located in the City of Richmond, Virginia. BEING the same real estate conveyed to Chavez Urban Land Associates-Broad Street, Richmond, a Georgia General Partnership, by deed from CSX Transportation, Inc., a Virginia corporation, dated December 12, 1990, recorded December 28, 1990, in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Deed Book 255, page 1972, all as shown on plat of survey made by Potts, Minter and Associates, P.C., Richmond, Virginia, dated November 29, 1990, which plat is attached to and recorded with that certain deed into Chavez Urban Land Associates-Broad Street, Richmond, a Georgia General Partnership, dated December 12, 1990, recorded December 28, 1990, in the*

*Clerk's Office, Circuit Court, City of Richmond, Virginia, in Deed Book 255, page 1972 (plat in Plat Book 41, page 70).*

§ 2. *That, notwithstanding any law to the contrary, the board of visitors of Virginia Commonwealth University, with the approval of the Governor pursuant to § [2.2-1150](#) of the Code of Virginia, is hereby authorized to convey to the City of Richmond all interest in that certain lot, piece or parcel of land, lying and being in the City of Richmond, Virginia, acquired by Virginia Commonwealth University by Quitclaim Deed dated October 8, 2008, recorded as Instrument Number 080029969 in the City of Richmond Circuit Court on November 25, 2008, and further described as set forth and described as Parcel E (0.321 acres) on that certain plat of survey made by Draper Aden Associates, dated June 13, 2007, entitled "PLAT SHOWING IMPROVEMENTS: A PARCEL OF LAND, FORMERLY A PORTION OF E. MARSHALL ST., BETWEEN N. 16th ST. AND INTERSTATE 95, CITY OF RICHMOND, VIRGINIA."*

§ 3. *The deed conveying the property shall provide that the property must be used for the official Richmond Slave Trail located in Richmond, Virginia, and that such use must commence within five years of the conveyance. If these conditions are not met, the property shall revert to the board of visitors of Virginia Commonwealth University.*

§ 4. *The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 100 Norfolk/Virginia Beach light rail project; clarifies extension of system.**

An Act to amend and reenact § 1 of Chapter 6 of the Acts of Assembly of 2008 Special Session II, as amended by Chapter 130 of the Acts of Assembly of 2010, relating to the extension of the proposed light rail system in the City of Norfolk to the oceanfront area in the City of Virginia Beach.

[\[H 1789\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 6 of the Acts of Assembly of 2008 Special Session II, as amended by Chapter 130 of the Acts of Assembly of 2010, is amended and reenacted as follows:

§ 1. The General Assembly determines that ~~expansion of the Norfolk Light Rail system, including extension from its current~~ *construction of a public transportation project extending from the terminus of the Norfolk Light Rail starter line at Newtown Road in the City of Norfolk to the ~~Oceanfront~~ oceanfront area in the City of Virginia Beach, along the Interstate 264 corridor on the right-of-way of the Norfolk Southern Railway, is in the public interest and qualifies for public funding, to the extent that any may be required, from the Transportation Partnership Opportunity Fund, established by § [33.1-221.1:8](#) of the Code of Virginia, or other funding available to the Commonwealth. Notwithstanding any contrary provision of law, the funds provided to the City of Virginia Beach under the Transportation Partnership Opportunity Fund to purchase railroad right-of-way from the Norfolk Southern Railroad Railway shall be expended and used subject to such requirements as the Federal Transit Administration shall determine to be most effective for the construction of the a public transportation project. *Nothing herein shall be interpreted to preselect the mode of public transportation to be constructed on the right-of-way to be acquired or any other public transportation alternative under study. Any public transportation project selected pursuant to the federally required environmental process currently underway will be deemed to satisfy the requirements of this act.**

## **Chapter 114 The Road to Revolution; adds Leatherwood Plantation in Henry County to this heritage trail.**

An Act to amend and reenact Chapter 852 of the Acts of Assembly of 2007, relating to the Road to Revolution Heritage Trail.

[\[H 2116\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That Chapter 852 of the Acts of Assembly of 2007 is amended and reenacted as follows:

§ 1. There is hereby established The Road to Revolution, a heritage trail of sites significant to Patrick Henry, orator of the American Revolution and independent Virginia's first governor, to highlight and celebrate Henry's leading role in liberating Virginia from

Colonial rule to independence. The Trail shall consist of the following sites: Henry's birthplace at Studley, Virginia; Rural Plains at Mechanicsville, Virginia; Pine Slash at Studley, Virginia; Hampden-Sydney College at Hampden-Sydney, Virginia; St. John's Church at Richmond, Virginia; Scotchtown at Beaverdam, Virginia; Hanover Tavern at Hanover, Virginia; the Hanover County Courthouse at Hanover, Virginia; Historic Polegreen Church at Mechanicsville, Virginia; *Leatherwood Plantation at Henry County, Virginia*; Red Hill Plantation and the Patrick Henry National Memorial, at Brookneal, Virginia. The Virginia Department of Transportation shall erect one identifying sign in the Department's right-of-way at each site only by request of a local government, historical organization, or foundation with custodial responsibilities for that site. Directional signs for travelers to these sites may be erected and maintained by similar request. Directional signage shall be placed at the nearest intersection to each site in the Department's right-of-way if there is no conflict with other Department signage. All signs shall consist of a common sign design developed by a committee consisting of one representative of each historical organization, foundation, or local governing body and the Director of the Department of Historic Resources. Sign panels and posts shall meet Department of Transportation specifications. All costs associated with manufacturing, erection, and maintenance of signs under this section shall be borne by the requesting party. Signs erected by the Virginia Department of Transportation under this section shall be developed in accordance with applicable provisions of § [10.1-2209](#) and placed in accordance with all applicable Virginia Department of Transportation regulations.

## **Chapter 174 Certificate of public need; Commissioner of Health to approve request to amend certain conditions.**

An Act to amend a certain certificate of public need.

[\[S 1212\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of subsection E of § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health shall accept and may approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered*

*with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 of the Code of Virginia in which nursing facility or extended care services are provided to allow such continuing care provider to continue to admit community patients, other than contract holders, to its nursing facility beds through December 31, 2014, if the following conditions are met: (i) the facility is located within the County of Botetourt and operated as a not-for-profit and (ii) the facility's contract holder occupancy rate is less than 85 percent at the time of such application.*

## **Chapter 116 UVA; to make full use of additional financial authority granted in management agreement.**

An Act to amend Article 2 of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, by adding a section numbered 2.3.1, relating to the management agreement between the Commonwealth and the University of Virginia.

[\[H 2140\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That Article 2 of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended by adding a section numbered 2.3.1 as follows:

*SECTION 2.3.1. Authority to Assist the Southwest Virginia Higher Education Center. In keeping with § [23-231.7](#) of the Code of Virginia, the University from time to time provides assistance to the Southwest Virginia Higher Education Center in the performance of its duties and responsibilities, including but not limited to financial administration, procurement, facilities management, and human resources assistance. The University is authorized to make full use of the additional financial and operational authority granted to it by this Management Agreement in providing assistance to the Southwest Virginia Higher Education Center.*

## **Chapter 144 Lake Anna; names six bridges in vicinity.**

An Act to designate several bridges in the vicinity of Lake Anna.

[\[S 952\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 522 bridge across Pamunkey Creek in Spotsylvania is hereby designated the "Pamunkey Bridge."*

*§ 2. The Virginia Route 522 bridge across Christophers Creek in Louisa County is hereby designated the "Christophers Bridge."*

*§ 3. The Virginia Route 652 bridge across Contrary Creek in Louisa County is hereby designated the "Contrary Bridge."*

*§ 4. The Virginia Route 652 bridge across Elk Creek in Louisa County is hereby designated the "Elk Bridge."*

*§ 5. The Virginia Route 652 bridge across Millpond Creek in Louisa County is hereby designated the "Millpond Bridge."*

*§ 6. The Virginia Route 652 bridge across Coleman Creek in Louisa County is hereby designated the "Coleman Creek Bridge."*

*§ 7. The Department of Transportation shall place and maintain appropriate markers indicating the designations of these bridges. These designations shall not affect any other designations heretofore or hereafter applied to any of these bridges.*

## **Chapter 161 UVA; to make full use of additional financial authority granted in management agreement.**

An Act to amend Article 2 of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, by adding a section numbered 2.3.1, relating to the management agreement between the Commonwealth and the University of Virginia.

[\[S 1110\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That Article 2 of the third enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended by adding a section numbered 2.3.1 as follows:

*SECTION 2.3.1. Authority to Assist the Southwest Virginia Higher Education Center. In keeping with § [23-231.7](#) of the Code of Virginia, the University from time to time provides assistance to the Southwest Virginia Higher Education Center in the performance of its duties and responsibilities, including but not limited to financial administration, procurement, facilities management, and human resources assistance. The University is authorized to make full use of the additional financial and operational authority granted to it by this Management Agreement in providing assistance to the Southwest Virginia Higher Education Center.*

## **Chapter 215 Harvell Dam; DGIF shall submit a report evaluating alternatives to proposed breach thereof.**

An Act directing the Department of Game and Inland Fisheries to submit a report evaluating the alternatives to a proposed breach of the Harvell Dam.

[\[H 1855\]](#)

Approved March 16, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That prior to any breach of the Harvell Dam, located on that part of the Appomattox River located within the City of Petersburg, the Department of Game and Inland Fisheries shall prepare and submit a report to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources on or before November 30, 2011. The report shall evaluate the alternatives to the proposed breach of the dam, and include consideration of the adaptive reuse of the existing fishways, the costs for such adaptive reuse, and the availability of federal or state funding sources for such alternatives to the breach of such dam, and such other matters as the Department deems necessary and appropriate.*

## **Chapter 167 Certificate of public need; Commissioner of Health to approve request to amend certain conditions.**

An Act to authorize the amendment of a certain certificate of public need.

[\[S 1149\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision E of § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health shall accept and may approve a request to amend the conditions of a certificate of public need issued to a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 of the Code of Virginia in which nursing facility or extended care services are provided to allow such continuing care provider to continue to admit community patients, other than contract holders, to its nursing facility beds through December 31, 2014, if the following conditions are met: (i) the facility is located within the City of Suffolk and operated as a not-for-profit and (ii) the facility's contract holder occupancy rate is less than 85 percent at the time of such application.*

## **Chapter 168 The Road to Revolution; adds Leatherwood Plantation in Henry County to this heritage trail.**

An Act to amend and reenact Chapter 852 of the Acts of Assembly of 2007, relating to the Road to Revolution Heritage Trail.

[\[S 1161\]](#)

Approved March 15, 2011

Be it enacted by the General Assembly of Virginia:

1. That Chapter 852 of the Acts of Assembly of 2007 is amended and reenacted as follows:

§ 1. There is hereby established The Road to Revolution, a heritage trail of sites significant to Patrick Henry, orator of the American Revolution and independent Virginia's first governor, to highlight and celebrate Henry's leading role in liberating Virginia from Colonial rule to independence. The Trail shall consist of the following sites: Henry's birthplace at Studley, Virginia; Rural Plains at Mechanicsville, Virginia; Pine Slash at Studley, Virginia; Hampden-Sydney College at Hampden-Sydney, Virginia; St. John's Church at Richmond, Virginia; Scotchtown at Beaverdam, Virginia; Hanover Tavern at Hanover, Virginia; the Hanover County Courthouse at Hanover, Virginia; Historic Polegreen Church at Mechanicsville, Virginia; *Leatherwood Plantation at Henry County, Virginia*; Red Hill Plantation and the Patrick Henry National Memorial, at Brookneal, Virginia. The Virginia Department of Transportation shall erect one identifying sign in the Department's right-of-way at each site only by request of a local government, historical organization, or foundation with custodial responsibilities for that site. Directional signs for travelers to these sites may be erected and maintained by similar request. Directional signage shall be placed at the nearest intersection to each site in the Department's right-of-way if there is no conflict with other Department signage. All signs shall consist of a common sign design developed by a committee consisting of one representative of each historical organization, foundation, or local governing body and the Director of the Department of Historic Resources. Sign panels and posts shall meet Department of Transportation specifications. All costs associated with manufacturing, erection, and maintenance of signs under this section shall be borne by the requesting party. Signs erected by the Virginia Department of Transportation under this section shall be developed in accordance with applicable provisions of § [10.1-2209](#) and placed in accordance with all applicable Virginia Department of Transportation regulations.

## **Chapter 269 Virginia Racing Commission; authorization to join Interstate Racing and Wagering Compact.**

An Act to authorize the Virginia Racing Commission to enter into the Interstate Racing and Wagering Compact.

[\[H 2365\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Racing Commission shall be authorized to negotiate, enter into, and participate in the Interstate Racing and Wagering Compact, as proposed by the Association of Racing Commissioners International, for the purpose of providing for member states through state racing commissions to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, and rules relating to (i) horse racing and (ii) pari-mutuel activities that occur in or affect a party state.*

## **Chapter 277 Corrections, Department of; elimination of agency mandates.**

An Act to require the Department of Corrections to eliminate certain mandates.

[\[H 2435\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Corrections shall eliminate the mandate, imposed on local governments pursuant to subdivision H 5 of subsection H of Item 67.30 of Chapter 874 of the 2010 Acts of Assembly and identified as SPS.DOC006 in the 2010 edition of the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government, related to contract inmate classification reporting. This mandate has been recommended for elimination by the Department pursuant to § [15.2-2903](#) of the Code of Virginia.*

## **Chapter 244 Underground transmission lines; extends scheduled expiration date of pilot program.**

An Act to amend and reenact §§ 3 and 6 of the first enactment of Chapter 799 of the Acts of Assembly of 2008, relating to a pilot program to place certain electric transmission lines underground.

[\[H 2027\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 3 and 6 of the first enactment of Chapter 799 of the Acts of Assembly of 2008 are amended and reenacted as follows:

§ 3. In reviewing applications submitted by public utilities for certificates of public convenience and necessity for the construction of electrical transmission lines of 230 kilovolts or less filed between ~~the effective date of this act April 2, 2008,~~ and July 1, ~~2012~~ 2014, the State Corporation Commission shall approve three applications for qualifying projects to be constructed in whole or in part underground, as a part of the pilot program. The three qualifying projects shall be in addition to the qualifying project described in subsection A of § 2. If a public utility submits an application for a certificate of public convenience and necessity for an electrical transmission line that completes the network for a qualifying project as set forth in subsection B of § 2, the approval of such application shall constitute one of the three additional projects to be approved pursuant to this section.

§ 6. The State Corporation Commission shall report annually to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor on the progress of the pilot program by no later than December 1 of each year that this act is in effect. The State Corporation Commission shall submit a final report to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor no later than December 1, ~~2012~~ 2014, analyzing the entire program and making recommendations about the continued placement of transmission lines underground in the Commonwealth.

## **Chapter 256 Mennel Milling Company; DGS to convey certain real property located in Roanoke County.**

An Act to authorize the Department of General Services to convey certain real property to the Mennel Milling Company located in Roanoke County, Virginia.

[\[H 2162\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That the Department of General Services is hereby authorized to convey, with the*

*approval of the Governor in the manner set forth in § [2.2-1156](#), a parcel of land (tax map 087.14-03-02.05) containing 7.766 acres, more or less, to the Mennel Milling Company, in exchange for three parcels of land (tax map 087.11-03-08 and 087.11-03-21 and 087.11-03-07) containing 6.25 acres, more or less, of improved property, at no cost to the Commonwealth, for use by the Virginia Department of Transportation as an area maintenance headquarters to serve the southwestern portion of Roanoke County.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That an emergency exists and this act is in force from its passage.

### **Chapter 311 Mercury switches; extends sunset provision that requires removal in certain motor vehicles.**

An Act to amend and reenact the third enactment of Chapters 16 and 163 of the Acts of Assembly of 2006, relating to removal of mercury switches in motor vehicles.

[\[S 793\]](#)

Approved March 21, 2011

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 16 of the Acts of Assembly of 2006 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2012~~ 2015.

2. That the third enactment of Chapter 163 of the Acts of Assembly of 2006 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2012~~ 2015.

### **Chapter 422 License plates, special; issuance to supporters celebrating centennial of Fort Belvoir.**

An Act to authorize the issuance of special license plates celebrating the centennial of Fort Belvoir.

[\[S 761\]](#)

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates celebrating the centennial of Fort Belvoir.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates celebrating the centennial of Fort Belvoir.*

**Chapter 488 Coeburn, Town of; real and personal property taxes interest and penalties.**

An Act to permit the Town of Coeburn to waive or refund certain penalties and interest on taxes.

[\[H 2171\]](#)

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Town of Coeburn may waive the interest and penalties on real and personal property taxes for all tax years beginning prior to January 1, 2009, provided that the taxes are paid during the period October 1, 2009, through December 31, 2011. The Town may also refund the interest and penalties on real and personal property taxes, provided that the interest and penalties are paid during the period October 1, 2009, through December 31, 2011.*

**Chapter 258 Victims of human trafficking; DSS to develop plan for provision of services.**

An Act to require the Department of Social Services to develop a plan for the provision of services to victims of human trafficking.

[\[H 2190\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall develop a plan for the delivery of services to victims of human trafficking. Such plan shall include provisions for (i) identifying victims of human trafficking in the Commonwealth; (ii) assisting victims of human trafficking with applying for federal and state benefits and services to which they may be entitled; (iii) coordinating the delivery of health, mental health, housing, education, job training, victims' compensation, legal, and other services for victims of human trafficking; (iv) preparing and disseminating educational and training programs and materials to increase awareness of human trafficking and services available to victims of human trafficking among local departments of social services, public and private agencies and service providers, and the public; (v) developing and maintaining community-based services for victims of human trafficking; and (vi) assisting victims of human trafficking with family reunification or return to their place of origin if the person so desires. In developing its plan, the Department shall work together with such other state and federal agencies, public and private entities, and other stakeholders as the Department shall deem appropriate.*

## **Chapter 293 Cigarette tax; Tax Commissioner shall convene a working group to review current policies, report.**

An Act to require the Department of Taxation to review certain issues relating to the local cigarette tax.

[\[S 1085\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Tax Commissioner shall convene a working group consisting of representatives selected by the Virginia Wholesalers and Distributors Association; the Virginia Retail Merchants Association; the Retail Alliance; the Virginia Petroleum,*

*Convenience and Grocery Association; the Northern Virginia Cigarette Tax Board; the Virginia Municipal League; and those counties that levy a local cigarette tax. The working group may add other individuals to its membership as it deems necessary.*

*§ 2. The working group shall review current policies on (i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers, (ii) the desirability of having a single cigarette tax stamp for state and local taxes, (iii) methods of determining the validity of cigarette tax stamps that are only partially visible, and (iv) related issues that are identified by the working group and must be considered in order to address the issues in clauses (i), (ii), and (iii).*

*§ 3. The working group is requested to begin its work as soon as possible after the conclusion of the 2011 regular session of the General Assembly and to identify any changes to current law, regulation, or policy that it considers desirable when addressing the above issues. The working group is requested to provide a report and recommendations to the Chairmen of the Senate Committee on Finance and the House Committee on Finance by December 1, 2011.*

## **Chapter 309 Mennel Milling Company; DGS to convey certain real property located in Roanoke County.**

An Act to authorize the Department of General Services to convey certain real property to the Mennel Milling Company located in Roanoke County, Virginia.

[\[S 1211\]](#)

Approved March 20, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services is hereby authorized to convey, with the approval of the Governor in the manner set forth in § [2.2-1156](#), a parcel of land (tax map # 087.14-03-02.05) containing 7.766 acres, more or less, to the Mennel Milling Company, in exchange for three parcels of land (tax map # 087.11-03-08 and 087.11-03-21 and 087.11-03-07) containing 6.25 acres, more or less, of improved property, at no cost to the Commonwealth, for use by the Virginia Department of Transportation as an area maintenance headquarters to serve the southwestern portion of Roanoke County.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 506 Medicaid Works program; DMAS to increase maximum allowable earnings for individuals.**

An Act to require the Department of Medical Assistance Services to increase the maximum allowable earnings for individuals participating in the Medicaid Works program.

[\[H 2384\]](#)

Approved March 24, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Medical Assistances Services shall increase the maximum allowable gross earnings for individuals participating in the Medicaid Works program established pursuant to § 1902(a)(10)(A)(ii)(XV) of the Social Security Act to the maximum gross income amount allowed by the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170) that does not trigger collection of mandatory premiums.*

## **Chapter 289 Dental hygienists; extension of educational and preventive care protocol.**

An Act to amend and reenact § [54.1-2722](#) of the Code of Virginia and to amend and reenact the third enactment of Chapters 99 and 561 of the Acts of Assembly of 2009, relating to the practice of dental hygienists.

[\[S 1014\]](#)

Approved March 18, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2722](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2722](#). License; application; qualifications; practice of dental hygiene.

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing, and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of an accredited dental hygiene program offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B of this section; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § [54.1-2706](#); and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § [54.1-3408](#), a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall

promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. (~~Expires July 1, 2011~~) Notwithstanding any provision of law or regulation to the contrary, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the Cumberland Plateau, Southside, and Lenowisco Health Districts, which are designated as Virginia Dental Health Professional Shortage Areas by the Virginia Department of Health. A dental hygienist providing such services shall practice pursuant to a protocol developed jointly by the medical directors of each of the districts, dental hygienists employed by the Department of Health, the Director of the Dental Health Division of the Department of Health, one representative of the Virginia Dental Association, and one representative of the Virginia Dental Hygienists' Association. A report of services provided by dental hygienists pursuant to such protocol, including their impact upon the oral health of the citizens of these districts, shall be prepared and submitted by the medical directors of the three health districts to the Virginia Secretary of Health and Human Resources by ~~November 1, 2010~~ *January 1, 2012*. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

2. That the third enactment of Chapter 99 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2011~~ *2012*.

3. That the third enactment of Chapter 561 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2011~~ *2012*.

## **Chapter 319 DCR; authorized to divest itself of certain properties conveyed to it by Norfolk Southern Railroad.**

An Act to authorize the Department of Conservation and Recreation to divest itself of certain properties that were conveyed to it by Norfolk Southern Railroad for the High Bridge Trail State Park.

[\[S 1300\]](#)

Approved March 21, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation (Department) is authorized to convey by quitclaim deed to Antone M. Servais and Rhonda L. Brock-Servais, their successors and assigns, upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General, any right, title, or interest that it may have in 0.201 acres, more or less, lying adjacent to 832 Buffalo Street in the Town of Farmville, Virginia, as shown on a plat of survey by S.W. Marsh, Land Surveyor, dated June 22, 2010, as it may be revised. Such plat, and any revisions thereto, and such quitclaim deed shall be recommended by the Director of the Department of General Services to the Governor.*

*§ 2. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department is hereby authorized to convey by quitclaim deed to Susan L. Estes, her successors and assigns, upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General, any right, title, or interest that it may have in 0.305 acres, more or less, lying adjacent to 836 Buffalo Street in the Town of Farmville, Virginia, as shown on a plat of survey by S.W. Marsh, Land Surveyor, dated June 22, 2010, as it may be revised. Such plat, and any revisions thereto, and such quitclaim deed shall be recommended by the Director of the Department of General Services to the Governor.*

*§ 3. That the purpose of this divestiture is to eliminate any liability for the Department associated with the private use of property that is of no present or potential future utility to the Department or its High Bridge Trail State Park. The use of such properties by the grantees, who are adjacent landowners, preceded the donation of the property to the Department by Norfolk Southern Railroad.*

## **Chapter 366 Cigarette tax; Tax Commissioner shall convene a working group to review current policies, report.**

An Act to require the Department of Taxation to review certain issues relating to the local cigarette tax.

[\[H 2038\]](#)

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1

*. § 1. The Tax Commissioner shall convene a working group consisting of representatives selected by the Virginia Wholesalers and Distributors Association; the Virginia Retail Merchants Association; the Retail Alliance; the Virginia Petroleum, Convenience and Grocery Association; the Northern Virginia Cigarette Tax Board; the Virginia Municipal League; and those counties that levy a local cigarette tax. The working group may add other individuals to its membership as it deems necessary.*

*§ 2. The working group shall review current policies on (i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers, (ii) the desirability of having a single cigarette tax stamp for state and local taxes, (iii) methods of determining the validity of cigarette tax stamps that are only partially visible, and (iv) related issues that are identified by the working group and must be considered in order to address the issues in clauses (i) through (iii).*

*§ 3. The working group is requested to begin its work as soon as possible after the conclusion of the 2011 regular session of the General Assembly, and to identify any changes to current law, regulation, or policy that it considers desirable when addressing the above issues. The working group is requested to provide a report and recommendations to the chairmen of the House Committee on Finance and the Senate Committee on Finance by December 1, 2011.*

## **Chapter 386 Certificate of public need; authorization of certain amendment.**

An Act to amend a certain certificate of public need.

[\[H 1456\]](#)

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Amendment of certain certificate of public need authorized.*

*Notwithstanding the provisions of subdivision 10 of § [32.1-102.3:2](#) of the Code of Virginia as in effect on June 30, 1996, or the provisions of Chapter 868 of the Acts of Assembly of 2000, Chapter 486 of the Acts of Assembly of 2003, Chapter 776 of the Acts of Assembly of 2006, and Chapter 394 of the Acts of Assembly of 2009, the Commissioner of Health may accept and approve a request, pursuant to this act, to amend the conditions of a certificate of need issued for an increase in beds in which nursing facility or extended care services are provided to allow such facility to continue to admit persons, other than residents of the cooperative units, to its nursing facility beds when such facility (i) is operated by an association described in § [55-458](#) of the Code of Virginia; (ii) was created in connection with a real estate cooperative; (iii) offers its residents a level of nursing services consistent with the definition of continuing care in Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 of the Code of Virginia; and (iv) was issued a certificate of need prior to October 3, 1995.*

## **Chapter 391 Accreditation of schools; delayed implementation of certain statutes and regulations.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, relating to the delayed implementation of certain regulations and state statutes related to the accreditation of schools.

[\[H 1554\]](#)

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, is amended and reenacted as follows:

§ 1. That no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2011~~ 2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, ~~2011~~ 2012,

unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in ~~2011-2012~~ ~~2012-2013~~ based on assessments administered during the ~~2010-2011~~ ~~2011-2012~~ school year shall be the same passing rates required for full accreditation during the 2008-2009 school year. Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011-2012. *Furthermore, notwithstanding the provisions of this section, regulations prescribing economics and financial literacy as a graduation requirement and related changes to the standard and advanced studies diplomas, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective July 1, 2011.*

## **Chapter 395 Certificate of public need; Commissioner of Health to issue for certain nursing home beds.**

An Act to require the Commissioner of Health to accept applications and to authorize the Commissioner to issue certificates of public need for certain nursing home beds.

[\[H 1643\]](#)

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding (i) the provisions of §§ [32.1-102.3](#) and [32.1-102.3:2](#) of the Code of Virginia, (ii) any regulations of the Board of Health establishing standards for the approval and issuance of Requests for Applications, and (iii) any current Requests for Applications issued pursuant to § [32.1-102.3:2](#) of the Code of Virginia, the Commissioner of Health shall accept and review applications and may issue certificates of public need for the addition of up to 10 Medicaid-eligible nursing home beds for a certified nursing home licensed for less than 60 beds, which is operated not for profit, is located in Planning District 15 but accepts patients from areas of the Commonwealth outside of the planning district, and provides care for patients regardless of ability to pay.*

2. That the provisions of this act shall not become effective unless an appropriation of general funds effectuating the purposes of this act is included in the general appro-

priation act passed by the 2011 Regular Session of the General Assembly and signed by the Governor and becomes law.

## **Chapter 411 Accreditation of schools; delayed implementation of certain statutes and regulations.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, relating to the delayed implementation of certain regulations and state statutes related to the accreditation of schools.

[\[S 810\]](#)

Approved March 23, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, is amended and reenacted as follows:

§ 1. That no statutes or regulations prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2011~~2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, ~~2011~~ 2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in ~~2011-2012~~ 2012-2013 based on assessments administered during the ~~2010-2011~~2011-2012 school year shall be the same passing rates required for full accreditation during the 2008-2009 school year. Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011-2012.

*Furthermore, notwithstanding the provisions of this section, regulations prescribing economics and financial literacy as a graduation requirement and related changes to the*

*standard and advanced studies diploma, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective July 1, 2011.*

## **Chapter 547 Claims; Richard Hitt and Charles P. Jarrett.**

An Act for the relief of Richard Hitt and Charles P. Jarrett.

[\[S 1458\]](#)

Approved March 25, 2011

Whereas, Richard Hitt served in the City of Fredericksburg Sheriff's Office for a total of 14 years, six months and the Spotsylvania County Sheriff's Office for 1 year, six months, thereby having 16 years of hazardous duty service, and was a member of the Virginia Retirement System as a result of such service; and

Whereas, Charles P. Jarrett served in the Spotsylvania County Sheriff's Office for 15 years and purchased one year and seven months of hazardous duty service from Stafford County, seven months of hazardous duty service from Central Virginia Jail and six months of hazardous duty service from the Northern Neck Jail for a total of 17 years, eight months of hazardous duty service, and was a member of the Virginia Retirement System as a result of such service; and

Whereas, Mr. Hitt and Mr. Jarrett each purchased an additional four years of service credit with the Virginia Retirement System for his active duty military service; and

Whereas, at the time of purchase each was led to believe that the four years of active duty military service would be certified as hazardous duty service with the Virginia Retirement System; and

Whereas, when Mr. Hitt was two weeks away from his original retirement date, he was informed by letter from the Virginia Retirement System that his active duty military service would not be certified as hazardous duty service; and

Whereas, when Mr. Jarrett retired effective December 1, 2010, he was informed by letter from the Virginia Retirement System that his active duty military service was not certified as hazardous duty service; and

Whereas, during pre-retirement counseling, the Virginia Retirement System may have failed to make the human resource representatives in the City of Fredericksburg (for Mr. Hitt) and Spotsylvania County (for Mr. Jarrett) aware that active duty military service could not be certified as hazardous duty service; and

Whereas, by the time the inaccurate advice was discovered, Mr. Hitt had already submitted his application to retire, and the City of Fredericksburg Sheriff's Office had already hired and trained his replacement, Mr. Jarrett had already retired from Spotsylvania County, and neither Mr. Hitt nor Mr. Jarrett had a job to which he could return and remedy the situation and qualify for the hazardous duty retirement supplement described in subsection B of § [51.1-206](#); and

Whereas, neither Mr. Hitt nor Mr. Jarrett has any other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Upon execution of a release of all claims each may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision in connection with the aforesaid occurrences, and notwithstanding any other provision of law, the Virginia Retirement System is authorized to pay the allowance described in subsection B of § [51.1-206](#) of the Code of Virginia (i) to Richard Hitt effective with his revised retirement date of February 1, 2011, and (ii) to Charles P. Jarrett effective with his retirement date of December 1, 2010.*

## **Chapter 558 Pearl Harbor Memorial Highway; designating as I-664 and I-264 in Hampton Roads Highway District.**

An Act to designate entire lengths of Interstate Route 664 and Interstate Route 264 in the Hampton Roads Highway Construction District the "Pearl Harbor Memorial Highway."

[\[S 1290\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the entire lengths of Interstate Route 664 and Interstate Route 264 in the Hampton Roads Highway Construction District are hereby designated the "Pearl Harbor Memorial Highway." The Department of Transportation may place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 568 Patriots Crossing project; requires VDOT to accept for review unsolicited proposal for construction.**

An Act to require the Virginia Department of Transportation to accept for review unsolicited proposals for development and operations of the Patriots Crossing project.

[\[H 1612\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Unsolicited proposals for development and operations of the Patriots Crossing (Third Crossing) project to be accepted for review by the Virginia Department of Transportation; procedure.*

*A. The Virginia Department of Transportation is hereby directed to accept for review unsolicited proposals under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) for the development and operations of the Patriots Crossing (Third Crossing) project at Hampton Roads. Unsolicited proposals shall be filed with the Department no later than September 30, 2011.*

*B. Upon enactment of this act, the Department shall make available on its website any and all information about the proposed Patriots Crossing (Third Crossing) project. The Department may take such measures as necessary to protect confidential or proprietary information or to protect vital state and national security interests that may be contained in such information.*

*C. Unsolicited proposals filed pursuant to this act shall provide information regarding team qualifications and experience, the proposed scope of work for the project, a schedule for project development, the proposed cost (including design, construction, operations, and maintenance costs), a conceptual finance plan (which includes the sources and uses of funds), and a discussion of public benefits of the project. The Department shall develop a process that would permit a private entity that is part of a proposal team to assist with the development of state or federally mandated environmental reviews or permits required to complete the project. Completion of such reviews or permits shall not be necessary prior to a decision by the Department to advance consideration of conceptual proposals.*

*D. Within 30 days of the receipt of unsolicited proposals, the Department shall post a public notice of the unsolicited proposals and provide 120 days for the submission of any competing proposals. The Department shall review unsolicited proposals filed pursuant to this act to assess the financial and technical merit of the proposals and the proposal teams. No later than May 1, 2012, the Department shall make a recommendation to a steering committee whether to advance development of the Patriots Crossing (Third Crossing) project. The Commonwealth Transportation Commissioner shall appoint the steering committee in accordance with guidelines developed pursuant to subsection D of § [56-560](#) of the Code of Virginia. The Department shall afford opportunities for public comment on the proposals prior to making its recommendation to the steering committee.*

*E. No later than September 1, 2012, the steering committee shall make a recommendation to the Commonwealth Transportation Commissioner whether to advance development of the Patriots Crossing (Third Crossing) project by entering into an interim or comprehensive agreement with one or more of the proposal teams or by issuing a request for detailed proposals to one or more of the proposal teams pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) and the guidelines developed in accordance with subsection D of § [56-560](#) of the Code of Virginia. Moneys in the Transportation Partnership Opportunity Fund may be made available to carry out the provisions of an interim or comprehensive agreement. The interim or comprehensive agreement shall also provide a schedule for the completion of the necessary reviews and approvals for construction of the Patriots Crossing (Third Crossing) project.*

2. That the Virginia Department of Transportation shall promptly inform the Joint Commission on Transportation Accountability, as authorized by Chapter 43 (§ [30-282](#) et seq.) of Title 30 of the Code of Virginia, by written update, of its completion of each requirement of this act.

## **Chapter 593 Isle of Wight County; authorizes Department of General Services to convey certain property.**

An Act to authorize the Department of General Services to convey certain real property to Isle of Wight County.

[\[H 2498\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services, with the approval of the Governor, is hereby authorized to convey to the County of Isle of Wight, upon such terms and conditions as may be agreed to by the parties, a parcel of land consisting of approximately 5.54 acres (Tax Map #58-01-047C), previously used by the Virginia Department of Transportation as the Walter's Sub-Area Headquarters.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 601 Piankatank River & Narrows; VMRC to convey easements for purpose of installing, etc. cable system.**

An Act to authorize the Virginia Marine Resources Commission to grant and convey a permanent easement and right-of-way across the bed of the Piankatank River and a permanent easement and right-of-way across the bed of the Narrows adjacent to Hills Bay, including a portion of the Baylor Survey, to Virginia Electric and Power Company (Dominion Virginia Power), for the purpose of installing and operating a submarine electric distribution cable system.

[\[S 921\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor, shall deem proper, a permanent easement and right-of-way of 50 feet of width and a temporary right-of-way of a reasonable width as needed for the purpose of installing, constructing, maintaining, repairing and operating a submarine electric distribution cable system in and across the bed of the Piankatank River, including a portion of the Baylor Survey, the*

*center line of such easement being described as follows:*

*Beginning at the mean low water mark on the south side of the Piankatank River and west of Twiggs Ferry Road Bridge, being the property line of a parcel of land now or formerly owned by Laura H. Hughes et al., in the County of Mathews, Virginia; said point having a coordinate value of latitude 37° 30' 26.92" north, longitude 76° 25' 12.41" west, being on the geographic datum NAD 1983(86), thence to a point ending at the low water mark on the north side of the Piankatank River and west of Twiggs Ferry Road Bridge being a property line of a parcel of land now or formerly owned by Allie J. and Carolyn A. Walton, Jr., R/S, in the County of Middlesex, Virginia; said point having a coordinate value of latitude 37° 30' 47.49" north, longitude 76° 25' 12.60" west, containing 2.36 acres more or less.*

*§ 2. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor, shall deem proper, a permanent easement and right-of-way of 50 feet of width and a temporary right-of-way of a reasonable width as needed for the purpose of installing, constructing, maintaining, repairing and operating a submarine electric distribution cable system in and across the bed of the Narrows adjacent to Hills Bay, including a portion of the Baylor Survey, the center line of such easement being described as follows:*

*Beginning at the mean low water mark on the south side of the Narrows adjacent to Hills Bay and west of the Gwynn's Island Bridge, State Route 223, being the property line of a parcel of land now or formerly owned by William Edward Nelson and Cathleen Cameron Nelson, Trustees, in the County of Mathews, Virginia; said point having a coordinate value of latitude 37° 29' 15.94" north, longitude 76° 18' 35.06" west, being on the geographic datum NAD 1983(86), thence to a point, said point having a coordinate value of latitude 37° 29' 19.25" north, longitude 76° 18' 43.87" west, thence to a point ending at the low water mark on the north side of the Narrows adjacent to Hills Bay and west of the Gwynn's Island Bridge, State Route 223, being the property line of a parcel of land now or formerly owned by W.D. Jenkins, Est. in the County of Mathews, Virginia; said point having a coordinate value of latitude 37° 29' 19.76" north, longitude 76° 18' 43.87" west, containing 0.96 acres more or less.*

*§ 3. The portion of the property described above in § 1 (Piankatank River Crossing) that lies within the Baylor Survey is described below and shall not be considered part of the natural oyster beds, rocks and shoals in the waters of the Commonwealth:*

*Area within Public Ground No. 5, Mathews County: Beginning on the southern side of the Piankatank River, the first point being along the southern boundary of Public Ground No. 5, Mathews County, and thence upstream of and running parallel with the Twiggs Ferry Road Bridge to a point being: latitude 37° 30' 29.9741" north, longitude 76° 25' 12.7539" west, thence clockwise (northerly) to an intersection point along the joint boundary of Public Ground No. 5, Mathews County, being: latitude 37° 30' 38.5394" north, longitude 76° 25' 12.8303" west, thence clockwise (easterly) to a point along the boundary of Public Ground No. 5, Mathews County, being: latitude 37° 30' 38.6398" north, longitude 76° 25' 12.2107" west, thence clockwise (southerly) to an intersection point along the southern boundary of Public Ground 5, Mathews County, being: latitude 37° 30' 30.0916" north, longitude 76° 25' 12.1343" west, thence clockwise (westerly) to a point along the southern boundary of Public Ground No. 5, Mathews County, being the point of beginning and containing 0.99 acres; and*

*Area within Public Ground No. 3, Middlesex County: Beginning at the approximate middle of the Piankatank River, the first point being along the southern boundary of Public Ground No. 3, and thence running upstream of and parallel with the Twiggs Ferry Road Bridge to a point being: latitude 37° 30' 38.5394" north, longitude 76° 25' 12.8303" west, thence clockwise (northerly) to a point along the northern boundary of Public Ground No. 3, Middlesex County, being: latitude 37° 30' 41.8477" north, longitude 76° 25' 12.8599" west, thence clockwise (easterly) to a point along the northern boundary of Public Ground No. 3, Middlesex County, being: latitude 37° 30' 41.8510" north, longitude 76° 25' 12.2393" west, thence clockwise (southerly) to a point along the southern boundary of Public Ground No. 3, Middlesex County, being: latitude 37° 30' 38.6398" north, longitude 76° 25' 12.21066" west, thence clockwise (westerly) to the point along the southern boundary of Public Ground No. 3, Middlesex County, being the point of beginning and containing 0.38 acres. All values are in geographic datum NAD 1983(86).*

*The portion of the property described above in § 2 (Narrows Crossing adjacent to Hills Bay) that lies within the Baylor Survey is described below and shall not be considered part of the natural oyster beds, rocks and shoals in the waters of the Commonwealth:*

*Area within Additional Public Ground, as set aside by § [28.2-642](#) of the Code of Virginia, hereafter referred to as Additional Public Ground § [28.2-642](#):: Beginning on the southern side of the Narrows adjacent to Hills Bay, the first point being along the southeastern boundary of Additional Public Ground § [28.2-642](#), Mathews County, at mean low water, said point being: latitude 37° 29' 15.7067" north, longitude 76° 18' 35.1665" west, thence clockwise (northwesterly) to an intersection point along the boundary of Additional Public Ground § [28.2-642](#), Mathews County, being: latitude 37° 29' 16.3774" north,*

*longitude 76° 18' 36.9516" west, thence clockwise (northeasterly) to a point along the boundary of Additional Public Ground § [28.2-642](#), Mathews County, being: latitude 37° 29' 16.7449" north, longitude 76° 18' 36.4750" west, thence clockwise (southeasterly) to an intersection point along the southern boundary of Additional Public Ground § [28.2-642](#), Mathews County, at mean low water being: latitude 37° 29' 16.3072" north, longitude 76° 18' 35.3101" west, thence clockwise (southeasterly) along the mean low water line to a point along the southern boundary of Additional Public Ground § [28.2-642](#), Mathews County, being the point of beginning and containing 0.15 acres; and Area within Public Ground No. 5, Mathews County: Beginning along the southern boundary of Public Ground No. 5, at a point being: latitude 37° 29' 16.3774" north, longitude 76° 18' 36.9516" west, thence clockwise (northwesterly) to a point along the northern boundary of Public Ground No. 5, Mathews County, being: latitude 37° 29' 17.9482" north, longitude 76° 18' 41.1325" west, thence clockwise (northeasterly) to a point along the northern boundary of Public Ground No. 5, Mathews County, being: latitude 37° 29' 18.1976" north, longitude 76° 18' 40.3413" west, thence clockwise (southeasterly) to a point along the southern boundary of Public Ground No. 5, Mathews County, being: latitude 37° 29' 16.7449" north, longitude 76° 18' 36.4750" west, thence clockwise (southwesterly) to the point along the southern boundary of Public Ground No. 5, Mathews County, being the point of beginning and containing 0.41 acres. All values are in geographic datum NAD 1983(86).*

*§ 4. The instruments granting and conveying these easements and rights-of-way from the Commonwealth to Virginia Electric and Power Company shall be in a form approved by the Attorney General. The legal descriptions above may be modified to correct any errors discovered during the process of finalizing these easements.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 608 Civics Education, Commission on; continuation of Commission until July 1, 2012.**

An Act to amend and reenact the second enactment of Chapter 859 of the Acts of Assembly of 2009, relating to the Commission on Civics Education.

[\[S 1054\]](#)

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 859 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. ~~For its first year of existence, if the Commission is not funded by a separate appropriation in the Appropriation Act or its Fund lacks sufficient moneys to sustain its work, the Commission may be funded jointly from the operating budgets of the Clerk of the Senate and the Clerk of the House of Delegates upon the approval of the Joint Rules Committee. Thereafter, if the Commission is not~~ *Unless the Commission is (i) funded by a separate appropriation in the Appropriation Act or its Fund lacks sufficient moneys to sustain its work (ii) funded with nongeneral funds or donations to sustain its work*, this chapter shall expire on July 1 of the fiscal year *following the fiscal year* that the Commission fails to receive such funding.

## **Chapter 631 License plates, special; issuance to those bearing national motto: IN GOD WE TRUST.**

An Act to authorize the issuance of special license plates bearing the national motto: In God We Trust.

[\[S 811\]](#)

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates bearing the national motto: In God We Trust.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the national motto: In God We Trust.*

## **Chapter 634 Family life education; SOL objectives related to dating violence, etc., to be taught in school.**

An Act to require awareness of teen dating violence to be taught as prescribed by the Board of Education's family life education guidelines.

[\[S 906\]](#)

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any family life education curriculum offered by a local school division shall require the Standards of Learning objectives related to dating violence and the characteristics of abusive relationships to be taught at least once in middle school and at least twice in high school, as described in the Board of Education's family life education guidelines.*

## **Chapter 749 Advanced Shipbuilding Training Facility Grant Program; revises Program.**

An Act to amend and reenact § [59.1-284.23](#) of the Code of Virginia and to amend Chapters 798 and 850 of the Acts of Assembly of 2009 by adding a fifth enactment, relating to the Advanced Shipbuilding Training Facility Grant Program.

[\[H 2495\]](#)

Approved March 28, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [59.1-284.23](#) of the Code of Virginia is amended and reenacted as follows:

§ [59.1-284.23](#). Advanced Shipbuilding Training Facility Grant Program; eligible city.

A. As used in this section:

"Advanced shipbuilding" means (i) the manufacture, construction, assembly, overhaul, repair, and test of nuclear vessels and submarines for the U.S. Navy; (ii) the design or development of nuclear vessels and submarines for the U.S. Navy; or (iii) the manufacturing activities of a private company described under 2007 index number 336611 of the North American Industry Classification System.

"Base training expense" means the total expenditures made by a qualified shipbuilder, ~~in the year prior to entering into a memorandum of understanding,~~ *in 2008* that directly and indirectly support training activities.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth.

"Eligible city" means the City of Newport News *or its industrial development authority*.

"Grant" means the advanced shipbuilding training facility grant as described in this section.

"Memorandum of understanding" means a performance agreement entered into on or before ~~June 30, 2009~~ *August 31, 2011*, among a qualified shipbuilder, the Commonwealth, and others as appropriate, such as the eligible city, setting forth the requirements for capital investment, training costs, and the creation of new full-time jobs that will make the qualified shipbuilder eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in an eligible city, created as the direct result of capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible city and for which the standard fringe benefits are paid by the qualified shipbuilder, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such qualified shipbuilder's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may or may not be of indefinite duration, including supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors of the qualified shipbuilder, may be considered new full-time jobs, if so designated as such in the memorandum of understanding between such qualified shipbuilder, the Commonwealth, and others.

"New training facility" means a facility that, pursuant to a Memorandum of Agreement with the Secretary, is to be operated by the qualified shipbuilder for use by the shipbuilding industry, primarily to provide education, training and retraining of workers in the shipbuilding industry. Such training facility may be owned by the qualified shipbuilder, or may be operated by the qualified shipbuilder through a lease agreement with the eligible city, a local industrial development authority, or a private developer.

"Qualified shipbuilder" means a shipbuilder located in an eligible city that (i) makes a new capital investment of at least \$300 million from January 1, 2009 through December 31, 2011, related to advanced shipbuilding in an eligible city; (ii) creates at least 1,000 new full-time jobs in an eligible city for advanced shipbuilding or activities ancillary to or supportive of advanced shipbuilding; (iii) maintains an apprenticeship program accredited by the Council for Occupational Education with an average annual enrollment of at least 750 and articulation agreements with local community colleges that allow its graduates to qualify for accredited associate degrees from those institutions; and (iv) maintains a level of ~~base training expenditures no less than that spent in calendar year 2008 as set~~

~~forth in the memorandum of understanding expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense.~~

"Secretary" means the Secretary of Commerce and Trade or his designee.

B. Any qualified shipbuilder located in an eligible city shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2012, and ending with the Commonwealth's fiscal year starting on July 1, 2016, unless such time frame is extended in accordance with subsection C or D. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Advanced Shipbuilding Training Facility Fund, which Fund is hereby established on the books of the Comptroller; (ii) shall not exceed \$25 million in the aggregate; (iii) shall be paid to a qualified shipbuilder during each fiscal year contingent upon the qualified shipbuilder meeting the requirements for the aggregate of (a) number of new full-time jobs created and the substantial retention of the same, (b) maintenance of base training expenses, and (c) amount of the capital investment made and substantially retained, as set forth in the memorandum of understanding; and (iv) shall be expended by the qualified shipbuilder on training costs or to pay the capital or lease cost of any new training facility to provide that training.

1. The amount of the grant to be paid in each fiscal year shall be conditional upon the qualified shipbuilder meeting the requirements for (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the beginning of such fiscal year; (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the beginning of such fiscal year; and (iii) ~~the expenditure of base training expenses as set forth in the memorandum of understanding entered into on or before June 30, 2009~~ *maintaining a level of expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense.* If the qualified shipbuilder has not fully met the grant requirements by December 31, 2011, the period of eligibility may be extended for up to three years, provided that the grants in any given fiscal year shall not exceed \$5 million, plus any amounts deferred in accordance with subsection C or D. Grants shall be paid based upon such requirements as agreed to on or before ~~June 30, 2009~~ *August 31, 2011*, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed;

2. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

a. \$5 million for the Commonwealth's fiscal year beginning July 1, 2012;

b. \$10 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2013;

c. \$15 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014;

d. \$20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2015; and

e. \$25 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2016; and

3. Grants provided by this section shall not exceed \$25 million in the aggregate or the aggregate total of training costs expended by a qualified shipbuilder during the period, whichever is less.

C. Any qualified shipbuilder applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid; (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid; and (iii) the aggregate amount of base training expenses as of the last day of the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 each year following the calendar year in which the qualified shipbuilder meets such aggregate new full-time job requirements and aggregate capital investments. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection B. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

D. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including the initial failure to meet the aggregate capital investment or the aggregate new full-time job requirements or the aggregate base training expenses set forth in the memorandum of understanding or the occurrence of any substantial reduction in such new full-time job requirements or capital investment requirements after such requirements have been met but before the grant payment has been made, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year shall include both the deferred payment and the scheduled grant payment as provided in subsection B or that a proportional payment, based on the proportional share of the required additional full-time jobs, be made.

E. As a condition of receipt of a grant, a qualified shipbuilder shall make available to the Secretary or his designee for inspection upon his request relevant and applicable documents to determine whether the qualified shipbuilder has met the requirements for the receipt of grants as set forth in this section and subject to the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified shipbuilder shall be considered confidential and proprietary.

*F. An eligible city shall be eligible to receive a grant from the Advanced Shipbuilding Training Facility Fund established under subsection B each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2012. The grants under this subsection may be paid to the eligible city subject to a memorandum of understanding between the Secretary, the eligible city, and the qualified shipbuilder that provides that (i) the eligible city or a private developer will build a new training facility for use by the qualified shipbuilder and the qualified shipbuilder will use the new training facility during the grant period; (ii) the new training facility is part of a development plan approved by the eligible city and the qualified shipbuilder that includes additional private capital investment adjacent to the new training facility that is equal to or greater than the cost of the facility; and (iii) the qualified shipbuilder waives its right to apply for grants under subsection B. Grants to an eligible city may be used only for the construction, lease, or lease-purchase of the new training facility, including related debt service or repayment of any loans whose proceeds are used for such costs. The memorandum of understanding may provide for a total amount of grants under this subsection of not more than \$42 million, subject to appropriation by the General Assembly, and for a period of eligibility of up to 10 years, unless such time frame is extended in accordance with subsection C or D, and may provide for a contractual agreement for payments by the Commonwealth. At the conclusion of the grant period, the qualified shipbuilder shall have the right to assume ownership of the new training facility.*

2. That Chapters 798 and 850 of the Acts of Assembly of 2009 are amended by adding a fifth enactment as follows:

*5. That a copy of the executed memorandum of understanding, as defined in § [59.1-284.23](#) of the Code of Virginia pursuant to enactments of the 2011 Session of the General Assembly, shall be provided by August 31, 2011, to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, with any analysis by the Virginia Economic Development Partnership of the economic impact of the*

*expected capital investment and new full-time jobs described in the memorandum of understanding. Any subsequent changes to the memorandum of understanding shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance not later than 30 days after being executed by the Secretary. All matters, including but not limited to any memorandum of agreement, or any other agreement, necessary to effectuate the purposes of this act shall be finalized on or before October 31, 2011. The Governor shall include in the Budget Bill he submits to the General Assembly in 2011 pursuant to § [2.2-1509](#) of the Code of Virginia all appropriations necessary to fulfill the obligations of the Commonwealth pursuant to such final agreements.*

## **Chapter 766 Landlord and tenant laws; service of process may be accomplished by a sheriff, etc.**

An Act to amend and reenact §§ [8.01-286.1](#), [8.01-291](#), [8.01-293](#), [8.01-294](#), [8.01-296](#), [8.01-312](#), [8.01-315](#), [8.01-327](#), [15.2-922](#), [16.1-79.1](#), [36-99.5](#), [55-225.4](#), [55-248.6:1](#), [55-248.15:2](#), [55-248.16](#), [55-248.18](#), [55-248.24](#), [55-248.38:3](#), and [58.1-486.2](#) of the Code of Virginia and to repeal the second enactment of Chapter 663 of the Acts of Assembly of 2009, relating to landlord and tenant law.

[\[H 1611\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ [8.01-286.1](#), [8.01-291](#), [8.01-293](#), [8.01-294](#), [8.01-296](#), [8.01-312](#), [8.01-315](#), [8.01-327](#), [15.2-922](#), [16.1-79.1](#), [36-99.5](#), [55-225.4](#), [55-248.6:1](#), [55-248.15:2](#), [55-248.16](#), [55-248.18](#), [55-248.24](#), [55-248.38:3](#), and [58.1-486.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [8.01-286.1](#). Service of process; waiver, duty to save costs, request to waive, how served.

A. In an action pending in *general district court* or circuit court, the plaintiff may notify a defendant of the commencement of the action and request that the defendant waive service of process as provided in subsection B. Any person subject to service as set forth in § [8.01-296](#), [8.01-299](#), §§ [8.01-301](#) through [8.01-306](#) or § [8.01-320](#), with the exception of the Secretary of the Commonwealth and the Clerk of the State Corporation Commission,

who receives actual notice of an action in the manner provided in this section, has a duty to avoid any unnecessary costs of serving process.

B. The notice and request shall incorporate the request for waiver and shall:

1. Be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer, director or registered agent authorized by appointment or law to receive service of process of a defendant subject to service under § [8.01-299](#), §§ [8.01-301](#) through [8.01-306](#) or § [8.01-320](#);
2. Be dispatched through first-class mail or other reliable means;
3. Be accompanied by a copy of the motion for judgment, bill of complaint or other such initial pleading and identify the court in which it has been filed;
4. Inform the defendant, by means of a form provided by Executive Secretary of the Supreme Court, of the consequences of compliance and failure to comply with the request;
5. Set forth the date on which the request is sent;
6. Allow the defendant a reasonable time to return the waiver, which shall be no more than 30 days from the date on which the request is sent, or 60 days from that date if the defendant's address is outside the Commonwealth; and
7. Provide the defendant with an extra copy of the notice and request, as well as a pre-paid means of compliance in writing.

If a defendant fails to comply with a request for waiver made by a plaintiff, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

C. A defendant that, before being served with process, timely returns a waiver so requested is not required to serve a grounds of defense or other responsive pleading to the motion for judgment or other initial pleading until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant's address was outside the Commonwealth.

D. When the plaintiff files a waiver of service with the court, the action shall proceed as if a notice and motion for judgment or other initial pleading had been served at the time of filing the waiver, and no proof of service shall be required.

E. The costs to be imposed on a defendant for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under § [8.01-299](#), §§ [8.01-301](#) through [8.01-306](#) or § [8.01-320](#), together with the costs, including reasonable attorneys' fees, of any motion required to collect the costs of service. This provision does not apply to the Commissioner of the Department of Motor

Vehicles, the Secretary of the Commonwealth or the Clerk of the State Corporation Commission.

F. A defendant who waives service of process pursuant to this section does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of that defendant, or to any other defense or objection other than objections based on inadequacy of process or service of process.

*G. If the parties agree to do so in writing, the provisions of this section for a waiver of service of process may be electronic. A waiver of service of process shall be in a separate writing signed by the responding party; however, such signature may be electronic as otherwise provided by law. If electronic delivery is used, sufficient proof of the electronic delivery shall be retained, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.*

§ [8.01-291](#). Copies to be made.

~~The~~ *Unless such process is otherwise transmitted electronically for service of process, the clerk issuing any such process unless otherwise directed shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served.*

§ [8.01-293](#). Authorization to serve process, capias or show cause order; execute writ of possession and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § [8.01-295](#); ~~or~~
2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; *or*
3. *A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.*

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an

order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § [9.1-101](#) of the Code of Virginia may serve any capias or show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

§ [8.01-294](#). Sheriff to get from clerk's office process and other papers; return of papers; effect of late return.

Every sheriff who attends a court shall, every day when the clerk's office is open for business, go to such office and receive all process, and other papers to be served by him, and give receipts therefor, unless he has received notice from a regular employee of the clerk's office that there are no such papers requiring service and shall return all papers within 72 hours of service, except when such returns would be due on a Saturday, Sunday, or legal holiday. In such case, the return is due on the next day following such Saturday, Sunday, or legal holiday.

*However, a sheriff may receive process directly from a party or a party's attorney in an electronic format for any civil action filed pursuant to § [16.1-79.1](#) on a uniform court form established by the Executive Secretary of the Supreme Court and print such process for service on such parties for whom service is proper, provided the clerk has established a system for electronically issuing such process. The return of service shall be made as otherwise provided by law. The sheriff may charge an additional fee to the party or party's attorney not to exceed \$10 for such electronic process. The fees shall be collected by the sheriff and remitted to the treasurer of the appropriate county or city, and held by such treasurer to be appropriated by the governing body to the sheriff's office. The assessment shall be used solely by the sheriff for the development, operation, and maintenance of technology to implement the provisions of this section.*

Failure to make return of service of process by anyone authorized to serve process under § [8.01-293](#) within the time specified in this section shall not invalidate any service of process or any judgment based thereon. In the event a late return prejudices a party or interferes with the court's administration of a case, the court may, in its discretion, continue the case, require additional or substitute service of process, or take such other action or enter such order as the court deems appropriate under the circumstances.

§ [8.01-296](#). Manner of serving process upon natural persons.

Subject to the provisions of § [8.01-286.1](#), in any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:

1. By delivering a copy thereof in writing to the party in person; or

2. By substituted service in the following manner:

a. If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of 16 years or older; or

b. If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than 10 days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of 10 days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, 1989, upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, 1989, is validated.

c. The person executing such service shall note the manner and the date of such service on the original and the copy of the process so delivered or posted under this subdivision and shall effect the return of process as provided in §§ [8.01-294](#) and [8.01-325](#).

3. If service cannot be effected under subdivisions 1 and 2, then by order of publication in appropriate cases under the provisions of §§ [8.01-316](#) through [8.01-320](#).

4. The landlord or his duly authorized agent or representative may serve notices required by the rental agreement or by law upon the tenant or occupant under a rental agreement that is within the purview of Chapter 13 (§ [55-217](#) et seq.) of Title 55.

*5. A sheriff may serve process electronically on a registered agent or other person who has agreed to accept service as otherwise provided by law. If electronic delivery is used, the sheriff shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a cer-*

*tificate of service prepared by the sheriff confirming the electronic delivery. The sheriff may charge an additional fee not to exceed \$10 for such electronic service.*

§ [8.01-312](#). Effect of service on statutory agent; duties of such agent.

A. Service of process on the statutory agent shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended.

Provided that such agent shall forthwith send by registered or certified mail, with return receipt requested, a copy of the process to the person named therein and for whom the statutory agent is receiving the process.

Provided further that the statutory agent shall file an affidavit of compliance with this section with the papers in the action; this filing shall be made in the office of the clerk of the court in which the action is pending.

B. Unless otherwise provided by § [8.01-313](#) and subject to the provisions of § [8.01-316](#), the address for the mailing of the process required by this section shall be that as provided by the party seeking service.

*C. If the statutory agent provides for electronic service, the service of process may be served on the statutory agent electronically. If electronic delivery is used, sufficient proof of the electronic delivery shall be retained, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.*

§ [8.01-315](#). Notice to be mailed defendant when service accepted by another.

No judgment shall be rendered upon, or by virtue of, any instrument in writing authorizing the acceptance of service of process by another on behalf of any person who is obligated upon such instrument, when such service is accepted as therein authorized, unless the person accepting service shall have made and filed with the court an affidavit showing that he mailed or caused to be mailed to the defendant at his last known post-office address at least ten days before such judgment is to be rendered a notice stating the time when and place where the entry of such judgment would be requested. *Any affidavit filed pursuant to this section may be filed electronically, provided the clerk has established a system for such electronic filing. If electronic delivery is used, sufficient proof of the electronic delivery shall be retained, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.*

§ [8.01-327](#). Acceptance of service of process.

Service of process may be accepted by the person for whom it is intended by signing the proof of service and indicating the jurisdiction and state in which it was accepted.

However, service of process in divorce or annulment actions may be accepted only as provided in § [20-99.1:1](#). *Any acceptance of service of process may be accepted electronically. If electronic delivery is used, sufficient proof of the electronic delivery shall be retained, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.*

§ [15.2-922](#). Smoke detectors in certain buildings.

Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke detectors be installed in the following structures or buildings: (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used or offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons, and (iii) rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations.

Smoke detectors installed pursuant to this section shall be installed in conformance with the provisions of the Uniform Statewide Building Code: (§ [36-97](#) *et seq.*), and any locality with an ordinance shall follow a uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code. The ordinance shall allow the type of smoke detector to be either battery operated or AC powered units. Such ordinance shall require that the owner of any unit which is rented or leased, at the beginning of each tenancy and at least annually thereafter, shall furnish the tenant with a certificate that all required smoke detectors are present, have been inspected, and are in good working order. Except for smoke detectors located in hallways, stairwells, and other public or common areas of multifamily buildings, interim testing, repair, and maintenance of smoke detectors in rented or leased units shall be the responsibility of the tenant; however, the owner shall be obligated to service, repair, or replace any malfunctioning smoke detectors within five days of receipt of written notice from the tenant that such smoke detector is in need of service, repair, or replacement.

§ [16.1-79.1](#). Electronic filing of civil cases.

The general district courts shall accept case data in an electronic format for any civil action filed. The use of the electronic transfer shall be at the option of the plaintiff or the plaintiff's attorney, and if electronic transfer is utilized, the plaintiff or the plaintiff's attorney shall comply with the security and data configuration standards established by the Office of the Executive Secretary of the Supreme Court. If electronic transfer is utilized, the plaintiff or the plaintiff's attorney shall be responsible for filing with the clerk of the general district court the paper copies of any pleading for the proper processing of such civil actions as otherwise required by law, *unless the plaintiff or the plaintiff's attorney*

*has established at his expense a system for the filing of a pleading generated through the electronic transfer of data; such system has been authorized by, and meets the filing requirements of, the clerk; and the plaintiff or plaintiff's attorney transmits the process in an electronic format directly with the sheriff as otherwise provided by law. Notwithstanding any electronic transfer, the plaintiff shall remain responsible for payment of any required fees upon case initiation or filing and as otherwise required by law.*

§ [36-99.5](#). Smoke detectors for the deaf and hearing-impaired.

Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify.

New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein; *however, any locality with an ordinance shall follow a uniform*

*set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ [36-97](#) et seq.).*

§ [55-225.4](#). Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;
6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative, *and shall maintain such smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ [36-97](#) et seq.);*
8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;
9. *Not paint or disturb painted surfaces, or make alterations in the dwelling unit, without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;*
10. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and
- ~~10~~:11. Abide by all reasonable rules and regulations imposed by the landlord.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

§ [55-248.6:1](#). Application fees.

Any landlord may require an application fee and a separate application deposit. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application fee or deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the fee *application deposit* wrongfully withheld and reasonable ~~attorney's~~ attorney fees.

§ [55-248.15:2](#). Schedule of interest rates on security deposits.

A. The interest rate established by § [55-248.15:1](#) varies annually with the annual rate being equal to four percentage points below the Federal Reserve Board discount rate as of January 1 of each year. The purpose of this section is to set out the interest rates applicable under this chapter.

B. The rates are as follows:

1. July 1, 1975, through December 31, 1979, 3.0%.
2. January 1, 1980, through December 31, 1981, 4.0%.
3. January 1, 1982, through December 31, 1984, 4.5%.
4. January 1, 1985, through December 31, 1994, 5.0%.
5. January 1, 1995, through December 31, 1995, 4.75%.
6. January 1, 1996, through December 31, 1996, 5.25%.
7. January 1, 1997, through December 31, 1998, 5.0%.
8. January 1, 1999, through June 30, 1999, 4.5%.
9. July 1, 1999, through December 31, 1999, 3.5%.
10. January 1, 2000, through December 31, 2000, 4.0%.
11. January 1, 2001, through December 31, 2001, 5.0%.
12. January 1, 2002, through December 31, 2002, 0.25%.
13. January 1, 2003, through December 31, 2003, 0%.
14. January 1, 2004, through December 31, 2004, 1.0%.
15. January 1, 2005, through December 31, 2005, 2.25%.

16. January 1, 2006, through December 31, 2006, 4.25%.

17. January 1, 2007, through December 31, 2007, 5.25%.

18. January 1, 2008, through December 31, 2008, 0.75%.

19. January 1, 2009, through December 31, 2009, 0.00%.

20. January 1, 2010, through December 31, 2010, 0.00%.

21. *January 1, 2011, through December 31, 2011, 0.00%.*

Thereafter, the interest rate shall be determined in accordance with subsection B of § [55-248.15:1](#).

§ [55-248.16](#). Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § [3.2-3900](#), and to promptly notify the landlord of the existence of any insects or pests;
4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § [55-248.13](#), if such disposal is on the premises;
5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;
7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
8. Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative *and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ [36-97 et seq.](#));*
9. Not remove or tamper with a properly functioning carbon monoxide detector installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative;

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. *Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord provided (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces or making alterations in the dwelling unit;*

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

~~12.~~ 13. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § [55-248.17](#).

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ [55-248.18](#). Access; consent; correction of nonemergency conditions; relocation of tenant.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord

may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § [55-248.13](#); (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. *If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section.*

C. The landlord has no other right to access except by court order or that permitted by §§ [55-248.32](#) and [55-248.33](#) or if the tenant has abandoned or surrendered the premises.

D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, carbon monoxide detection devices, and fire detection devices, that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.
2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.
3. Upon termination of the tenancy the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

§ [55-248.24](#). Fire or casualty damage.

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required

repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § [55-226](#) shall apply.

The landlord may terminate the rental agreement by giving the tenant~~45~~ 30 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § [55-248.15:1](#) and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

§ [55-248.38:3](#). Disposal of property of deceased tenants.

If a tenant, who is the sole occupant of the dwelling unit, dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the premises, or in a storage area provided by the landlord, provided the landlord has given at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § [55-248.6](#) if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § [55-248.38:1](#), if not claimed within~~30~~ 10 days.

§ [58.1-486.2](#). Withholding tax on Virginia source income of nonresident owners.

A. For the privilege of doing business in the Commonwealth, a pass-through entity that has taxable income for the taxable year derived from or connected with Virginia sources, any portion of which is allocable to a nonresident owner, shall pay a withholding tax under this section, except as provided in subsection C.

B. 1. The amount of withholding tax payable by any pass-through entity under this article shall be equal to five percent of the nonresident owner's share of income from Virginia sources of all nonresident owners as determined under this chapter, which may lawfully be taxed by the Commonwealth and which is allocable to a nonresident owner.

2. When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under the Code of Virginia to the pass-through entity that pass through to nonresident owners; provided that in no event may the application of any credit or credits reduce the tax liability of any nonresident owner under this article to less than zero.

C. Withholding shall not be required:

1. For any nonresident owner, other than a nonresident corporation, who is exempt from the tax imposed by this article. An owner shall be exempt from the tax imposed by this article only if the owner is, by reason of the owner's purpose or activities, exempt from paying federal income taxes on the owner's Virginia source income. The pass-through entity may rely on the written statement of the owner claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such owners in its return for the taxable year filed under § [58.1-392](#);

2. For any nonresident owner that is a corporation that is exempt from the tax imposed by Article 10 (§ [58.1-400](#) et seq.). For purposes of this subdivision, a corporation is exempt from the tax imposed by Article 10 only if the corporation, by reason of its purpose or activities, is exempt from paying federal income taxes on the corporation's Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by Article 10 provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable year filed under § [58.1-392](#); or

3. When compliance will cause undue hardship on the pass-through entity. However, no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. The standards for undue hardship, determined by the Tax Commissioner in his discretion, shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the

withholding requirements of this section and the cost to the Commonwealth of collecting the tax directly from a nonresident owner who does not voluntarily file a return and pay the amount of tax due under this chapter with respect to his allocable Virginia taxable income; or

*4. For any nonresident person of the Commonwealth when the pass-through entity owns and leases four or fewer dwelling units in the Commonwealth, provided the pass-through entity discloses the name and federal taxpayer identification number for all such owners in its return for the taxable year filed under § [58.1-392](#). For the purposes of this subdivision, the term "person" shall mean the same as that term is defined in § [55-248.4](#).*

D. 1. Each pass-through entity required to withhold tax under this section shall pay the amount required to be withheld to the Tax Commissioner at the same time that the return under Article 9 (§ [58.1-390.1](#) et seq.), if required, is to be filed.

2. An extension of time for filing the return under § [58.1-393.1](#) shall not extend the time for paying the amount of withholding tax due under this section. In cases of an extension of time for filing, the pass-through entity shall pay, by the due date specified in subsection A of § [58.1-392](#), at least 90 percent of the withholding tax due for the taxable year or 100 percent of the tax paid under this section for the prior taxable year, if that taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return required under § [58.1-392](#). If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with that return is 10 percent or less of the tax due under this section for the taxable year, no penalty shall be imposed with respect to the balance so remitted. In addition to interest, if the underestimation of the balance of tax due exceeds 10 percent of the actual tax liability, there shall be added to the tax as a penalty an amount equal to two percent per month of the balance of tax due for each month or fraction thereof from the original due date for the filing of the withholding tax return to the date of payment. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

3. The Tax Commissioner may, if he believes it necessary for the protection of trust fund moneys due the Commonwealth, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section at any earlier time or times.

E. 1. Each nonresident owner shall be allowed a credit for that owner's share of the tax withheld by the pass-through entity under this section; provided, that when the distribution is to a corporation taxable under Article 10 (§ [58.1-400](#) et seq.), the credit allowed by this subsection shall be applied against the corporation's liability for tax under this chapter.

2. A nonresident owner's share of any withholding tax paid by the pass-through entity shall be treated as distributed to such nonresident owner on the earlier of (i) the day on which such tax was paid to the Tax Commissioner by the pass-through entity or (ii) the last day of the taxable year for which such tax was paid by the pass-through entity.

F. 1. Every pass-through entity required to deduct and withhold tax under this section shall furnish to each nonresident owner a written statement, as prescribed by the Tax Commissioner, showing (i) the amount of its allocable Virginia taxable income, whether or not distributed for federal income tax purposes by such pass-through entity to such nonresident owner; (ii) the amount deducted and withheld as tax under this section; and (iii) such other information as the Tax Commissioner may require.

2. A copy of the written statements required by this subsection shall be filed with the Virginia return filed under § [58.1-392](#) by the pass-through entity for its taxable year to which the distribution relates. The written statement shall be furnished to each nonresident owner on or before the due date of the pass-through entity's return under § [58.1-392](#) for the taxable year, including extensions of time for filing such return, or a later date as may be allowed by the Tax Commissioner.

G. Every pass-through entity required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years beginning on or after January 1, 2008. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No nonresident owner shall have a right of action against the pass-through entity in respect to any moneys withheld from such owner's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

H. If any pass-through entity fails to deduct and withhold tax as required by this section, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the pass-through entity, but the pass-through entity shall not be relieved from liability for any penalties or interest or additions to tax otherwise applicable in respect of such failure to withhold.

2. That the second enactment of Chapter 663 of the Acts of Assembly of 2009 is repealed.

3. That the provisions of the first enactment of this act amending §§ [8.01-286.1](#), [8.01-291](#), [8.01-294](#), [8.01-296](#), [8.01-312](#), [8.01-315](#), and [8.01-327](#), which relate to the use of electronic service of process, shall not become effective unless reenacted by the 2012 Session of the General Assembly.

## **Chapter 830 Va. Transportation Infrastructure Fund and Va. Transportation Infrastructure Bank; created, report.**

An Act to amend and reenact §§ [33.1-23.05](#), [33.1-23.4:01](#), [33.1-268](#), [33.1-269](#), [33.1-276](#), [33.1-277](#), and [33.1-280](#) of the Code of Virginia; to amend and reenact § 2 of the second enactment of Chapter 896 of the Acts of Assembly of 2007; and to amend the Code of Virginia by adding in Chapter 1 of Title 33.1 an article numbered 1.2, consisting of sections numbered [33.1-23.6](#) through [33.1-23.13](#), and an article numbered 1.3, consisting of sections numbered [33.1-23.14](#) through [33.1-23.26](#), and by adding a section numbered [33.1-221.1:1.3](#), relating to transportation funding.

[\[H 2527\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-23.05](#), [33.1-23.4:01](#), [33.1-268](#), [33.1-269](#), [33.1-276](#), [33.1-277](#), and [33.1-280](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 33.1 an article numbered 1.2, consisting of sections numbered [33.1-23.6](#) through [33.1-23.13](#), and an article numbered 1.3, consisting of sections numbered [33.1-23.14](#) through [33.1-23.26](#), and by adding a section numbered [33.1-221.1:1.3](#) as follows:

§ [33.1-23.05](#). Revenue-sharing funds for systems in certain counties, cities, and towns.  
A. From revenues made available by the General Assembly ~~after January 1, 2008,~~ and appropriated for the improvement, construction, or reconstruction of the systems of state highways, the Commonwealth Transportation Board ~~shall~~*may* make an equivalent matching allocation to any county, city, or town for designations by the governing body of up to \$1 ~~\$10 million in county, city, or town general funds~~ for use by the county, city, or town to improve, construct, or reconstruct the highway systems within such county, city,

or town. After adopting a resolution supporting the action, the governing body may request revenue-sharing funds to improve, construct, or reconstruct a highway system located in another locality, between two or more localities, or to bring subdivision streets, used as such prior to July 1, 1992 *the date specified in § 33.1-72.1*, up to standards sufficient to qualify them for inclusion in the state primary and secondary system of highways. All requests for funding shall be accompanied by a prioritized listing of specified projects.

~~B. The allocation of funds to localities shall be only for the purposes set forth in subsection A. In allocating funds under this section, the Board shall give priority (i) first when such project is administered by the county, city, or town, either directly or by contract with another entity, (ii) second, when such county, city, or town commits more local funding than the amount of revenue-sharing funding requested, and (iii) third when the allocation will accelerate an existing project in the Six-Year Improvement Program or the locality's capital plans. Any funds remaining may be applied to any other project that requires an equivalent matching allocation from the governing body to allocations that will accelerate projects in the Commonwealth Transportation Six-Year Improvement Program or the locality's capital plan.~~

C. The Department will contract with the county, city, or town for the implementation of the project or projects. Such contract may cover either a single project or may provide for the locality's implementation of several projects during the fiscal year. The county, city, or town will undertake implementation of the particular project or projects by obtaining the necessary permits from the Department of Transportation in order to ensure that the improvement is consistent with the Department's standards for such improvements. At the request of the locality, the Department may provide the locality with engineering, right-of-way acquisition, and/or construction services for a project with its own forces. The locality shall provide payment to the Department for any such services. If administered by the Department, such contract shall also require that the governing body pay to the Department within 30 days the local revenue-sharing funds ~~from its general fund~~ upon written notice by the Department of its intent to proceed. Any project having funds allocated under this program shall be initiated in such a fashion where at least a portion of such funds have been expended within two subsequent fiscal years of allocation. Any revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be reallocated at the discretion of the Commonwealth Transportation Board.

D. Total Commonwealth funds allocated by the Board under this section shall not exceed ~~\$50~~\$200 million in any one fiscal year and no less than \$15 million each fiscal year, subject to appropriation for such purpose.

~~E. No more than three months prior to the end of any fiscal year in which less than the full program allocation has been allocated by the Board to specific governing bodies, those localities requesting the maximum allocation under subsection A may be allowed an additional allocation. The funds allocated by the Commonwealth Transportation Board under this section shall be distributed and administered in accordance with the revenue-sharing program guidelines established by the Board.~~

§ [33.1-23.4:01](#). Allocation of proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds.

The Commonwealth Transportation Board shall allocate, use, and distribute the proceeds of any bonds it is authorized to issue on or after July 1, 2007, pursuant to subdivision 4f of § [33.1-269](#), as follows:

1. A minimum of ~~20%~~ *20 percent* of the bond proceeds shall be used for transit capital consistent with subdivision A 4 g of § [58.1-638](#).
2. A minimum of ~~4.3%~~ *4.3 percent* of the bond proceeds shall be used for rail capital consistent with the provisions of §§ [33.1-221.1:1.1](#) and [33.1-221.1:1.2](#).
3. The remaining amount of bond proceeds shall be used for paying the costs incurred or to be incurred for construction of transportation projects with such bond proceeds used or allocated as follows: ~~(a)~~ *(i)* first, to match federal highway funds projected to be made available and allocated to highway and public transportation capital projects *to the extent determined* by the Commonwealth Transportation Board, for purposes of allowing additional state construction funds to be allocated to the primary, urban, and secondary systems of highways pursuant to subdivisions B 1, B 2, and B 3 of § [33.1-23.1](#); ~~(b)~~ *(ii)* next, to provide any required funding to fulfill the Commonwealth's allocation of equivalent revenue sharing matching funds pursuant to § [33.1-23.05](#) *to the extent determined by the Commonwealth Transportation Board*; and ~~(c)~~ *(iii)* third, to pay or fund the costs of statewide or regional projects throughout the Commonwealth. Costs incurred or to be incurred for construction or funding of these transportation projects shall include, but are not limited to, environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs or other financing expenses relating to such bonds. Such costs may include the payment of interest on such bonds for a period during construction and not exceeding one year after completion of construction of the relevant project.
4. The total amount of bonds authorized shall be used for purposes of applying the percentages in subdivisions 1 through 3.

*Article 1.2.*

*Virginia Transportation Infrastructure Bank.*

§ [33.1-23.6](#). *Legislative findings and purposes.*

*The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for the design and construction of roads and highways, including toll facilities, mass transit, freight, passenger and commuter rail, including rolling stock, port, airport and other transportation facilities. This need can be alleviated in part through the creation of a transportation infrastructure bank. The purpose of such bank is to encourage the investment of both public and private funds and to make loans and other financial assistance available to localities, private entities, and other Eligible Borrowers to finance eligible transportation projects. The General Assembly determines that the creation of a transportation infrastructure bank for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience, or prosperity of the people of the Commonwealth.*

§ [33.1-23.7](#). *Definitions.*

*As used in this article, whether in capitalized or uncapitalized form, each of the following terms has the meaning given it in this section, unless the context requires a different meaning to be consistent with the manifest intention of the General Assembly:*

*"Bank" means the Virginia Transportation Infrastructure Bank created in § [33.1-23.8](#).*

*"Board" means the Commonwealth Transportation Board.*

*"Cost," as applied to any project financed under the provisions of this article, means the total of all costs including, but not limited to, the costs of planning, design, right-of-way acquisition, engineering, and construction incurred by an Eligible Borrower or other Project Sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. The term also includes capitalized interest, reasonably required reserve funds, and financing, credit enhancement, and issuance costs.*

*"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.*

*"Creditworthiness" means attributes such as revenue stability, debt service coverage, reserves, and other factors commonly considered in assessing the strength of the security for indebtedness.*

*"Eligible Borrower" means any (i) Private Entity; (ii) Governmental Entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § [33.1-23.11](#); or (iv) combination of two or more of the foregoing.*

*“Finance” and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms.*

*“Governmental Entity” means any (i) Locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § [33.1-23.11](#); or (v) any combination of two or more of the foregoing.*

*“Grant” means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance with the governmental purpose of the transfer. Such term includes, without limitation, direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ [33.1-23.8](#) and [33.1-23.9](#), only Governmental Entities may receive grants of moneys or property held in or for the credit of the Bank.*

*“Loan” means an obligation subject to repayment that is provided by the Bank to an Eligible Borrower to finance all or a part of the eligible cost of a project incurred by the Eligible Borrower or other Project Sponsor. A loan may be disbursed (i) in anticipation of reimbursement (including an advance or draw under a credit enhancement instrument), (ii) as direct payment of eligible costs, or (iii) to redeem or defease a prior obligation incurred by the Eligible Borrower or other Project Sponsor to finance the eligible costs of a project.*

*“Locality” means any county, city, or town in the Commonwealth.*

*“Management agreement” means the memorandum of understanding or interagency agreement among the Manager, the Secretary of Finance and the Board as authorized under subsection B of § [33.1-23.8](#).*

*“Manager” means the Virginia Resources Authority serving as the manager, administrator and trustee of funds disbursed from the Bank in accordance with the provisions of this article and the management agreement.*

*“Other financial assistance” means, but is not limited to, grants, capital or debt reserves for bonds or debt instrument financing, provision of letters of credit and other forms of credit enhancement, and other lawful forms of financing and methods of leveraging funds that are approved by the Manager.*

*"Private Entity" means any private or nongovernmental entity that has executed an interim or comprehensive agreement to develop and construct a transportation infrastructure project pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.).*

*"Project" means (i) the construction, reconstruction, rehabilitation, or replacement of any interstate, state highway, toll road, tunnel, local road, or bridge; or (ii) the construction, reconstruction, rehabilitation, replacement, of any (a) mass transit, (b) commuter, passenger or freight rail, (c) port, or (d) airport facility; or the acquisition of any rolling stock, vehicle or equipment to be used therewith.*

*"Project obligation" means any bond, note, debenture, interim certificate, grant or revenue anticipation note, lease or lease-purchase or installment sales agreement, or credit enhancements issued, incurred, or entered into by an Eligible Borrower to evidence a loan, or any financing agreements, reimbursement agreements, guarantees, or other evidences of an obligation of an Eligible Borrower or other Project Sponsor to pay or guarantee a loan.*

*"Project Sponsor" means any Private Entity or Governmental Entity that is involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance or financing of a project.*

*"Reliable repayment source" means any means by which an Eligible Borrower or other Project Sponsor generates funds that are dedicated to the purpose of retiring a project obligation.*

*"Substantial project completion" means the opening of a project for vehicular or passenger traffic or the handling of cargo and freight.*

*§ [33.1-23.8](#). Creation of the Virginia Transportation Infrastructure Bank.*

*A. There is hereby created in the state treasury a special nonreverting, revolving loan fund that is a subfund of the Transportation Trust Fund, known as the Virginia Transportation Infrastructure Bank. The Bank shall be established on the books of the Comptroller. The Bank shall be capitalized with moneys appropriated by the General Assembly and credited to the Bank. Disbursements from the Bank shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commonwealth Transportation Commissioner or his or her designee. Payments on project obligations and interest earned on the moneys in the Bank shall be credited to the Bank. Any moneys remaining in the Bank, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Bank. Notwithstanding anything to the contrary set forth in this article or in the management agreement, the Board will have the right to determine the projects for which loans or other*

*financial assistance may be provided by the Bank. Moneys in the Bank shall be used solely for the purposes enumerated in subsections C and D.*

*B. The Board, the Manager and the Secretary of Finance are authorized to enter into a management agreement which may include provisions (i) setting forth the terms and conditions under which the Manager will advise the Board on the financial propriety of providing particular loans or other financial assistance, (ii) setting forth the terms and conditions under which the substantive requirements of subsections C through F and [§ 33.1-23.11](#) will be applied and administered, and (iii) authorizing the Manager to request the Board to disburse from the moneys in the Bank, the reasonable costs and expenses the Manager may incur in the management and administration of the Bank and a reasonable fee to be approved by the Board for the Manager's management and administrative services.*

*C. 1. Moneys deposited in the Bank shall be used for the purpose of making loans and other financial assistance to finance projects.*

*2. Each project obligation shall be payable, in whole or in part, from reliable repayment sources pledged for such purpose.*

*3. The interest rate on a project obligation shall be determined by reference to the current market rates for comparable obligations, the nature of the project and the financing structure therefor, and the creditworthiness of the Eligible Borrower and other Project Sponsors.*

*4. The repayment schedule for each project obligation shall require (i) the amortization of principal beginning within five years following the later of substantial project completion or the date of incurrence of the project obligation and (ii) a final maturity date of not more than 35 years following substantial project completion.*

*D. A portion not to exceed 20 percent of the capitalization of the Bank may be used for grants to Governmental Entities to finance projects.*

*E. The pledge of reliable repayment sources and other property securing any project obligation may be subordinate to the pledge securing any other senior debt obligations incurred to finance the project.*

*F. Notwithstanding subdivision C 4, the Manager may at any time following substantial project completion defer payments on a project obligation if the project is unable to generate sufficient revenues to pay the scheduled payments.*

*G. No loan or other financial assistance may be provided or committed to be provided by the Bank in a manner that would cause such loan or other financial assistance to be tax-supported debt within the meaning of [§ 2.2-2713](#) or be deemed to constitute a debt of the*

*Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth but shall be payable solely from legally available moneys held by the Bank.*

*H. Neither the Bank nor the Manager is authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of the Commonwealth or an agency thereof or the Comptroller of Currency of the U.S. Treasury Department; or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers law of the United States or of the Commonwealth.*

*I. The Board or the Manager may establish or direct the establishment of federal and state accounts or subaccounts as may be necessary to meet any applicable federal law requirements or desirable for the efficient administration of the Bank in accordance with this article.*

*§ [33.1-23.9](#). Eligibility and project selection.*

*A. Any entity constituting an Eligible Borrower or other Project Sponsor is eligible to apply to the Board for project financing from the Bank.*

*B. Notwithstanding subsection A, only Governmental Entities are eligible to apply for a grant from the Bank.*

*C. Any Governmental Entity applying for a grant must demonstrate, among other things as determined by the Manager, that the project cannot be financed on reasonable terms or would otherwise be financially infeasible without the grant.*

*D. All applicants for a loan or other financial assistance (other than a grant) must file an application with the Board, which must include all items determined by the Board in consultation with the Manager to be necessary and appropriate for the Board to determine whether or not to approve the loan, including the availability of reliable repayment sources to retire the project obligation as well as creditworthiness.*

*E. Each applicant for a loan or other financial assistance must demonstrate that the project is of local, regional or statewide significance, and it meets the goal of generating economic benefits, improving air quality, reducing congestion, and/or improving safety through enhancement of the state transportation network. Another criterion to be considered is whether or not the loan or other financial assistance will enable the project to be completed at an earlier date than otherwise feasible. The Board shall issue guidelines for scoring projects in accordance with the criteria set out in this subsection and any other criteria deemed necessary and appropriate for evaluating projects as determined by the Board in consultation with the Manager and shall apply the scoring guidelines to each proposed project. Further, the Board shall promptly publish each proposed project and its score using the scoring guidelines.*

*F. All projects for which a loan or other financial assistance is provided must meet and remain in compliance with the policies and guidelines established by the Board and the Manager.*

*§ 33.1-23.10. Grants from the Commonwealth Transportation Board.*

*The Board may make grants of money or property to the Bank for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Board may have to make grants to the Bank.*

*§ 33.1-23.11. Project Obligations.*

*A. Subject to the terms determined by the Manager in accordance with the management agreement, each loan or other financial assistance (which for purposes of this section shall not include grants) shall be evidenced or guaranteed by project obligations provided to finance the costs of any project. The Manager may also sell any project obligations so acquired and apply the proceeds of such a sale to the making of additional loans and the provision of other financial assistance for financing the cost of any project or for any other corporate purpose of the Bank.*

*B. The Manager may require, as a condition to provision of a loan or other financial assistance and the acquisition of any project obligations, that the Eligible Borrower or any other Project Sponsor covenant to perform any of the following:*

*1. Establish and collect tolls, rents, rates, fees, and other charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the project obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Manager to offset the need, in whole or part, for future increases in tolls, rents, rates, fees, or charges;*

*2. Create and maintain a special fund or funds as security for or the source of the scheduled payments on the project obligations or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the Eligible Borrower or any other Project Sponsor, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;*

*3. Create and maintain other special funds as required by the Manager; and*

*4. Perform other acts, including the conveyance or mortgaging of real and personal property together with all right, title and interest therein to secure project obligations, or take other actions as may be deemed necessary or desirable by the Manager to secure*

*payment of the project obligations and to provide for remedies in the event of any default or nonpayment by the Eligible Borrower or any other Project Sponsor, including, without limitation, any of the following:*

*a. The procurement of credit enhancements or liquidity arrangements for project obligations from any source, public or private, and the payment therefor of premiums, fees, or other charges.*

*b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, and systems to secure project obligations issued in connection with such combination or any part or parts thereof.*

*c. The payment of such fees and charges in connection with the acquisition of the project obligations as may be determined by the Manager.*

*C. All Eligible Borrowers and other Project Sponsors, including any Governmental Entities, providing project obligations to the Bank are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Bank, the Manager, or the Board that are contemplated by this article. Such contracts need not be identical among all Eligible Borrowers or other Project Sponsors, but may be structured as determined by the Manager according to the needs of the contracting Eligible Borrowers and other Project Sponsors and the purposes of the Bank.*

*In addition, subject to the approval of the Manager, any Project Sponsor is authorized to establish and contract with a special purpose or limited purpose instrumentality, corporation, or other entity for the purpose of having such entity serve as the Eligible Borrower with respect to a particular project.*

*§ [33.1-23.12](#). Exemption from taxation; exemption from Virginia Public Procurement Act.*

*A. The Bank will be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Bank shall not be required to pay any taxes or assessments to the Commonwealth or its localities or any political subdivision thereof upon any capital, moneys or any property or upon any operations of the Bank or the income therefrom, or any taxes or assessments upon any project or any property or project obligation acquired by the Bank under the provisions of this article or upon the income therefrom.*

*B. The provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Bank in the exercise of any power conferred under this article.*

*§ [33.1-23.13](#). Reporting requirement.*

*A. No loan or other financial assistance shall be awarded from the Bank until the Secretary of Transportation has provided copies of the management agreement and related criteria and guidelines to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation.*

*B. Within 30 days after each six-month period ending June 30 and December 31, the Manager shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation, which shall include, but not be limited to, the amounts of loans and other financial assistance provided by the Bank and the projects for which the loans and other financial assistance were provided.*

Article 1.3.

*Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.*

§ [33.1-23.14](#). Short title; definitions.

*A. This article shall be known and may be cited as the "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011."*

*B. As used in this article, unless the context requires a different meaning:*

*"Federal highway reimbursements" means all federal-aid highway construction reimbursements and any other federal highway assistance received from time to time by the Commonwealth under or in accordance with Title 23 of the United States Code or any successor program established under federal law from the Federal Highway Administration and any successor or additional federal agencies.*

*"GARVEE" means an "eligible debt financing instrument" as defined under § 122 of Chapter 1 of Title 23 of the United States Code, the principal of and interest on which and certain other costs associated therewith may be reimbursed by federal highway reimbursements.*

*"Notes" means those notes authorized and issued pursuant to § [33.1-23.15](#).*

*"Project-specific reimbursements" means the federal highway reimbursements received by the Commonwealth from time to time only with respect to the project or projects to be financed by the Notes or any series thereof.*

*"Series" means any grouping of Notes issued at one time or from time to time as designated as such by the Board as necessary or desirable for administrative convenience, satisfaction of federal tax or securities law requirements, or any similar purpose.*

§ [33.1-23.15](#). Authorization of Notes.

*The Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ [33.1-267](#) et seq.), in one or*

*more series from time to time revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series ....." (the Notes) provided that the aggregate principal amount outstanding at any time shall not exceed the amount authorized pursuant to the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 as amended by Chapter 655 of the Acts of Assembly of 2005, less any principal amounts outstanding from revenue obligations issued pursuant to those enactments prior to July 1, 2011, and exclusive of (i) the amount of any revenue obligations that may be issued to refund Notes issued under this Article or the revenue obligations issued under those enactments in accordance with § [33.1-293](#), and (ii) any amounts issued for financing expenses (including, without limitation, any original issue discount).*

*§ [33.1-23.16](#). Use of proceeds of Notes.*

*A. The net proceeds of the Notes shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs incurred or to be incurred for construction or funding of such projects to be designated by the Board.*

*B. The proceeds of Notes, including any premium received on the sale thereof, shall be made available by the Board to pay costs of the projects and, where appropriate, may be paid to any authority, locality, commission, or other entity for the purposes of paying for costs of the projects. The proceeds of Notes may be used together with any federal, local, or private funds that may be made available for such purpose. The proceeds of Notes, together with any investment earnings thereon, may at the discretion of the Board secure the payment of principal or purchase price of and redemption premium, if any, and interest on Notes.*

*§ [33.1-23.17](#). Details of Notes.*

*A. The terms and structure of each issue of Notes shall be determined by the Board, subject to approval by the Treasury Board if required in accordance with § [2.2-2416](#). The Notes of each issue shall be dated, shall be issued in a principal amount (subject to the limitation as to amount outstanding at any one time set forth in § [33.1-23.15](#)), shall bear interest at such rate or rates that may be fixed, adjustable, variable, or a combination thereof, and may be determined by a formula or other method, shall mature at such time or times not exceeding 20 years after the issuance thereof, and may be made subject to purchase or redemption before their maturity or maturities, at such price or prices and under such terms and conditions, all as may be determined by the Board. The Board shall determine the form and series designations of Notes, whether Notes are certificated or uncertificated, and fix the authorized denomination or denominations of Notes and the place or places of payment of principal or purchase price of, and redemption*

*premium, if any, and interest on, Notes, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth. The principal or purchase price of, and redemption premium, if any, and interest on, Notes shall be made payable in lawful money of the United States of America. Each issue of Notes may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal or purchase price of and redemption premium, if any, and interest on such Notes. All Notes shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*

*B. The Board may sell Notes from time to time at public or private sale, by competitive bidding, negotiated sale, or private placement, for such price or prices as it may determine to be in the best interests of the Commonwealth.*

*§ [33.1-23.18](#). Form and manner of execution; signature of person ceasing to be officer. The Notes shall be signed on behalf of the Board by the Chairman or Vice-Chairman of the Board, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Board, which shall be attested by the manual or facsimile signature of the secretary or assistant secretary of the Board. In the event that Notes shall bear the facsimile signature of the Chairman or Vice-Chairman of the Board, such Notes shall be signed by such administrative assistant as the Chairman of the Board shall determine or by any registrar/paying agent that may be designated by the Board. In case any officer whose signature or a facsimile of whose signature appears on any Notes shall cease to be such officer before the delivery of such Notes, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery.*

*§ [33.1-23.19](#). Authority to obtain GARVEE approval. The Board is authorized to seek any necessary approvals for the issuance of Notes as GARVEEs from the Federal Highway Administration and any successor or additional federal agencies.*

*§ [33.1-23.20](#). Expenses. All expenses incurred under this article or in connection with issuance of Notes shall be paid from the proceeds of such Notes or from any available funds as the Board shall determine.*

*§ [33.1-23.21](#). Deposit of proceeds. The proceeds of each series of Notes shall be placed by the State Treasurer in a special fund in the state treasury or may be placed with a trustee in accordance with § [33.1-283](#) and shall be disbursed only for the purpose for which such series shall be issued.*

§ [33.1-23.22](#). *Other funds.*

*The Board is hereby authorized to receive any other funds that may be made available to pay costs of the projects and, subject to appropriation by the General Assembly or allocation or designation by the Board, as the case may be, to make available the same to the payment of the principal or purchase price of, and redemption premium, if any, and interest on Notes authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with § [33.1-283](#) to pay a part of the costs of the projects or to pay principal or purchase price of, and redemption premium, if any, and interest on Notes.*

§ [33.1-23.23](#). *Application of project-specific reimbursements.*

*A. In accordance with Article X, Section 7 of the Constitution of Virginia, and § [2.2-1802](#), all federal highway reimbursements are paid into the state treasury. In connection with each series of Notes issued pursuant to this article, the Board shall establish a fund in accordance with § [33.1-286](#) either in the state treasury or with a trustee in accordance with § [33.1-283](#), which secures and is used for the payment of such series of Notes to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of, and redemption premium, if any, and interest on Notes, as and when due and payable, (i) first from the project-specific reimbursements; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose.*

*B. The Board is authorized to provide that the pledge of federal highway reimbursements and any other federal highway assistance received for all or any series of the Notes will be subordinate to any prior pledge thereof to notes issued pursuant to subdivision 4d of § [33.1-269](#) and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended and that the obligation to make transfers of federal highway reimbursements and any other federal highway assistance received or other amounts into any fund established under subsection A will be subordinate to the obligation to make any required payments or deposits on or with respect to notes issued pursuant to subdivision 4d of § [33.1-269](#) and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended.*

§ [33.1-23.24](#). *Investment of proceeds and other amounts.*

*Notes proceeds and moneys in any reserve funds and sinking funds in respect of Notes shall be invested by the State Treasurer in accordance with the provisions of general*

*law relating to the investment of such funds belonging to or in the control of the Commonwealth, or by a trustee in accordance with § [33.1-283](#).*

*§ [33.1-23.25](#). Exemption from taxation.*

*The interest income from and any profit made on the sale of the Notes issued under the provisions of this article shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.*

*§ [33.1-23.26](#). Notes as eligible securities.*

*All Notes issued under the provisions of this article are hereby made securities in which all persons and entities listed in § [33.1-280](#) may properly and legally invest funds under their control.*

*§ [33.1-221.1:1.3](#). Intercity Passenger Rail Operating and Capital Fund.*

*A. The General Assembly declares it to be in the public interest that developing and continuing intercity passenger rail operations and the development of rail infrastructure, rolling stock, and support facilities to support intercity passenger rail service are important elements of a balanced transportation system in the Commonwealth and further declares it to be in the public interest that the retention, maintenance, improvement, and development of intercity passenger rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.*

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund, which shall be considered a special fund within the Transportation Trust Fund. The Intercity Passenger Rail Operating and Capital Fund shall be established on the books of the Comptroller and shall consist of funds as may be set forth in the appropriation act and by allocation of funds for operations and projects pursuant to this section by the Commonwealth Transportation Board in accordance with § [33.1-23.1](#). Interest earned on moneys in the Intercity Passenger Rail Operating and Capital Fund shall remain in the Intercity Passenger Rail Operating and Capital Fund and be credited to it. Any moneys remaining in the Intercity Passenger Rail Operating and Capital Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Intercity Passenger Rail Operating and Capital Fund. Moneys in the Intercity Passenger Rail Operating and Capital Fund shall be used solely as provided in this section. Expenditures and disbursements from the Intercity Passenger Rail Operating and Capital Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or his designee.*

*C. The Director of the Virginia Department of Rail and Public Transportation or his designee shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Intercity Passenger Rail Operating and Capital Fund to support the cost of operating intercity passenger rail service; acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support intercity passenger rail projects.*

*D. Capital projects including tracks and facilities constructed and property, equipment, and rolling stock purchased with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all intercity passenger rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues.*

§ [33.1-268](#). Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Transportation improvements in the Dulles Corridor, with an eastern terminus of the East Falls Church Metrorail station at Interstate Route 66 and a western terminus of Virginia Route 772 in Loudoun County, including without limitation the Dulles Toll Road, the Dulles Access Road, outer roadways adjacent or parallel thereto, mass transit, including rail, bus rapid transit, and capacity enhancing treatments such as High-Occupancy Vehicle lanes, High-Occupancy Toll (HOT) lanes, interchange improvements, commuter parking lots, and other transportation management strategies.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § [33.1-279.1](#), any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a

project satisfactory to the Commonwealth Transportation Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and third, to the extent required from other legally available revenues of the Trust Fund and from any other available source of funds.

(r) U.S. 58 Corridor Development Program projects as defined in §§ [33.1-221.1:2](#) and [58.1-815](#).

(s) The Northern Virginia Transportation District Program as defined in § [33.1-221.1:3](#).

(t) Any program for highways or mass transit or transportation facilities, endorsed by the local jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

(u) Any project designated from time to time by the General Assembly financed in whole or part through the issuance of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes.

(v) Any project authorized by the General Assembly financed in whole or in part by funds from the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#) or from the proceeds of bonds whose debt service is paid in whole or in part by funds from such Fund.

*(w) Any project identified by the Commonwealth Transportation Board to be financed in whole or in part through the issuance of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.*

(3) The word "undertaking" means all of the projects authorized to be acquired or constructed under this article.

(4) The word "improvements" means such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "cost of project" as applied to a project to be acquired by purchase or by condemnation, includes the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "cost of project" as applied to a project to be constructed, embraces the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry which is deemed by the Board to be competitive with any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or associations having any title or interest in any property rights, easements or franchises authorized to be acquired by this article.

(8) [Repealed.]

(9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by the Board pursuant to this article, including, without limitation, legally available Transportation Trust Fund revenues and any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth.

(10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

§ [33.1-269](#). General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;
2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;
3. Subject to the limitations and approvals of § [33.1-279.1](#), issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;
4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;
  - 4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;
  - 4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their

appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from the Commonwealth Transit Capital Fund established by the General Assembly pursuant to subdivision A 4 g of § [58.1-638](#), (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4d. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes" secured, subject to their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;

4e. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation by the General Assembly, solely from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the

applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation;

4f. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds;

*4g. Issue grant anticipation notes of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes" secured, subject to their appropriation by the General Assembly, (i) first from the project-specific reimbursements pursuant to § [33.1-23.23](#); (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;*

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the

Commonwealth and of any municipality, county, or other political subdivision, public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board. The cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained by the Board.

On any toll project, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation. On all other projects, under this article, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, or political subdivision. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article;

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be fin-

anced in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution of Virginia; and

11. Enter into any agreements or take such other actions as the Board shall determine in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the United States Department of Transportation with respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ [33.1-276](#). Revenue bonds.

The Board may provide by resolution, at one time or from time to time, for the issuance of revenue bonds, notes, or other revenue obligations of the Commonwealth for the purpose of paying all or any part of the cost as hereinabove defined of any one or more projects as hereinabove defined. The principal or purchase price of, and redemption premium, if any, and interest on such obligations shall be payable solely from the special funds herein provided for such payment. "Special funds" for the purposes of this section shall include any such funds established for Commonwealth of Virginia Toll Revenue Bonds, Commonwealth of Virginia Transportation Contract Revenue Bonds, Commonwealth of Virginia Transportation Revenue Bonds, ~~or~~ Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, *or Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes*.

§ [33.1-277](#). Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, from bond proceeds or earnings thereon and from any other available sources of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this article or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in subdivision (2) (s) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern

Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in subdivision (2) (t) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues from the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.

F. Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes issued under this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then, from such other funds, if any, which are designated by the General Assembly for such purpose.

G. Commonwealth of Virginia Transportation Credit Assistance Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor

and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation.

H. Commonwealth of Virginia Transportation Capital Projects Revenue Bonds issued under the provisions of this article for projects as provided in subdivision 2 (v) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds.

*I. Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes issued under the provisions of Article 1.3 (§ [33.1-23.14](#) et seq.) of Chapter 1 and this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such notes shall be payable solely, subject to their appropriation by the General Assembly, (i) first from the project-specific reimbursements pursuant to § [33.1-23.23](#), (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose.*

§ [33.1-280](#). Sale of bonds; bonds as legal investments.

The Board may sell such bonds in such manner and for such price as it may determine to be for the best interests of the Commonwealth, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than the maximum per centum per annum approved by the Commonwealth Treasury Board with respect to such obligations in accordance with § [2.2-2416](#) of the Code of Virginia, as amended, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption for any bonds prior to maturity.

All bonds heretofore or hereafter issued pursuant to the authority of this article are hereby made securities in which all public officers and bodies of this Commonwealth and all political subdivisions thereof, all insurance companies and associations, all national banks and trust companies, and savings institutions, including savings and loan associations, in the Commonwealth, and all executors, administrators, trustees, and other fiduciaries, both individual or corporate, may properly and legally invest funds within their control.

2. That § 2 of the second enactment of Chapter 896 of the Acts of Assembly of 2007 is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ [33.1-267](#) et seq. of the Code of Virginia) as amended from time to time, revenue obligations of the Commonwealth to be designated “Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series .....” (*the Bonds*) at one or more times in an aggregate principal amount not to exceed \$3 billion, ~~after all costs~~ (*the Overall Limitation*); provided that the aggregate principal amount issued in any one fiscal year shall not exceed \$300 million (*the Annual Limitation*), excluding any refunding bonds, *except for the fiscal years ending June 30, 2012, and June 30, 2013, in which the Annual Limitation shall be increased by \$200 million and \$300 million respectively.* If the aggregate principal amount issued in any fiscal year is less than ~~\$300 million~~ *the Annual Limitation*, then the amount by which such issuance is less than ~~\$300 million~~ *the Annual Limitation* may be issued in any subsequent fiscal year in addition to the ~~\$300 million~~ *authorized maximum Annual Limitation* for the subsequent fiscal year. *In determining compliance with either the Overall Limitation or any Annual Limitation there shall be excluded (i) the principal amount of Bonds issued under this enactment to pay issuance or financing expenses or costs (including any original issue discount) and (ii) the principal amount of Bonds issued under § [33.1-293](#) to refund any outstanding Bonds.* The issuance of any bonds under this Act is subject to the provisions of subsection C of § [33.1-23.03:8](#) of the Code of Virginia.

3. That the authority to issue additional Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes pursuant to the second enactment of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended by Chapter 655 of the Acts of Assembly of 2005, shall expire on July 1, 2011. Nothing in this enactment shall in any way affect such notes issued prior to July 1, 2011.

## **Chapter 868 Virginia Transportation Infrastructure Bank; created, report.**

An Act to amend and reenact §§ [33.1-23.05](#), [33.1-23.4:01](#), [33.1-268](#), [33.1-269](#), [33.1-276](#), [33.1-277](#), and [33.1-280](#) of the Code of Virginia; to amend and reenact § 2 of the second enactment of Chapter 896 of the Acts of Assembly of 2007; and to amend the Code of Virginia by adding in Chapter 1 of Title 33.1 an article numbered 1.2, consisting of sections

numbered [33.1-23.6](#) through [33.1-23.13](#), and an article numbered 1.3, consisting of sections numbered [33.1-23.14](#) through [33.1-23.26](#), and by adding a section numbered [33.1-221.1:1.3](#), relating to transportation funding.

[\[S 1446\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.1-23.05](#), [33.1-23.4:01](#), [33.1-268](#), [33.1-269](#), [33.1-276](#), [33.1-277](#), and [33.1-280](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 33.1 an article numbered 1.2, consisting of sections numbered [33.1-23.6](#) through [33.1-23.13](#), and an article numbered 1.3, consisting of sections numbered [33.1-23.14](#) through [33.1-23.26](#), and by adding a section numbered [33.1-221.1:1.3](#) as follows:

§ [33.1-23.05](#). Revenue-sharing funds for systems in certain counties, cities, and towns.

A. From revenues made available by the General Assembly ~~after January 1, 2008,~~ and appropriated for the improvement, construction, or reconstruction of the systems of state highways, the Commonwealth Transportation Board ~~shall~~*may* make an equivalent matching allocation to any county, city, or town for designations by the governing body of up to ~~\$1~~*\$10* million in ~~county, city, or town general funds~~ for use by the county, city, or town to improve, construct, or reconstruct the highway systems within such county, city, or town. After adopting a resolution supporting the action, the governing body may request revenue-sharing funds to improve, construct, or reconstruct a highway system located in another locality, between two or more localities, or to bring subdivision streets, used as such prior to ~~July 1, 1992~~*the date specified in § [33.1-72.1](#),* up to standards sufficient to qualify them for inclusion in the state primary and secondary system of highways. All requests for funding shall be accompanied by a prioritized listing of specified projects.

~~B. The allocation of funds to localities shall be only for the purposes set forth in subsection A. In allocating funds under this section, the Board shall give priority (i) first when such project is administered by the county, city, or town, either directly or by contract with another entity, (ii) second, when such county, city, or town commits more local funding than the amount of revenue-sharing funding requested, and (iii) third when the allocation will accelerate an existing project in the Six-Year Improvement Program or the locality's capital plans. Any funds remaining may be applied to any other project that requires an~~

~~equivalent matching allocation from the governing body to allocations that will accelerate projects in the Commonwealth Transportation Six-Year Improvement Program or the locality's capital plan.~~

C. The Department will contract with the county, city, or town for the implementation of the project or projects. Such contract may cover either a single project or may provide for the locality's implementation of several projects during the fiscal year. The county, city, or town will undertake implementation of the particular project or projects by obtaining the necessary permits from the Department of Transportation in order to ensure that the improvement is consistent with the Department's standards for such improvements. At the request of the locality, the Department may provide the locality with engineering, right-of-way acquisition, and/or construction services for a project with its own forces. The locality shall provide payment to the Department for any such services. If administered by the Department, such contract shall also require that the governing body pay to the Department within 30 days the local revenue-sharing funds ~~from its general fund~~ upon written notice by the Department of its intent to proceed. Any project having funds allocated under this program shall be initiated in such a fashion where at least a portion of such funds have been expended within two subsequent fiscal years of allocation. Any revenue-sharing funds for projects not initiated after two subsequent fiscal years of allocation may be reallocated at the discretion of the Commonwealth Transportation Board.

D. Total Commonwealth funds allocated by the Board under this section shall not exceed ~~\$50~~\$200 million in any one fiscal year and no less than \$15 million each fiscal year, subject to appropriation for such purpose.

~~E. No more than three months prior to the end of any fiscal year in which less than the full program allocation has been allocated by the Board to specific governing bodies, those localities requesting the maximum allocation under subsection A may be allowed an additional allocation.~~ *The funds allocated by the Commonwealth Transportation Board under this section shall be distributed and administered in accordance with the revenue-sharing program guidelines established by the Board.*

§ [33.1-23.4:01](#). Allocation of proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds.

The Commonwealth Transportation Board shall allocate, use, and distribute the proceeds of any bonds it is authorized to issue on or after July 1, 2007, pursuant to subdivision 4f of § [33.1-269](#), as follows:

1. A minimum of ~~20%~~ 20 percent of the bond proceeds shall be used for transit capital consistent with subdivision A 4 g of § [58.1-638](#).

2. A minimum of ~~4.3%~~ *4.3 percent* of the bond proceeds shall be used for rail capital consistent with the provisions of §§ [33.1-221.1:1.1](#) and [33.1-221.1:1.2](#).
3. The remaining amount of bond proceeds shall be used for paying the costs incurred or to be incurred for construction of transportation projects with such bond proceeds used or allocated as follows: ~~(a)~~ *(i)* first, to match federal highway funds projected to be made available and allocated to highway and public transportation capital projects *to the extent determined* by the Commonwealth Transportation Board, for purposes of allowing additional state construction funds to be allocated to the primary, urban, and secondary systems of highways pursuant to subdivisions B 1, B 2, and B 3 of § [33.1-23.1](#); ~~(b)~~ *(ii)* next, to provide any required funding to fulfill the Commonwealth's allocation of equivalent revenue sharing matching funds pursuant to § [33.1-23.05](#) *to the extent determined by the Commonwealth Transportation Board*; and ~~(c)~~ *(iii)* third, to pay or fund the costs of statewide or regional projects throughout the Commonwealth. Costs incurred or to be incurred for construction or funding of these transportation projects shall include, but are not limited to, environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs or other financing expenses relating to such bonds. Such costs may include the payment of interest on such bonds for a period during construction and not exceeding one year after completion of construction of the relevant project.
4. The total amount of bonds authorized shall be used for purposes of applying the percentages in subdivisions 1 through 3.

*Article 1.2.*

*Virginia Transportation Infrastructure Bank.*

§ [33.1-23.6](#). *Legislative findings and purposes.*

*The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for the design and construction of roads and highways, including toll facilities, mass transit, freight, passenger and commuter rail, including rolling stock, port, airport and other transportation facilities. This need can be alleviated in part through the creation of a transportation infrastructure bank. The purpose of such bank is to encourage the investment of both public and private funds and to make loans and other financial assistance available to localities, private entities, and other Eligible Borrowers to finance eligible transportation projects. The General Assembly determines that the creation of a transportation infrastructure bank for this purpose is in the public interest,*

*serves a public purpose and will promote the health, safety, welfare, convenience, or prosperity of the people of the Commonwealth.*

*§ [33.1-23.7](#). Definitions.*

*As used in this article, whether in capitalized or uncapitalized form, each of the following terms has the meaning given it in this section, unless the context requires a different meaning to be consistent with the manifest intention of the General Assembly:*

*"Bank" means the Virginia Transportation Infrastructure Bank created in § [33.1-23.8](#).*

*"Board" means the Commonwealth Transportation Board.*

*"Cost," as applied to any project financed under the provisions of this article, means the total of all costs including, but not limited to, the costs of planning, design, right-of-way acquisition, engineering, and construction incurred by an Eligible Borrower or other Project Sponsor as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. The term also includes capitalized interest, reasonably required reserve funds, and financing, credit enhancement, and issuance costs.*

*"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.*

*"Creditworthiness" means attributes such as revenue stability, debt service coverage, reserves, and other factors commonly considered in assessing the strength of the security for indebtedness.*

*"Eligible Borrower" means any (i) Private Entity; (ii) Governmental Entity; (iii) instrumentality, corporation, or entity established by any of the foregoing pursuant to § [33.1-23.11](#); or (iv) combination of two or more of the foregoing.*

*"Finance" and any variation of the term, when used in connection with a cost or a project, includes both the initial financing and any refinancing of the cost or project and any variation of such terms.*

*"Governmental Entity" means any (i) Locality; (ii) local, regional, state, or federal entity; transportation authority, planning district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth; or public transportation entity owned, operated, or controlled by one or more local entities; (iii) entity established by interstate compact; (iv) instrumentality, corporation, or entity established by any of the foregoing pursuant to § [33.1-23.11](#); or (v) any combination of two or more of the foregoing.*

*"Grant" means a transfer of moneys or property that does not impose any obligation or condition on the grantee to repay any amount to the transferor other than in connection with assuring that the transferred moneys or property will be spent or used in accordance*

*with the governmental purpose of the transfer. Such term includes, without limitation, direct cash payments made to pay or reimburse all or a portion of interest payments made by a grantee on a debt obligation. As provided in §§ [33.1-23.8](#) and [33.1-23.9](#), only Governmental Entities may receive grants of moneys or property held in or for the credit of the Bank.*

*"Loan" means an obligation subject to repayment that is provided by the Bank to an Eligible Borrower to finance all or a part of the eligible cost of a project incurred by the Eligible Borrower or other Project Sponsor. A loan may be disbursed (i) in anticipation of reimbursement (including an advance or draw under a credit enhancement instrument), (ii) as direct payment of eligible costs, or (iii) to redeem or defease a prior obligation incurred by the Eligible Borrower or other Project Sponsor to finance the eligible costs of a project.*

*"Locality" means any county, city, or town in the Commonwealth.*

*"Management agreement" means the memorandum of understanding or interagency agreement among the Manager, the Secretary of Finance and the Board as authorized under subsection B of § [33.1-23.8](#).*

*"Manager" means the Virginia Resources Authority serving as the manager, administrator and trustee of funds disbursed from the Bank in accordance with the provisions of this article and the management agreement.*

*"Other financial assistance" means, but is not limited to, grants, capital or debt reserves for bonds or debt instrument financing, provision of letters of credit and other forms of credit enhancement, and other lawful forms of financing and methods of leveraging funds that are approved by the Manager.*

*"Private Entity" means any private or nongovernmental entity that has executed an interim or comprehensive agreement to develop and construct a transportation infrastructure project pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.).*

*"Project" means (i) the construction, reconstruction, rehabilitation, or replacement of any interstate, state highway, toll road, tunnel, local road, or bridge; or (ii) the construction, reconstruction, rehabilitation, replacement, of any (a) mass transit, (b) commuter, passenger or freight rail, (c) port, or (d) airport facility; or the acquisition of any rolling stock, vehicle or equipment to be used therewith.*

*"Project obligation" means any bond, note, debenture, interim certificate, grant or revenue anticipation note, lease or lease-purchase or installment sales agreement, or credit enhancements issued, incurred, or entered into by an Eligible Borrower to evidence a loan, or any financing agreements, reimbursement agreements, guarantees, or other*

*evidences of an obligation of an Eligible Borrower or other Project Sponsor to pay or guarantee a loan.*

*"Project Sponsor" means any Private Entity or Governmental Entity that is involved in the planning, design, right-of-way acquisition, engineering, construction, maintenance or financing of a project.*

*"Reliable repayment source" means any means by which an Eligible Borrower or other Project Sponsor generates funds that are dedicated to the purpose of retiring a project obligation.*

*"Substantial project completion" means the opening of a project for vehicular or passenger traffic or the handling of cargo and freight.*

*§ [33.1-23.8](#). Creation of the Virginia Transportation Infrastructure Bank.*

*A. There is hereby created in the state treasury a special nonreverting, revolving loan fund that is a subfund of the Transportation Trust Fund, known as the Virginia Transportation Infrastructure Bank. The Bank shall be established on the books of the Comptroller. The Bank shall be capitalized with moneys appropriated by the General Assembly and credited to the Bank. Disbursements from the Bank shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commonwealth Transportation Commissioner or his or her designee. Payments on project obligations and interest earned on the moneys in the Bank shall be credited to the Bank. Any moneys remaining in the Bank, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Bank. Notwithstanding anything to the contrary set forth in this article or in the management agreement, the Board will have the right to determine the projects for which loans or other financial assistance may be provided by the Bank. Moneys in the Bank shall be used solely for the purposes enumerated in subsections C and D.*

*B. The Board, the Manager and the Secretary of Finance are authorized to enter into a management agreement which may include provisions (i) setting forth the terms and conditions under which the Manager will advise the Board on the financial propriety of providing particular loans or other financial assistance, (ii) setting forth the terms and conditions under which the substantive requirements of subsections C through F and § [33.1-23.11](#) will be applied and administered, and (iii) authorizing the Manager to request the Board to disburse from the moneys in the Bank, the reasonable costs and expenses the Manager may incur in the management and administration of the Bank and a reasonable fee to be approved by the Board for the Manager's management and administrative services.*

*C. 1. Moneys deposited in the Bank shall be used for the purpose of making loans and other financial assistance to finance projects.*

*2. Each project obligation shall be payable, in whole or in part, from reliable repayment sources pledged for such purpose.*

*3. The interest rate on a project obligation shall be determined by reference to the current market rates for comparable obligations, the nature of the project and the financing structure therefor, and the creditworthiness of the Eligible Borrower and other Project Sponsors.*

*4. The repayment schedule for each project obligation shall require (i) the amortization of principal beginning within five years following the later of substantial project completion or the date of incurrence of the project obligation and (ii) a final maturity date of not more than 35 years following substantial project completion.*

*D. A portion not to exceed 20 percent of the capitalization of the Bank may be used for grants to Governmental Entities to finance projects.*

*E. The pledge of reliable repayment sources and other property securing any project obligation may be subordinate to the pledge securing any other senior debt obligations incurred to finance the project.*

*F. Notwithstanding subdivision C 4, the Manager may at any time following substantial project completion defer payments on a project obligation if the project is unable to generate sufficient revenues to pay the scheduled payments.*

*G. No loan or other financial assistance may be provided or committed to be provided by the Bank in a manner that would cause such loan or other financial assistance to be tax-supported debt within the meaning of § [2.2-2713](#) or be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth but shall be payable solely from legally available moneys held by the Bank.*

*H. Neither the Bank nor the Manager is authorized or empowered to be or to constitute a bank or trust company within the jurisdiction or under the control of the Commonwealth or an agency thereof or the Comptroller of Currency of the U.S. Treasury Department; or a bank, banker, or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange, or securities dealers law of the United States or of the Commonwealth.*

*I. The Board or the Manager may establish or direct the establishment of federal and state accounts or subaccounts as may be necessary to meet any applicable federal law requirements or desirable for the efficient administration of the Bank in accordance with this article.*

*§ [33.1-23.9](#). Eligibility and project selection.*

*A. Any entity constituting an Eligible Borrower or other Project Sponsor is eligible to apply to the Board for project financing from the Bank.*

*B. Notwithstanding subsection A, only Governmental Entities are eligible to apply for a grant from the Bank.*

*C. Any Governmental Entity applying for a grant must demonstrate, among other things as determined by the Manager, that the project cannot be financed on reasonable terms or would otherwise be financially infeasible without the grant.*

*D. All applicants for a loan or other financial assistance (other than a grant) must file an application with the Board, which must include all items determined by the Board in consultation with the Manager to be necessary and appropriate for the Board to determine whether or not to approve the loan, including the availability of reliable repayment sources to retire the project obligation as well as creditworthiness.*

*E. Each applicant for a loan or other financial assistance must demonstrate that the project is of local, regional or statewide significance, and it meets the goal of generating economic benefits, improving air quality, reducing congestion, and/or improving safety through enhancement of the state transportation network. Another criterion to be considered is whether or not the loan or other financial assistance will enable the project to be completed at an earlier date than otherwise feasible. The Board shall issue guidelines for scoring projects in accordance with the criteria set out in this subsection and any other criteria deemed necessary and appropriate for evaluating projects as determined by the Board in consultation with the Manager and shall apply the scoring guidelines to each proposed project. Further, the Board shall promptly publish each proposed project and its score using the scoring guidelines.*

*F. All projects for which a loan or other financial assistance is provided must meet and remain in compliance with the policies and guidelines established by the Board and the Manager.*

*§ [33.1-23.10](#). Grants from the Commonwealth Transportation Board.*

*The Board may make grants of money or property to the Bank for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Board may have to make grants to the Bank.*

*§ [33.1-23.11](#). Project Obligations.*

*A. Subject to the terms determined by the Manager in accordance with the management agreement, each loan or other financial assistance (which for purposes of this section shall not include grants) shall be evidenced or guaranteed by project obligations provided to finance the costs of any project. The Manager may also sell any project*

*obligations so acquired and apply the proceeds of such a sale to the making of additional loans and the provision of other financial assistance for financing the cost of any project or for any other corporate purpose of the Bank.*

*B. The Manager may require, as a condition to provision of a loan or other financial assistance and the acquisition of any project obligations, that the Eligible Borrower or any other Project Sponsor covenant to perform any of the following:*

*1. Establish and collect tolls, rents, rates, fees, and other charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the project obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Manager to offset the need, in whole or part, for future increases in tolls, rents, rates, fees, or charges;*

*2. Create and maintain a special fund or funds as security for or the source of the scheduled payments on the project obligations or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the Eligible Borrower or any other Project Sponsor, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;*

*3. Create and maintain other special funds as required by the Manager; and*

*4. Perform other acts, including the conveyance or mortgaging of real and personal property together with all right, title and interest therein to secure project obligations, or take other actions as may be deemed necessary or desirable by the Manager to secure payment of the project obligations and to provide for remedies in the event of any default or nonpayment by the Eligible Borrower or any other Project Sponsor, including, without limitation, any of the following:*

*a. The procurement of credit enhancements or liquidity arrangements for project obligations from any source, public or private, and the payment therefor of premiums, fees, or other charges.*

*b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, and systems to secure project obligations issued in connection with such combination or any part or parts thereof.*

*c. The payment of such fees and charges in connection with the acquisition of the project obligations as may be determined by the Manager.*

*C. All Eligible Borrowers and other Project Sponsors, including any Governmental Entities, providing project obligations to the Bank are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Bank, the Manager, or the Board that are contemplated by this article. Such contracts need not be identical among all Eligible Borrowers or other Project Sponsors, but may be structured as determined by the Manager according to the needs of the contracting Eligible Borrowers and other Project Sponsors and the purposes of the Bank.*

*In addition, subject to the approval of the Manager, any Project Sponsor is authorized to establish and contract with a special purpose or limited purpose instrumentality, corporation, or other entity for the purpose of having such entity serve as the Eligible Borrower with respect to a particular project.*

[§ 33.1-23.12](#). *Exemption from taxation; exemption from Virginia Public Procurement Act.*

*A. The Bank will be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Bank shall not be required to pay any taxes or assessments to the Commonwealth or its localities or any political subdivision thereof upon any capital, moneys or any property or upon any operations of the Bank or the income therefrom, or any taxes or assessments upon any project or any property or project obligation acquired by the Bank under the provisions of this article or upon the income therefrom.*

*B. The provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Bank in the exercise of any power conferred under this article.*

[§ 33.1-23.13](#). *Reporting requirement.*

*A. No loan or other financial assistance shall be awarded from the Bank until the Secretary of Transportation has provided copies of the management agreement and related criteria and guidelines to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation.*

*B. Within 30 days after each six-month period ending June 30 and December 31, the Manager shall provide a report to the Chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation, which shall include, but not be limited to, the amounts of loans and other financial assistance provided by the Bank and the projects for which the loans and other financial assistance were provided.*

*Article 1.3.*

*Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.*

[§ 33.1-23.14](#). *Short title; definitions.*

*A. This article shall be known and may be cited as the "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes Act of 2011."*

*B. As used in this article, unless the context requires a different meaning:*

*"Federal highway reimbursements" means all federal-aid highway construction reimbursements and any other federal highway assistance received from time to time by the Commonwealth under or in accordance with Title 23 of the United States Code or any successor program established under federal law from the Federal Highway Administration and any successor or additional federal agencies.*

*"GARVEE" means an "eligible debt financing instrument" as defined under § 122 of Chapter 1 of Title 23 of the United States Code, the principal of and interest on which and certain other costs associated therewith may be reimbursed by federal highway reimbursements.*

*"Notes" means those notes authorized and issued pursuant to § [33.1-23.15](#).*

*"Project-specific reimbursements" means the federal highway reimbursements received by the Commonwealth from time to time only with respect to the project or projects to be financed by the Notes or any series thereof.*

*"Series" means any grouping of Notes issued at one time or from time to time as designated as such by the Board as necessary or desirable for administrative convenience, satisfaction of federal tax or securities law requirements, or any similar purpose.*

*§ [33.1-23.15](#). Authorization of Notes.*

*The Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ [33.1-267](#) et seq.), in one or more series from time to time revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series ....." (the Notes) provided that the aggregate principal amount outstanding at any time shall not exceed the amount authorized pursuant to the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000 as amended by Chapter 655 of the Acts of Assembly of 2005, less any principal amounts outstanding from revenue obligations issued pursuant to those enactments prior to July 1, 2011, and exclusive of (i) the amount of any revenue obligations that may be issued to refund Notes issued under this Article or the revenue obligations issued under those enactments in accordance with § [33.1-293](#), and (ii) any amounts issued for financing expenses (including, without limitation, any original issue discount).*

*§ [33.1-23.16](#). Use of proceeds of Notes.*

*A. The net proceeds of the Notes shall be used exclusively for the purpose of providing funds, together with any other available funds, for paying the costs incurred or to be incurred for construction or funding of such projects to be designated by the Board.*

*B. The proceeds of Notes, including any premium received on the sale thereof, shall be made available by the Board to pay costs of the projects and, where appropriate, may be paid to any authority, locality, commission, or other entity for the purposes of paying for costs of the projects. The proceeds of Notes may be used together with any federal, local, or private funds that may be made available for such purpose. The proceeds of Notes, together with any investment earnings thereon, may at the discretion of the Board secure the payment of principal or purchase price of and redemption premium, if any, and interest on Notes.*

*§ [33.1-23.17](#). Details of Notes.*

*A. The terms and structure of each issue of Notes shall be determined by the Board, subject to approval by the Treasury Board if required in accordance with § [2.2-2416](#). The Notes of each issue shall be dated, shall be issued in a principal amount (subject to the limitation as to amount outstanding at any one time set forth in § [33.1-23.15](#)), shall bear interest at such rate or rates that may be fixed, adjustable, variable, or a combination thereof, and may be determined by a formula or other method, shall mature at such time or times not exceeding 20 years after the issuance thereof, and may be made subject to purchase or redemption before their maturity or maturities, at such price or prices and under such terms and conditions, all as may be determined by the Board. The Board shall determine the form and series designations of Notes, whether Notes are certificated or uncertificated, and fix the authorized denomination or denominations of Notes and the place or places of payment of principal or purchase price of, and redemption premium, if any, and interest on, Notes, which may be at the office of the State Treasurer or any bank or trust company within or without the Commonwealth. The principal or purchase price of, and redemption premium, if any, and interest on, Notes shall be made payable in lawful money of the United States of America. Each issue of Notes may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments of principal or purchase price of and redemption premium, if any, and interest on such Notes. All Notes shall have and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth.*

*B. The Board may sell Notes from time to time at public or private sale, by competitive bidding, negotiated sale, or private placement, for such price or prices as it may determine to be in the best interests of the Commonwealth.*

§ [33.1-23.18](#). *Form and manner of execution; signature of person ceasing to be officer. The Notes shall be signed on behalf of the Board by the Chairman or Vice-Chairman of the Board, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Board, which shall be attested by the manual or facsimile signature of the secretary or assistant secretary of the Board. In the event that Notes shall bear the facsimile signature of the Chairman or Vice-Chairman of the Board, such Notes shall be signed by such administrative assistant as the Chairman of the Board shall determine or by any registrar/paying agent that may be designated by the Board. In case any officer whose signature or a facsimile of whose signature appears on any Notes shall cease to be such officer before the delivery of such Notes, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery.*

§ [33.1-23.19](#). *Authority to obtain GARVEE approval.*

*The Board is authorized to seek any necessary approvals for the issuance of Notes as GARVEEs from the Federal Highway Administration and any successor or additional federal agencies.*

§ [33.1-23.20](#). *Expenses.*

*All expenses incurred under this article or in connection with issuance of Notes shall be paid from the proceeds of such Notes or from any available funds as the Board shall determine.*

§ [33.1-23.21](#). *Deposit of proceeds.*

*The proceeds of each series of Notes shall be placed by the State Treasurer in a special fund in the state treasury or may be placed with a trustee in accordance with § [33.1-283](#) and shall be disbursed only for the purpose for which such series shall be issued.*

§ [33.1-23.22](#). *Other funds.*

*The Board is hereby authorized to receive any other funds that may be made available to pay costs of the projects and, subject to appropriation by the General Assembly or allocation or designation by the Board, as the case may be, to make available the same to the payment of the principal or purchase price of, and redemption premium, if any, and interest on Notes authorized hereby and to enter into the appropriate agreements to allow for those funds to be paid into the state treasury, or to a trustee in accordance with § [33.1-283](#) to pay a part of the costs of the projects or to pay principal or purchase price of, and redemption premium, if any, and interest on Notes.*

§ [33.1-23.23](#). *Application of project-specific reimbursements.*

*A. In accordance with Article X, Section 7 of the Constitution of Virginia, and § [2.2-1802](#), all federal highway reimbursements are paid into the state treasury. In connection with*

*each series of Notes issued pursuant to this article, the Board shall establish a fund in accordance with § [33.1-286](#) either in the state treasury or with a trustee in accordance with § [33.1-283](#), which secures and is used for the payment of such series of Notes to the credit of which there shall be deposited such amounts, appropriated therefor by the General Assembly, as are required to pay principal or purchase price of, and redemption premium, if any, and interest on Notes, as and when due and payable, (i) first from the project-specific reimbursements; (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund; and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose.*

*B. The Board is authorized to provide that the pledge of federal highway reimbursements and any other federal highway assistance received for all or any series of the Notes will be subordinate to any prior pledge thereof to notes issued pursuant to subdivision 4d of § [33.1-269](#) and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended and that the obligation to make transfers of federal highway reimbursements and any other federal highway assistance received or other amounts into any fund established under subsection A will be subordinate to the obligation to make any required payments or deposits on or with respect to notes issued pursuant to subdivision 4d of § [33.1-269](#) and the second enactments of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended.*

*§ [33.1-23.24](#). Investment of proceeds and other amounts.*

*Notes proceeds and moneys in any reserve funds and sinking funds in respect of Notes shall be invested by the State Treasurer in accordance with the provisions of general law relating to the investment of such funds belonging to or in the control of the Commonwealth, or by a trustee in accordance with § [33.1-283](#).*

*§ [33.1-23.25](#). Exemption from taxation.*

*The interest income from and any profit made on the sale of the Notes issued under the provisions of this article shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.*

*§ [33.1-23.26](#). Notes as eligible securities.*

*All Notes issued under the provisions of this article are hereby made securities in which all persons and entities listed in § [33.1-280](#) may properly and legally invest funds under their control.*

*§ [33.1-221.1:1.3](#). Intercity Passenger Rail Operating and Capital Fund.*

*A. The General Assembly declares it to be in the public interest that developing and continuing intercity passenger rail operations and the development of rail infrastructure,*

*rolling stock, and support facilities to support intercity passenger rail service are important elements of a balanced transportation system in the Commonwealth and further declares it to be in the public interest that the retention, maintenance, improvement, and development of intercity passenger rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.*

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund, which shall be considered a special fund within the Transportation Trust Fund. The Intercity Passenger Rail Operating and Capital Fund shall be established on the books of the Comptroller and shall consist of funds as may be set forth in the appropriation act and by allocation of funds for operations and projects pursuant to this section by the Commonwealth Transportation Board in accordance with § [33.1-23.1](#). Interest earned on moneys in the Intercity Passenger Rail Operating and Capital Fund shall remain in the Intercity Passenger Rail Operating and Capital Fund and be credited to it. Any moneys remaining in the Intercity Passenger Rail Operating and Capital Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Intercity Passenger Rail Operating and Capital Fund. Moneys in the Intercity Passenger Rail Operating and Capital Fund shall be used solely as provided in this section. Expenditures and disbursements from the Intercity Passenger Rail Operating and Capital Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or his designee.*

*C. The Director of the Virginia Department of Rail and Public Transportation or his designee shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Intercity Passenger Rail Operating and Capital Fund to support the cost of operating intercity passenger rail service; acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support intercity passenger rail projects.*

*D. Capital projects including tracks and facilities constructed and property, equipment, and rolling stock purchased with funds under this section shall be the property of the*

*Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all intercity passenger rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues.*

§ [33.1-268](#). Definitions.

As used in this article, the following words and terms shall have the following meanings:

(1) The word "Board" means the Commonwealth Transportation Board, or if the Commonwealth Transportation Board is abolished, any board, commission or officer succeeding to the principal functions thereof or upon whom the powers given by this article to the Board shall be given by law.

(2) The word "project" or "projects" means any one or more of the following:

(a) York River Bridges, extending from a point within the Town of Yorktown in York County, or within York County across the York River to Gloucester Point or some point in Gloucester County.

(b) Rappahannock River Bridge, extending from Greys Point, or its vicinity, in Middlesex County, across the Rappahannock River to a point in the vicinity of White Stone, in Lancaster County, or at some other feasible point in the general vicinity of the two respective points.

(c), (d) [Reserved.]

(e) James River Bridge, from a point at or near Jamestown, in James City County, across the James River to a point in Surry County.

(f), (g) [Reserved.]

(h) James River, Chuckatuck and Nansemond River Bridges, together with necessary connecting roads, in the Cities of Newport News and Suffolk and the County of Isle of Wight.

(i) [Reserved.]

(j) Hampton Roads Bridge, Tunnel, or Bridge and Tunnel System, extending from a point or points in the Cities of Newport News and Hampton on the northwest shore of Hampton Roads across Hampton Roads to a point or points in the City of Norfolk or Suffolk on the southeast shore of Hampton Roads.

(k) The Norfolk-Virginia Beach Highway, extending from a point in the vicinity of the intersection of Interstate Route 64 and Primary Route 58 at Norfolk to some feasible point between London Bridge and Primary Route 60.

(l) The Henrico-James River Bridge, extending from a point on the eastern shore of the James River in Henrico County to a point on the western shore, between Falling Creek and Bells Road interchanges of the Richmond-Petersburg Turnpike; however, the project shall be deemed to include all property, rights, easements and franchises relating to any of the foregoing projects and deemed necessary or convenient for the operation thereof and to include approaches thereto.

(m) The limited access highway between the Patrick Henry Airport area and the Newport News downtown area which generally runs parallel to tracks of the Chesapeake and Ohio Railroad.

(n) Transportation improvements in the Dulles Corridor, with an eastern terminus of the East Falls Church Metrorail station at Interstate Route 66 and a western terminus of Virginia Route 772 in Loudoun County, including without limitation the Dulles Toll Road, the Dulles Access Road, outer roadways adjacent or parallel thereto, mass transit, including rail, bus rapid transit, and capacity enhancing treatments such as High-Occupancy Vehicle lanes, High-Occupancy Toll (HOT) lanes, interchange improvements, commuter parking lots, and other transportation management strategies.

(o), (p) [Repealed.]

(q) Subject to the limitations and approvals of § [33.1-279.1](#), any other highway for a primary highway transportation improvement district or transportation service district which the Board has agreed to finance under a contract with any such district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, the financing for which is to be secured by Transportation Trust Fund revenues under any appropriation made by the General Assembly for that purpose and payable first from revenues received under such contract or other local funding source, second, to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project is located or to the county or counties in which the project is located and third, to the extent required from other legally available revenues of the Trust Fund and from any other available source of funds.

(r) U.S. 58 Corridor Development Program projects as defined in §§ [33.1-221.1:2](#) and [58.1-815](#).

(s) The Northern Virginia Transportation District Program as defined in § [33.1-221.1:3](#).

(t) Any program for highways or mass transit or transportation facilities, endorsed by the local jurisdiction or jurisdictions affected, which agree that certain distributions of state recordation taxes will be dedicated and used for the payment of any bonds or other obligations, including interest thereon, the proceeds of which were used to pay the cost of the program. Any such program shall be referred to as a "Transportation Improvement Program."

(u) Any project designated from time to time by the General Assembly financed in whole or part through the issuance of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes.

(v) Any project authorized by the General Assembly financed in whole or in part by funds from the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#) or from the proceeds of bonds whose debt service is paid in whole or in part by funds from such Fund.

*(w) Any project identified by the Commonwealth Transportation Board to be financed in whole or in part through the issuance of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.*

(3) The word "undertaking" means all of the projects authorized to be acquired or constructed under this article.

(4) The word "improvements" means such repairs, replacements, additions and betterments of and to a project acquired by purchase or by condemnation as are deemed necessary to place it in a safe and efficient condition for the use of the public, if such repairs, replacements, additions and betterments are ordered prior to the sale of any bonds for the acquisition of such project.

(5) The term "cost of project" as applied to a project to be acquired by purchase or by condemnation, includes the purchase price or the amount of the award, cost of improvements, financing charges, interest during any period of disuse before completion of improvements, cost of traffic estimates and of engineering and legal expenses, plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprises, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition of the project and the placing of the project in operation.

(6) The term "cost of project" as applied to a project to be constructed, embraces the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for such construction, the cost of acquiring by purchase or condemnation any ferry which is deemed by the Board to be competitive with

any bridge to be constructed, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering data, engineering and legal expenses, cost of plans, specifications and surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of the project, the placing of the project in operation and the condemnation of property necessary for such construction and operation.

(7) The word "owner" includes all individuals, incorporated companies, copartnerships, societies or associations having any title or interest in any property rights, easements or franchises authorized to be acquired by this article.

(8) [Repealed.]

(9) The words "revenue" and "revenues" include tolls and any other moneys received or pledged by the Board pursuant to this article, including, without limitation, legally available Transportation Trust Fund revenues and any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth.

(10) The terms "toll project" and "toll projects" mean projects financed in whole or in part through the issuance of revenue bonds which are secured by toll revenues generated by such project or projects.

§ [33.1-269](#). General powers of Board.

The Commonwealth Transportation Board may, subject to the provisions of this article:

1. Acquire by purchase or by condemnation, construct, improve, operate and maintain any one or more of the projects mentioned and included in the undertaking defined in this article;
2. Issue revenue bonds of the Commonwealth, to be known and designated as "Commonwealth of Virginia Toll Revenue Bonds," payable from earnings and from any other available sources of funds, to pay the cost of such projects;
3. Subject to the limitations and approvals of § [33.1-279.1](#), issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Contract Revenue Bonds," secured by Transportation Trust Fund revenues under a payment agreement between the Board and the Treasury Board, subject to their appropriation by the General Assembly and payable first from revenues received pursuant to contracts with a primary highway transportation improvement district or transportation service district or other local revenue sources for which specific funding of any such bonds may be authorized by law; second, to the extent required, from funds

appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which the project or projects to be financed are located; and third, to the extent required, from other legally available revenues of the Trust Fund and from any other available source of funds;

4. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured (i) by revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which have been appropriated by the General Assembly;

4a. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Revenue Bonds," secured, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly;

4b. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues of the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4c. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Program Revenue Bonds" secured, subject to their appropriation by the General Assembly, first from (i) any revenues received from the Commonwealth Transit Capital Fund established by the General Assembly pursuant to subdivision A 4 g of § [58.1-638](#), (ii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iii) such other funds which may be appropriated by the General Assembly. No bonds for any project or projects shall be issued under the authority of this subsection unless such project or projects are specifically included in a bill or resolution passed by the General Assembly;

4d. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes" secured, subject to their appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;

4e. Issue revenue bonds of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Credit Assistance Revenue Bonds," secured, subject to their appropriation by the General Assembly, solely from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation;

4f. Issue revenue bonds of the Commonwealth to be known and designated as "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds," secured, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds;

*4g. Issue grant anticipation notes of the Commonwealth from time to time to be known and designated as "Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes" secured, subject to their appropriation by the General Assembly, (i) first from the project-specific reimbursements pursuant to § [33.1-23.23](#); (ii) then, at the discretion of the Board, to the extent required, from legally available rev-*

*enues of the Transportation Trust Fund; and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose;*

5. Fix and collect tolls and other charges for the use of such projects or to refinance the cost of such projects;

6. Construct grade separations at intersections of any projects with public highways, streets or other public ways or places and change and adjust the lines and grades thereof so as to accommodate the same to the design of such grade separations, the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways, streets, ways and places to be ascertained and paid by the Board as a part of the cost of the project;

7. Vacate or change the location of any portion of any public highway, street or other public way or place and reconstruct the same at such new location as the Board deems most favorable for the project and of substantially the same type and in as good condition as the original highway, streets, way or place, the cost of such reconstruction and any damage incurred in vacating or changing the location thereof to be ascertained and paid by the Board as a part of the cost of the project. Any public highway, street or other public way or place vacated or relocated by the Board shall be vacated or relocated in the manner provided by law for the vacation or relocation of public roads and any damages awarded on account thereof may be paid by the Board as a part of the cost of the project;

8. Make reasonable regulations for the installation, construction, maintenance, repair, renewal and relocation of pipes, mains, sewers, conduits, cables, wires, towers, poles and other equipment and appliances herein called "public utility facilities," of the Commonwealth and of any municipality, county, or other political subdivision, public utility or public service corporation owning or operating the same in, on, along, over or under the project. Whenever the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board. The cost and expense of such relocation or removal, including the cost of installing such public utility facilities in a new location or locations, and the cost of any lands or any rights or interests in lands, and any other rights acquired to accomplish such relocation or removal shall be ascertained by the Board.

On any toll project, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, political subdivision, public utility or public

service corporation. On all other projects, under this article, the Board shall pay the cost and expense of relocation or removal as a part of the cost of the project for those public utility facilities owned or operated by the Commonwealth or such municipality, county, or political subdivision. The Commonwealth or such municipality, county, political subdivision, public utility or public service corporation may maintain and operate such public utility facilities with the necessary appurtenances, in the new location or locations, for as long a period and upon the same terms and conditions as it had the right to maintain and operate such public utility facilities in their former location or locations;

9. Acquire by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or parts thereof or rights therein, of any municipality, county or other political subdivision, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed.

The cost of such projects shall be paid solely from the proceeds of Commonwealth of Virginia Toll or Transportation Contract Revenue Bonds or a combination thereof or from such proceeds and from any grant or contribution which may be made thereto pursuant to the provisions of this article;

10. Notwithstanding any provision of this article to the contrary, the Board shall be authorized to exercise the powers conferred herein, in addition to its general powers to acquire rights-of-way and to construct, operate and maintain state highways, with respect to any project which the General Assembly has authorized or may hereafter authorize to be financed in whole or in part through the issuance of bonds of the Commonwealth pursuant to the provisions of Section 9 (c) of Article X of the Constitution of Virginia; and

11. Enter into any agreements or take such other actions as the Board shall determine in connection with applying for or obtaining any federal credit assistance, including without limitation loan guarantees and lines of credit, pursuant to authorization from the United States Department of Transportation with respect to any project included in the Commonwealth's long-range transportation plan and the approved State Transportation Improvement Program.

§ [33.1-276](#). Revenue bonds.

The Board may provide by resolution, at one time or from time to time, for the issuance of revenue bonds, notes, or other revenue obligations of the Commonwealth for the purpose of paying all or any part of the cost as hereinabove defined of any one or more projects as hereinabove defined. The principal or purchase price of, and redemption premium, if any, and interest on such obligations shall be payable solely from the special

funds herein provided for such payment. "Special funds" for the purposes of this section shall include any such funds established for Commonwealth of Virginia Toll Revenue Bonds, Commonwealth of Virginia Transportation Contract Revenue Bonds, Commonwealth of Virginia Transportation Revenue Bonds, or Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, or *Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes*.

§ [33.1-277](#). Credit of Commonwealth not pledged.

A. Commonwealth of Virginia Toll Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from tolls and revenues, from bond proceeds or earnings thereon and from any other available sources of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, from bond proceeds or earnings thereon and from any other available sources of funds and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, other than appropriate available funds derived as revenues from tolls and charges under this article or derived from bond proceeds or earnings thereon and from any other available sources of funds.

B. Commonwealth of Virginia Transportation Contract Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received pursuant to contracts with a primary highway transportation district or transportation service district or any other alternative mechanism for generation of local revenues for specific funding of a project satisfactory to the Commonwealth Transportation Board, (ii) to the extent required, from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the county or counties in which such project or projects are located, (iii) from bond proceeds or earnings thereon, (iv) to the extent required, from other legally available revenues of the Trust Fund, and (v) from any other available source of funds. All such bonds shall state on their face that the Commonwealth of Virginia is not obligated to pay the same or the interest thereon except

from revenues in clauses (i) and (iii) hereof and that the faith and credit of the Commonwealth are not pledged to the payment of the principal and interest of such bonds. The issuance of such revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the Commonwealth to levy or to pledge any form of taxation whatever or to make any appropriation for their payment, other than to appropriate available funds derived as revenues under this article from the sources set forth in clauses (i) and (iii) hereof. Nothing in this article shall be construed to obligate the General Assembly to make any appropriation of the funds set forth in clause (ii) or (iv) hereof for payment of such bonds.

C. Commonwealth of Virginia Transportation Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor (i) from revenues received from the U.S. Route 58 Corridor Development Fund, subject to their appropriation by the General Assembly, (ii) to the extent required, from revenues legally available from the Transportation Trust Fund and (iii) to the extent required, from any other legally available funds which shall have been appropriated by the General Assembly.

D. Commonwealth of Virginia Transportation Revenue Bonds issued under this article for Category 1 projects as provided in subdivision (2) (s) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) revenues received from the Northern Virginia Transportation District Fund, (ii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iii) to the extent required, legally available revenues of the Transportation Trust Fund, and (iv) such other funds which may be appropriated by the General Assembly.

E. Commonwealth of Virginia Transportation Program Revenue Bonds issued under this article for projects defined in subdivision (2) (t) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth. Such bonds shall be payable solely, subject to their appropriation by the General Assembly, first from (i) any revenues received from any Set-aside Fund established by the General Assembly pursuant to § [58.1-816.1](#), (ii) to the extent required, revenues received pursuant to any contract with a local jurisdiction or any alternative mechanism for generation of local revenues for specific funding of a project satisfactory

to the Commonwealth Transportation Board, (iii) to the extent required, funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located, (iv) to the extent required, legally available revenues from the Transportation Trust Fund, and (v) such other funds which may be appropriated by the General Assembly.

F. Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes issued under this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, (i) first from any federal highway reimbursements and any other federal highway assistance received from time to time by the Commonwealth, (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then, from such other funds, if any, which are designated by the General Assembly for such purpose.

G. Commonwealth of Virginia Transportation Credit Assistance Revenue Bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such obligations shall be payable solely, subject to appropriation by the General Assembly, from revenues with respect to or generated by the project or projects being financed thereby and any tolls or other revenues pledged by the Board as security therefor and in accordance with the applicable federal credit assistance authorized with respect to such project or projects by the United States Department of Transportation.

H. Commonwealth of Virginia Transportation Capital Projects Revenue Bonds issued under the provisions of this article for projects as provided in subdivision ~~2~~ (2) (v) of § [33.1-268](#) shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such bonds shall be payable solely, subject to their appropriation by the General Assembly, (i) from the revenues deposited into the Priority Transportation Fund established pursuant to § [33.1-23.03:8](#); (ii) to the extent required, from revenues legally available from the Transportation Trust Fund; and (iii) to the extent required, from any other legally available funds.

*I. Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes issued under the provisions of Article 1.3 (§ [33.1-23.14](#) et seq.) of Chapter 1 and this article shall not be deemed to constitute a debt of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth, but such notes shall be payable solely, subject to their appropriation by the General Assembly, (i) first from the project-*

*specific reimbursements pursuant to § [33.1-23.23](#), (ii) then, at the discretion of the Board, to the extent required, from legally available revenues of the Transportation Trust Fund, and (iii) then from such other funds, if any, which are designated by the General Assembly for such purpose.*

§ [33.1-280](#). Sale of bonds; bonds as legal investments.

The Board may sell such bonds in such manner and for such price as it may determine to be for the best interests of the Commonwealth, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than the maximum per centum per annum approved by the Commonwealth Treasury Board with respect to such obligations in accordance with § [2.2-2416](#) of the Code of Virginia, as amended, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding, however, from such computations the amount of any premium to be paid on redemption for any bonds prior to maturity.

All bonds heretofore or hereafter issued pursuant to the authority of this article are hereby made securities in which all public officers and bodies of this Commonwealth and all political subdivisions thereof, all insurance companies and associations, all national banks and trust companies, and savings institutions, including savings and loan associations, in the Commonwealth, and all executors, administrators, trustees, and other fiduciaries, both individual or corporate, may properly and legally invest funds within their control.

2. That § 2 of the second enactment of Chapter 896 of the Acts of Assembly of 2007 is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Revenue Bond Act (§ [33.1-267](#) et seq. of the Code of Virginia) as amended from time to time, revenue obligations of the Commonwealth to be designated “Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series .....” (*the Bonds*) at one or more times in an aggregate principal amount not to exceed \$3 billion, ~~after all costs~~ (*the Overall Limitation*); provided that the aggregate principal amount issued in any one fiscal year shall not exceed \$300 million (*the Annual Limitation*), excluding any refunding bonds, *except for the fiscal years ending June 30, 2012, and June 30, 2013, in which the Annual Limitation shall be increased by \$200 million and \$300 million respectively.* If, the aggregate principal amount issued in any fiscal year is less than ~~\$300 million~~ *the Annual Limitation*, then the amount by which such issuance is less than ~~\$300 million~~ *the Annual*

*Limitation* may be issued in any subsequent fiscal year in addition to the ~~\$300 million authorized in maximum Annual Limitation~~ for the subsequent fiscal year. *In determining compliance with either the Overall Limitation or any Annual Limitation there shall be excluded (i) the principal amount of Bonds issued under this enactment to pay issuance or financing expenses or costs (including any original issue discount) and (ii) the principal amount of Bonds issued under § [33.1-293](#) to refund any outstanding Bonds.* The issuance of any bonds under this Act is subject to the provisions of subsection C of § [33.1-23.03:8](#) of the Code of Virginia.

3. That the authority to issue additional Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes pursuant to the second enactment of Chapters 1019 and 1044 of the Acts of Assembly of 2000, as amended by Chapter 655 of the Acts of Assembly of 2005, shall expire on July 1, 2011. Nothing in this enactment shall in any way affect such notes issued prior to July 1, 2011.

### **Chapter 890 Budget Bill. Appropriations for 2010-2012 biennium.**

An Act to amend Chapter 874, Acts of Assembly of 2010, which appropriated funds for the 2010-12 Biennium, and to provide a portion of revenues for the two years ending, respectively, on the thirtieth day of June, 2011, and the thirtieth day of June, 2012, submitted by the Governor of Virginia to the presiding officer of each house of the General Assembly of Virginia in accordance with the provisions of § [2.2-1509](#), Code of Virginia.

[\[H 1500\]](#)

Approved May 2, 2011

Be it enacted by the General Assembly of Virginia:

### **Chapter 633 Patriots Crossing project; requires VDOT to accept unsolicited proposals for development, etc.**

An Act to require the Virginia Department of Transportation to accept for review unsolicited proposals for development and operations of the Patriots Crossing project.

[\[S 856\]](#)

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Unsolicited proposals for development and operations of the Patriots Crossing (Third Crossing) project to be accepted for review by the Virginia Department of Transportation; procedure.*

*A. The Virginia Department of Transportation is hereby directed to accept for review unsolicited proposals under the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) for the development and operations of the Patriots Crossing (Third Crossing) project at Hampton Roads. Unsolicited proposals shall be filed with the Department no later than September 30, 2011.*

*B. Upon enactment of this act, the Department shall make available on its website any and all information about the proposed Patriots Crossing (Third Crossing) project. The Department may take such measures as necessary to protect confidential or proprietary information or to protect vital state and national security interests that may be contained in such information.*

*C. Unsolicited proposals filed pursuant to this act shall provide information regarding team qualifications and experience, the proposed scope of work for the project, a schedule for project development, the proposed cost (including design, construction, operations, and maintenance costs), a conceptual finance plan (which includes the sources and uses of funds), and a discussion of public benefits of the project. The Department shall develop a process that would permit a private entity that is part of a proposal team to assist with the development of state or federally mandated environmental reviews or permits required to complete the project. Completion of such reviews or permits shall not be necessary prior to a decision by the Department to advance consideration of conceptual proposals.*

*D. Within 30 days of the receipt of unsolicited proposals, the Department shall post a public notice of the unsolicited proposals and provide 120 days for the submission of any competing proposals. The Department shall review unsolicited proposals filed pursuant to this act to assess the financial and technical merit of the proposals and the proposal teams. No later than May 1, 2012, the Department shall make a recommendation to a steering committee whether to advance development of the Patriots Crossing (Third Crossing) project. The Commonwealth Transportation Commissioner shall appoint the steering committee in accordance with guidelines developed pursuant to subsection D of § [56-560](#) of the Code of Virginia. The Department shall afford opportunities for public comment on the proposals prior to making its recommendation to the steering committee.*

*E. No later than September 1, 2012, the steering committee shall make a recommendation to the Commonwealth Transportation Commissioner whether to advance development of the Patriots Crossing (Third Crossing) project by entering into an interim or comprehensive agreement with one or more of the proposal teams or by issuing a request for detailed proposals to one or more of the proposal teams pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq. of the Code of Virginia) and the guidelines developed in accordance with subsection D of § [56-560](#) of the Code of Virginia. Moneys in the Transportation Partnership Opportunity Fund may be made available to carry out the provisions of an interim or comprehensive agreement. The interim or comprehensive agreement shall also provide a schedule for the completion of the necessary reviews and approvals for construction of the Patriots Crossing (Third Crossing) project.*

2. That the Virginia Department of Transportation shall promptly inform the Joint Commission on Transportation Accountability, as authorized by Chapter 43 (§ [30-282](#) et seq.) of Title 30 of the Code of Virginia, by written update, of its completion of each requirement of this act.

## **Chapter 662 Electric utility service; termination of service of customers with a serious medical condition.**

An Act to require the State Corporation Commission to limit electric utility service shutoffs for individuals with a serious medical condition.

[\[H 2159\]](#)

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission, in order to promote public health and safety, shall conduct a proceeding for the purpose of establishing limitations on the authority of an investor-owned electric utility or electric cooperative to terminate electric service to the residence of any customer who provides the certification of a licensed physician that the customer has a serious medical condition or the customer resides with a family member with a serious medical condition. The limitations shall be consistent with the public interest. In the proceeding establishing such limitations, the State*

*Corporation Commission shall consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, electric utilities, and any other persons that the State Corporation Commission deems appropriate. As a part of the proceeding, the State Corporation Commission shall adopt regulations to implement such limitations. The regulations shall (i) be adopted in accordance with the Commission's Rules of Practice and Procedure, (ii) be effective not later than October 31, 2011, (iii) establish a cost recovery mechanism under which electric utilities shall be authorized to recover, from approved rates collected from other customers or other sources of revenue, any losses on customer accounts the balance of which is written off or otherwise determined to be uncollectible as the result of the implementation of the regulations, and (iv) define "serious medical condition."*

## **Chapter 673 Electric utility service; termination of service of customers with a serious medical condition.**

An Act to require the State Corporation Commission to limit electric utility service shutoffs for individuals with a serious medical condition.

[\[S 1165\]](#)

Approved March 26, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission, in order to promote public health and safety, shall conduct a proceeding for the purpose of establishing limitations on the authority of an investor-owned electric utility or electric cooperative to terminate electric service to the residence of any customer who provides the certification of a licensed physician that the customer has a serious medical condition or the customer resides with a family member with a serious medical condition. The limitations shall be consistent with the public interest. In the proceeding establishing such limitations, the State Corporation Commission shall consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, electric utilities, and any other persons that the State Corporation Commission deems appropriate. As a part of the proceeding, the State Corporation*

*Commission shall adopt regulations to implement such limitations. The regulations shall (i) be adopted in accordance with the Commission's Rules of Practice and Procedure, (ii) be effective not later than October 31, 2011, (iii) establish a cost recovery mechanism under which electric utilities shall be authorized to recover, from approved rates collected from other customers or other sources of revenue, any losses on customer accounts the balance of which is written off or otherwise determined to be uncollectible as the result of the implementation of the regulations, and (iv) define "serious medical condition."*

## **Chapter 696 Biscuit Run; DCR to negotiate land exchange of certain acres in Albemarle County.**

An Act to authorize the Department of Conservation and Recreation to negotiate a land exchange of certain parcels in an area known as Biscuit Run in Albemarle County, Virginia.

[\[H 2167\]](#)

Approved March 26, 2011

Whereas, the Department of Conservation and Recreation acquired the 1,191-acre Biscuit Run tract (the Property) for a state park; and

Whereas, the deed of conveyance perpetually limited the use of the Property to outdoor recreation or education of the general public or for open-space protection; and

Whereas, the Property surrounds a 36-acre in-holding, the location of which is detrimental to the operation of a state park; and

Whereas, the Property and the 36-acre in-holding are equivalent types of land with equivalent value for park, recreational, educational, and open-space use, but the location of the 36 acres in the middle of the park may be detrimental to park use; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, and after judicial approval, as required by the deed of December 28, 2009, the Department of Conservation and Recreation (the Department) is hereby authorized to convey to Muffin Trodding, LLC, Yancey Hardtimes, LLC, and Ms. Elizabeth Breeden, their successors and assigns, separately or together, upon terms*

*and conditions as the Department and the grantees deem proper, and with the approval of the Governor and in a form approved by the Attorney General, all of its right, title, and interest in a parcel or parcels of land that are a part of the 1,191 acres, more or less, known as Biscuit Run in Albemarle County, Virginia, owned by the Department, or such other parcel or parcels of land in proximity to the Biscuit Run property that the Department acquires for the purpose of this exchange. The acreage and boundaries of such parcels shall be determined by mutual agreement of the Department and the grantees, but in no instance shall the negotiated monetary value of the property conveyed from the Property, if unrestricted by the terms of the Deed of Bargain and Sale, exceed the value of the property and life estate described in § 2 hereof. Such acreage and boundaries, and the value thereof, shall be approved by the Director of the Department of General Services. The value of such parcels shall be no more than the value, or the remainder interest value if conveyed subject to a life estate, of the 36 acres, more or less, contemplated in § 2 hereof to be received in exchange therefor by the Department. If the land deeded to Muffin Trodding, LLC, Yancey Hardtimes, LLC, and Ms. Elizabeth Breeden by virtue of this act is taken from the Biscuit Run property, such land shall be subject to all the restrictions contained in the Deed of Bargain and Sale that conveyed Biscuit Run to the Commonwealth until such time as the restrictions are extinguished by a judicial proceeding as provided for in the Deed of Bargain and Sale.*

*§ 2. That in exchange for such conveyance, the Department is authorized to receive, subject to the approval of the Governor and in a form approved by the Attorney General and subject to § [2.2-1149](#) of the Code of Virginia, all the respective right, title, and interest in 36 acres, more or less, owned by Muffin Trodding, LLC, Yancey Hardtimes, LLC, and Ms. Elizabeth Breeden, their successors and assigns, located in the interior of the property known as Biscuit Run. The boundaries of such conveyance shall be determined by mutual agreement of the Department and the owners. The Department is further authorized to allow for the reservation of a life estate in any portion of those 36 acres, more or less, as part of the exchange. The boundaries of such 36 acres, more or less, and the value thereof, including the value of the remainder interest if conveyed subject to a life estate, shall be approved by the Director of the Department of General Services.*

*§ 3. That the purpose of this exchange is to provide the Department with a state park site that is less encumbered with private uses that may be detrimental to the operation of a state park on the property.*

## **Chapter 756 Constitutional amendment; legislative sessions.**

HOUSE JOINT RESOLUTION NO. 679

Proposing an amendment to Section 6 of Article IV of the Constitution of Virginia, relating to legislative sessions.

Agreed to by the House of Delegates, February 8, 2011

Agreed to by the Senate, February 18, 2011

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article IV of the Constitution of Virginia as follows:

ARTICLE IV

LEGISLATURE

Section 6. Legislative sessions.

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.

The General Assembly shall reconvene on the sixth Wednesday after adjournment of each regular or special session for the purpose of considering bills which may have

been returned by the Governor with recommendations for their amendment and bills and items of appropriation bills which may have been returned by the Governor with his objections. No other business shall be considered at a reconvened session. Such reconvened session shall not continue longer than three days unless the session be extended, for a period not exceeding seven additional days, upon the vote of the majority of the members elected to each house. *The General Assembly may provide, by a joint resolution approved during a regular or special session by the vote of the majority of the members elected to each house, that it shall reconvene on a date after the sixth Wednesday after adjournment of the regular or special session but no later than the seventh Wednesday after adjournment.*

## **Chapter 757 Constitutional amendment; taking or damaging of private property for public use (first reference).**

HOUSE JOINT RESOLUTION NO. 693

Proposing an amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

Agreed to by the House of Delegates, February 23, 2011

Agreed to by the Senate, February 22, 2011

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking *or damaging* of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

## **Chapter 760 License plates, special; issuance to those bearing legend: DONT TREAD ON ME.**

An Act to authorize the issuance of special license plates bearing the legend: "DONT TREAD ON ME," bearing the national motto: "In God We Trust," for members and supporters of the Friends of the Blue Ridge Parkway, Inc., and for supporters of the James River Park System; fees.

[\[H 1418\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Special license plates bearing the legend: DONT TREAD ON ME.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend: DONT TREAD ON ME.*

§ 2. *Special license plates bearing the national motto: "In God We Trust."*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the national motto: "In God We Trust."*

§ 3. *Special license plates for members and supporters of the Friends of the Blue Ridge Parkway, Inc.; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates to members and supporters of the Friends of the Blue Ridge Parkway, Inc.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Friends of the Blue Ridge Parkway, Inc., Fund established within the Department of Accounts. These funds shall be paid annually to the Friends of the Blue Ridge Parkway, Inc., and used to support its program to clear the scenic overlooks along the Blue Ridge Parkway in order to promote tourism along the Parkway in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

§ 4. *Special license plates for supporters of the James River Park System; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the James River Park System.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the James River Park System Fund established within the Department of Accounts. These funds shall be paid annually to the Friends of the James River Park and used to support its programs to conserve, maintain and enhance the James River Park System through trail maintenance and construction, nature education and historical interpretation, park and river cleanup, and removal of invasive plant species and replacement with native plant species in and along the waterways in the parks. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles, and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 771 Distributed solar generation demonstration programs; SCC to consider approval of facilities.**

An Act to direct the State Corporation Commission to consider for approval distributed solar generation facilities and to offer special tariffs as alternatives to net energy metering.

[\[H 1686\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in order to promote solar energy through distributed generation, the State Corporation Commission shall exercise its existing authority to consider for approval, after notice to all affected parties and opportunity for hearing, petitions filed by a utility to construct and operate distributed solar generation facilities and to offer special tariffs to facilitate customer-owned distributed solar generation as alternatives to net energy metering, with an aggregate amount of rated generating capacity of up to 0.20 percent of each electric utility's adjusted Virginia peak load for the calendar year 2010. Such petitions may be made during the period of July 1, 2011, through July 1, 2015, and the Commission, on its own motion, may extend this period an additional year for good cause. Each*

*distributed solar generation installation approved pursuant to this section shall be considered to be part of a demonstration program to assess benefits to the utility's distribution system, including constrained or high load growth circuits, for a period of five years from the date each installation becomes operational. Thereafter each installation shall cease to be part of a demonstration program and, in the case of a utility-owned installation, shall continue to operate as a utility-owned generating facility, and in the case of a customer-owned installation, shall continue to provide power to the utility pursuant to the terms of the agreed upon tariff arrangement. Subject to review by the Commission, such utility-owned distributed solar generation facilities and tariffs for power generated from customer-owned distributed solar installations shall be prioritized in areas identified by the utility as areas where localized solar generation would provide benefits to the utility's distribution system, including constrained or high-growth areas. The Commission shall approve such programs or distributed generation facilities if it determines that the programs or facilities, including those targeting constrained or high load growth areas, are reasonably designed to be in furtherance of the public interest.*

*§ 2. A utility participating in demonstration programs pursuant to § 1 of this act shall use reasonable efforts to ensure that at least four of the distributed solar installation sites included in the demonstration projects shall be in a community setting, which shall include, but not be limited to, to the extent permitted by law, participation by local governments, schools, community associations, neighborhood associations, or nonprofit organizations. The capacity of each such community installation shall not exceed 500 kilowatts.*

*§ 3. When a utility proposes solar distributed generation resources as permitted in § 1 of this act comprised of multiple installations combined collectively, the Commission shall consider such projects as one small non-combustible renewable power generation facility for purposes of project approval pursuant to §§ [10.1-1197.5](#), [10.1-1197.8](#), [56-265.2](#), [56-580](#) and [56-585.1](#) of the Code of Virginia. A "small non-combustible renewable power generation facility" is a small renewable energy project that generates electricity from sunlight and may consist of one or more installations distributed on separate structures or facilities, whether such installations are treated each as a stand-alone small renewable energy project or are combined and treated collectively as one small renewable energy project.*

*§ 4. The Commission shall provide annual reports on any demonstration programs approved pursuant to this act to the Governor and the chairmen of the House and Senate Committees on Commerce and Labor.*

## **Chapter 793 Overweight vehicles; Commissioner of DMV to develop comprehensive, tiered schedule for fees, etc.**

An Act to amend and reenact the second enactment of Chapter 738 of the Acts of Assembly of 2007, as amended by Chapter 864 of the Acts of Assembly of 2008, and as further amended by Chapter 188 of the Acts of Assembly of 2009, relating to vehicle weights; fee structure.

[\[H 2022\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 738 of the Acts of Assembly of 2007, as amended by Chapter 864 of the Acts of Assembly of 2008, and as further amended by Chapter 188 of the Acts of Assembly of 2009, is amended and reenacted as follows:
2. That the annual overweight permit fee for each eligible tank wagon vehicle shall be \$265 until further comprehensive legislation addressing fees for overweight vehicles is enacted. *The Commissioner of the Department of Motor Vehicles, in consultation with the Commissioner of Highways, the Executive Director of the Virginia Port Authority, the Virginia Trucking Association and a representative from the heavy equipment industry, as well as other groups as may be deemed appropriate by the Commissioner, shall develop a uniform system of permitting for overweight and oversize vehicles and a comprehensive, tiered schedule of fees for overweight vehicles, taking into consideration the Virginia Department of Transportation's research on the cost impact of damage to Virginia's highways from overweight vehicles, the administrative feasibility of such fee structure, and the impact of such fee structure on the Commonwealth's economic competitiveness. Such fee structure shall be presented to the Joint Commission on Transportation Accountability by December 15, 2011.*

## **Chapter 873 State and local government entities; limitation of authority over certain charitable organizations.**

An Act to limit state and local government authority; certain charitable organizations.

[\[S 1483\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That a government agency shall not require any charitable organization to:*

*1. Disclose individual demographic information concerning employees, officers, directors, trustees, members, or owners, without the prior written consent of such individuals;*

*2. Disclose individual demographic information concerning any person, or the employees, officers, directors, trustees, members or owners of any entity that has received monetary or in-kind contributions from or contracted with a charitable organization without the prior written consent of such individuals;*

*3. Include in the membership of the governing board or officers of the charitable organization an individual based on his demographic characteristics;*

*4. Prohibit an individual from serving as a board member or officer based upon the individual's familial relationship to other board members or officers or to a donor;*

*5. Include in the membership of the governing board one or more individuals who do not share a familial relationship with other board members or officers or with the donor; or*

*6. Distribute its funds to or contract with any individual or entity based upon the demographic characteristics of the employees, officers, directors, trustees, members, or owners of the individual or entity, or based on populations, locations, or communities served by the individual or entity, except as a lawful condition on the expenditure of the funds imposed by the donor.*

*As used in this act:*

*"Charitable organization" means any nonstock corporate or other entity that has been granted tax-exempt status under § 509(a) of the Internal Revenue Code.*

*"Government agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government and any county, city, or town.*

*Nothing in this act shall prohibit a government agency from obtaining information from a charitable organization pursuant to a subpoena, civil investigative demand, or other compulsory process. Nothing in this act shall alter or limit the filing requirements applicable to charitable organizations under Chapter 8 of Title 18.2 of the Code of Virginia or Chapter 5 of Title 57 of the Code of Virginia.*

## Chapter 823 Health benefits exchange; intent to develop.

An Act to state the intent of the General Assembly to create and operate a health benefits exchange.

[\[H 2434\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That it is the intent of the General Assembly that the Commonwealth create and operate its own health benefits exchange or exchanges, hereafter referred to collectively as the "Virginia Exchange," to preserve and enhance competition in the health insurance market. The purpose of the Virginia Exchange shall be to facilitate the purchase and sale of qualified health plans in the individual market and to assist qualified small employers in facilitating the enrollment of their employees in qualified health plans offered in the small group market. To accomplish this purpose, the Virginia Exchange shall, at a minimum: (i) meet the relevant requirements of the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) (collectively referred to as the Affordable Care Act), regarding the establishment of an American Health Benefit Exchange or Small Business Health Options Program by the prescribed deadline imposed by the Affordable Care Act in order to avoid development and implementation of a federal exchange in the Commonwealth; (ii) ensure that no qualified health insurance plan that is sold or offered for sale through an exchange established or operating in the Commonwealth shall provide coverage for abortions, regardless of whether such coverage is provided through the plan or is offered as a separate optional rider thereto; and (iii) the limitation set forth in (ii) shall not apply to an abortion performed (a) when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (b) when the pregnancy is the result of an alleged act of rape or incest.*

*§ 2. The General Assembly requests the Governor, through the Secretary of Health and Human Resources and with the State Corporation Commission's Bureau of Insurance, to work with the General Assembly, relevant experts, and stakeholders generally to provide recommendations for consideration by the 2012 Session of the General Assembly*

*regarding the structure and governance of the Virginia Exchange. The Governor's recommendations shall address, at a minimum, the following: (i) whether to create the Virginia Exchange within an existing governmental agency, as a new governmental agency, or as a not-for-profit private entity; (ii) the make-up of a governing board for the Virginia Exchange; (iii) an analysis of resource needs and sustainability of such resources for the Virginia Exchange; (iv) a delineation of specific functions to be conducted by the Virginia Exchange; and (v) an analysis of the potential effects of the interactions between the Virginia Exchange and relevant insurance markets or health programs, including Medicaid. These recommendations shall be presented to the General Assembly by October 1, 2011, in order that any necessary amendments to the Code of Virginia and any appropriation necessary for establishment of the Virginia Exchange may be considered during the 2012 Session of the General Assembly.*

2. That the provisions of this act shall expire on July 1, 2014.

3. That nothing in this act shall be construed or implied to recognize the constitutionality of the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

4. That the provisions of this act constitute the election of the Commonwealth to prohibit abortion coverage in qualified health plans offered through an exchange in the Commonwealth as amended by § 1303(a)(1) of the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

## **Chapter 866 State's tax code; advances conformity with federal law.**

An Act to amend and reenact § [58.1-301](#) of the Code of Virginia *and to repeal the third enactment of Chapter 874 of the Acts of Assembly of 2010*, relating to conformity of the Commonwealth's tax system with the federal Internal Revenue Code.

[\[S 1384\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-301](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-301](#). Conformity to Internal Revenue Code.

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on ~~January 22~~ *December 31*, 2010, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;

2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;

3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108 (i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108 (i) of the Internal Revenue Code) reacquired in *the* taxable year ~~2009~~ shall be fully included in the taxpayer's Virginia taxable income for *the* taxable year ~~2009~~, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a 3-taxable-year period beginning with taxable year ~~2009~~ *for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010.* For purposes of such election, all other provisions of § 108 (i) shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument";

5. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010; *and*

6. For taxable years beginning on or after January 1, ~~2010~~ *2011*, the provisions of § 32 (b)(3) of the Internal Revenue Code relating to the earned income tax credit; ~~and~~

~~7. For taxable years beginning on or after January 1, 2010, the deduction for qualified motor vehicle taxes pursuant to § 164(a)(6) of the Internal Revenue Code.~~

The Department of Taxation is hereby authorized to develop procedures or guidelines for implementation of the provisions of this section, which procedures or guidelines shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

2. That the modifications to subdivisions B 6 and B 7 of § [58.1-301](#) shall be retroactive to taxable years beginning on and after January 1, 2010.

3. That the third enactment of Chapter 874 of the Acts of Assembly of 2010 is repealed and that § 4-12.00 of such act shall not be applicable with respect to the conflict between the third enactment of such act and the provisions of this act, and that the provisions of this act shall prevail over any conflict with the third enactment of Chapter 874 of the Acts of Assembly of 2010.

4. That an emergency exists and this act is in force from its passage.

### **Chapter 870 VDOT; review and adopt revisions to certain regulations applicable to transportation planning.**

An Act to amend and reenact the second enactment of Chapter 527 of the Acts of Assembly of 2006, the second enactment of Chapter 563 of the Acts of Assembly of 2006, the second and third enactments of Chapter 382 of the Acts of Assembly of 2007, and the second, third, and fourth enactments of Chapters 863 and 928 of the Acts of Assembly of 2007, as amended by Chapter 274 of the Acts of Assembly of 2008, relating to coordination of state and local transportation planning.

[\[S 1462\]](#)

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 527 of the Acts of Assembly of 2006 is amended and reenacted as follows:

2. That *prior to November 30, 2011*, the Department of Transportation shall ~~promulgate~~ *review and adopt any appropriate revisions to the regulations by adopted prior to December 31, 2006, or amendments thereto*, to carry out the provisions of this act. Such *revised* regulations shall become effective ~~on July 1, 2007~~, and shall include reasonable exemptions from the requirements of subsections A, B, and C of § [15.2-2222.1](#) *no later than January 1, 2012*.

2. That the second enactment of Chapter 563 of the Acts of Assembly of 2006 is amended and reenacted as follows:

2. That *prior to November 30, 2011*, the Department of Transportation shall ~~promulgate~~ *review and adopt any appropriate revisions to the regulations by adopted prior to December 31, 2006, or amendments thereto*, to carry out the provisions of this act. Such *revised* regulations shall become effective ~~on July 1, 2007~~, and shall include ~~reasonable exemptions from the requirements of subsections A, B, and C of § 15.2-2222.1~~ *no later than January 1, 2012*.

3. That the second and third enactments of Chapter 382 of the Acts of Assembly of 2007 are amended and reenacted as follows:

2. ~~The~~ *That the* provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia, shall not apply to initial regulations *or any revisions recommended by the Department of Transportation and promulgated or adopted* by the Board pursuant to this section *prior to November 30, 2011*, but such exemption shall not apply to subsequent ~~regulations or amendments thereto~~ promulgated by the Board.

3. That the Board shall solicit and consider public comment in the development of *the revisions to the regulations* required by this act, *and that such revisions shall become effective no later than January 1, 2012*.

4. That the second, third, and fourth enactments of Chapter 928 of the Acts of Assembly of 2007, as amended by Chapter 274 of the Acts of Assembly of 2008, are amended and reenacted as follows:

2. That ~~the provisions of the first enactment of this act shall be done in phases and that prior to November 11, 2011, the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards no later than December 31, 2007. Such standards shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009~~ *review and adopt revisions to the regulations adopted prior to October 2, 2009, to carry out the provisions of this act with regards to the application of such provisions to entrances to family subdivisions.*

3. That the full provisions of the first enactment of this act shall become effective ~~on July 1, 2008~~. However, the standards required by this act for minor arterial roads and collector roads shall become effective ~~on October 1, 2009~~ *no later than January 1, 2012*.

4. That, ~~until July 1, 2008,~~ the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia as may be necessary to carry out the provisions of this act as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia *prior to November 30, 2011.*

5. That the second, third, and fourth enactments of Chapter 863 of the Acts of Assembly of 2007, as amended by Chapter 274 of the Acts of Assembly of 2008, are amended and reenacted as follows:

2. That the provisions of the first enactment of this act shall be done in phases and that *prior to November 11, 2011,* the Commissioner shall solicit and consider public comment in the development of standards required by this act and publish such standards not later than December 31, 2007. Such standards as they relate to principal arterial roads shall become effective on July 1, 2008, and for minor arterial roads and collector roads shall become effective on October 1, 2009 *review and adopt revisions to the regulations adopted prior to October 2, 2009, to carry out the provisions of this act with regards to the application of such provisions to entrances to family subdivisions.*

3. That the full provisions of the first enactment of this act shall become effective July 1, 2008. However, the standards required by this act for minor arterial roads and collector roads shall become effective on October 1, 2009 *no later than January 1, 2012.*

4. That, ~~until July 1, 2008,~~ the Commissioner shall not be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia as may be necessary to carry out the provisions of this act as they relate to principal arterial roads, which shall become effective on that date, and that additional phases of the provisions of the first enactment of this act as they relate to minor arterial roads and collector roads, which shall become effective on October 1, 2009, shall be subject to the requirements of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia *prior to November 30, 2011.*

# Uncodified Acts of Assembly - 2012

## Chapter 14 Amherst County; conveyance of certain property by Department of Conservation and Recreation.

An Act to authorize the Department of Conservation and Recreation to divest itself of certain property located in Amherst County.

[\[H 240\]](#)

Approved February 28, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Amherst County, upon terms and conditions that the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General as required by § [10.1-109](#) of the Code of Virginia, any right, title, or interest that it may have in 31.153 acres, more or less, lying adjacent to the James River at State Route 1004 in Amherst County, Virginia, as more particularly described by deed recorded in the Clerk's Office of the Amherst County Circuit Court in Deed Book 784, Page 145.*

*§ 2. Any conveyance shall require that the property be maintained and open to public recreational use, and that if this condition is not met, the property shall revert to the Department.*

## Chapter 34 License plates, special; repeals issuance to supporters celebrating centennial of Fort Belvoir.

An Act to repeal Chapter 422 of the Acts of Assembly of 2011, relating to special license plates celebrating the centennial of Fort Belvoir.

[\[H 774\]](#)

Approved February 28, 2012

Be it enacted by the General Assembly of Virginia:

1. That Chapter 422 of the Acts of Assembly of 2011 is repealed.

### **Chapter 49 Real Estate Appraiser Board; shall develop continuing education curriculum for licensees, report.**

An Act to direct the Real Estate Appraiser Board to develop continuing education curriculum for licensees; report.

[\[H 433\]](#)

Approved March 1, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Real Estate Appraiser Board shall evaluate the development of a continuing education curriculum for licensees that includes the effects of the use of energy efficiency and renewable energy equipment on the determination of the fair market value in the appraisal of non-income-producing residential real estate.*

*§ 2. On or before November 1, 2012, the Real Estate Appraiser Board shall report its findings to the (i) Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology and (ii) Housing Commission.*

### **Chapter 83 High school accreditation; Board of Education to adopt regulation adjusting formula for calculating.**

An Act to require that the Board of Education adopt regulations that adjust the formula for calculating the high school accreditation by adding points for students obtaining industry certifications, state licensure, or competency credentials.

[\[S 514\]](#)

Approved March 6, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall adopt regulations adjusting the formula for calculating the final high school accreditation status as follows: for schools having met minimal accreditation requirements, a minimum numerical value of three points shall be added to the completion index total points calculation for each student obtaining (i) a diploma and (ii) an industry certification, industry pathway certification, a state licensure, or an occupational competency credential in a career and technical education program, when such certification, licensure, or credential is approved by the Board of Education as student-selected verified credit. The additional points shall not be used to obtain or deny accreditation.*

## **Chapter 172 High school accreditation; Board of Education to adopt regulation adjusting formula for calculating.**

An Act to require that the Board of Education adopt regulations that adjust the formula for calculating the high school accreditation by adding points for students obtaining industry certifications, state licensure, or competency credentials.

[\[H 642\]](#)

Approved March 8, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall adopt regulations adjusting the formula for calculating the final high school accreditation status as follows: for schools having met minimal accreditation requirements, a minimum numerical value of three points shall be added to the completion index total points calculation for each student obtaining (i) a diploma and (ii) an industry certification, industry pathway certification, a state licensure, or an occupational competency credential in a career and technical education program, when such certification, licensure, or credential is approved by the Board of Education as student-selected verified credit. The additional points shall not be used to obtain or deny accreditation.*

## **Chapter 182 Career and technical education; industry certifications mandatory part of program.**

An Act to amend and reenact the second enactment of Chapter 388 of the Acts of Assembly of 2011, relating to career and technical education industry certifications.

[\[H 1108\]](#)

Approved March 8, 2012

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 388 of the Acts of Assembly of 2011 is amended and reenacted as follows:
2. That the provisions of this act shall become effective on July 1, ~~2012~~2013.

## **Chapter 490 Higher Educational Institutions Bond Act of 2012; created.**

An Act to authorize the issuance of bonds, in an amount not to exceed \$125,594,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[H 54\]](#)

Approved April 4, 2012

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt

issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2012."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$125,594,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>George Mason University</i>	<i>Construct Student Housing IX-</i>		
<i>A</i>	<i>17929</i>	<i>\$41,071,000</i>	
<i>James Madison University</i>	<i>Student Housing</i>		

Uncodified Acts of Assembly - 2012

	<i>Phase I</i>	<i>17949</i>	<i>\$50,-</i>
<i>000,000</i>			
<i>Old Dominion University</i>	<i>Renovate Student</i>		
	<i>Housing, Phase 2</i>	<i>17945</i>	<i>\$23,-</i>
<i>113,000</i>			
<i>Radford University</i>	<i>Renovate Washing-</i>		
	<i>ton Hall</i>	<i>17948</i>	<i>\$ 5,-</i>
<i>410,000</i>			
<i>The College of William</i>	<i>Renovate Dormitory</i>		
<i>and Mary in Virginia</i>		<i>17933</i>	<i>\$ 5,-</i>
<i>000,000</i>			
<i>The College of William</i>	<i>Construct New</i>		
<i>and Mary in Virginia</i>	<i>Dormitory</i>	<i>17808</i>	<i>\$ 1,-</i>
<i>000,000</i>			
<i>Total</i>			<i>\$125,-</i>
<i>594,000</i>			

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii)*

*refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs*

*bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the*

*Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other*

*political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

**§ 11. Refunding bonds and BANs.**

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12. Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 551 Hampton, City of; Department of General Services to transfer certain property located within City.**

An Act to transfer certain property in the City of Hampton.

[\[H 1270\]](#)

Approved April 4, 2012

Whereas, by Deed from the Old Dominion Land Company, a corporation created by and existing under the laws of the State of Virginia, to The Board of Visitors of Virginia State School for Colored Deaf and Blind Children, a body corporate created by an act of the General Assembly of Virginia, approved March 12, 1906, which Deed was dated July 31, 1908, and recorded on September 16, 1908, in the Clerk's Office of the Circuit Court of Elizabeth City County (now the City of Hampton), Virginia, in Deed Book 49, page 390, the Old Dominion Land Company conveyed a tract of land containing 25.11 acres in Elizabeth City County to the school's Board of Visitors, as more particularly described in said Deed; and

Whereas, provisions in the 1908 Deed evidence that the 25.11 acres was given to the said school's Board of Visitors for the specific purpose of establishing and operating the school created by the General Assembly's act of March 12, 1906, on the donated 25.11 acres of land, which land is now located within the boundaries of the City of Hampton; and

Whereas, other provisions in the 1908 Deed provide that the said 25.11 acres of land was conveyed to the school's Board of Visitors "until such time as the said school shall cease to be conducted and maintained for the purposes set out in the said act of March 12th 1906," as amended, "with remainder [reverter] in and to such real estate to the party of the first part [i.e., Old Dominion Land Company], its successor and assigns," and that "in the event of the termination of the estate of the party of the second part [i.e., the estate held by the school's Board of Visitors - today, the Commonwealth of Virginia]" that "the said party of the second part or its successors, shall have the right [but not the obligation] to remove all structures, buildings and improvements" from the land; and

Whereas, over the years, the school's campus was expanded through the Commonwealth's purchase of a number of adjacent parcels of land, which resulted in the expansion of the campus to approximately 75 acres, bounded, in part, by Shell Road, Pine Lane, and Gloucester Street; and

Whereas, during the period of 2007-2010, legislation was adopted that provided for the closure of what had become known as the Hampton School for the Deaf, Blind and Multi-Disabled, also known as the Virginia School at Hampton, and which legislation also provided for the transfer of all the school's operations and students to the existing School for the Deaf and the Blind at Staunton; and

Whereas, the Hampton School for the Deaf, Blind and Multi-Disabled, also known as the Virginia School at Hampton, has been closed and its main front gates locked, thereby leaving a campus of many empty buildings that are not being put to a productive use; and

Whereas, by Deed from the Commonwealth of Virginia, Department of Education, as Grantor, to the City of Hampton, Virginia, as Grantee, dated December 22, 2010, and recorded December 29, 2010, in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia, as Instrument No. 100016560, the Commonwealth conveyed all of the properties comprising the campus of said school to the City of Hampton, with the exception, however, of the original 25.11-acre tract; and

Whereas, the Old Dominion Land Company was dissolved by Order of the Virginia State Corporation Commission, said Order being entered in its Judicial Order Book No. 37 (1948-1949), at page 371, which Order Book is on file at the Virginia State Library and Archives; and

Whereas, as a part of the process of winding up its affairs, and pursuant to a resolution adopted at a special meeting of stockholders of the Old Dominion Land Company held on October 29, 1947, the said Old Dominion Land Company granted, conveyed, quitclaimed and released, with Special Warranty of Title, unto J.M. Dozier, Jr., and D.C. Curtis, Trustees, "all unsold real estate or any rights or interests in any real estate or any real estate title to which might hereafter revert to the said corporation....," which was accomplished by Deed dated December 8, 1948, and recorded April 16, 1952, in the Circuit Court (formerly Corporation Court) of the City of Newport News, Virginia, in Deed Book 273, page 218; and

Whereas, the Attorney General's Office has opined that the title originally acquired by the school's Board of Visitors (i.e., by the Commonwealth) was a fee simple determinable under which the Commonwealth's title terminated upon closure of the said school in Hampton, with title reverting to the Old Dominion Land Company, its successors and assigns, and that, even if the title did not automatically revert, it was subject to being divested through the exercise of a right of entry by the dissolved corporation's trustees, or by their successor substitute trustee or trustees, for a material breach of an express condition subsequent as set forth in the 1908 Deed, the conveyance in said 1908 Deed having been made on the condition that the school's Board of Visitors (i.e., the Commonwealth) conduct and forever maintain on the 25.11-acre tract of land the school as comprehended by the said 1906 Act of the General Assembly "for the sole and specific uses of said school only"; and

Whereas, the Trustees named in said December 8, 1948, Deed are both deceased, which will necessitate the appointment of a substitute trustee or substitute trustees; and  
Whereas, the original 25.11-acre portion of the school's campus, the title to which has reverted, needs to be returned to a productive use that will require the administration and disposition of the said 25.11 acres, more or less, by a substitute trustee or substitute

trustees in a manner that complies with the December 8, 1948, Deed from the Old Dominion Land Company; and

Whereas, (i) for purposes of establishing of record in the City of Hampton Circuit Court that the Hampton School for the Deaf, Blind and Multi-Disabled has been permanently closed; (ii) for purposes of evidencing by recorded instrument that the Commonwealth considers that title to said 25.11-acre, more or less, tract of land has reverted and that any interest or claims of the Commonwealth have been granted, conveyed, released, and quitclaimed to a duly appointed substitute trustee or substitute trustees as successor or successors in interest to the trustees named in the said Deed from the Old Dominion Land Company (which is now a dissolved Virginia corporation), dated December 8, 1948, and recorded April 16, 1952; (iii) to minimize or eliminate any need for a suit to quiet title; and (iv) to otherwise facilitate the subsequent transfer of title to the 25.11 acres, more or less, by the substitute trustee or substitute trustees, the Department of General Services, on behalf of the Commonwealth and its Department of Education, should have the authority to grant, convey, remise, and quitclaim, without warranty, unto any successor trustee or successor trustees appointed under the said December 8, 1948, Deed from the Old Dominion Land Company, all of the Commonwealth's right, title, and interest, if any, in and to, and to release any claims upon, the said 25.11-acre, more or less, tract of land conveyed to the Commonwealth (i.e., to The Board of Visitors of Virginia State School for Colored Deaf and Blind Children) by the said July 31, 1908, Deed; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services, on behalf of the Department of Education and the Commonwealth of Virginia, with the approval of the Governor, is hereby authorized to grant, convey, remise, and quitclaim, without warranty, unto the substitute trustee or to those substitute trustees duly appointed in accordance with applicable law to act in the place and stead of the two now deceased trustees (J.M. Dozier, Jr., and D.C. Curtis) named in that certain Deed from the Old Dominion Land Company, dated December 8, 1948, and recorded April 16, 1952, in the Circuit Court (formerly Corporation Court) of the City of Newport News, Virginia, in Deed Book 273, page 218, all of the Commonwealth's right, title, and interest, if any, in and to, and to release any claims upon, that certain 25.11-acre, more or less, tract of land, as described in that certain Deed from the Old Dominion Land Company to The Board of Visitors of Virginia State School for Colored Deaf and Blind Children, dated July 31, 1908, and recorded September 16,*

*1908, in the Clerk's Office of the Circuit Court of Elizabeth City County (now the City of Hampton), Virginia, in Deed Book 49, page 390, or as may be more particularly described by a current survey thereof. The form of the instrument (i.e., quitclaim deed) shall be approved by the Office of the Attorney General. It is recognized that this is not a conveyance of surplus property. There shall be no requirement for the payment of any monetary consideration in connection with any quitclaim deed made pursuant to this Act, and neither the Commonwealth nor its Department of General Services shall have any obligation to see to the disposition of said tract of land or to the application of any proceeds that may be obtained from any sale thereof.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 556 Higher Educational Institutions Bond Act of 2012; created.**

An Act to authorize the issuance of bonds, in an amount not to exceed \$125,594,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[S 31\]](#)

Approved April 4, 2012

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth.

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of

the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2012."*

§ 2. *Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$125,594,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Project Code</i>	<i>Amount</i>
<i>George Mason University</i>	<i>Construct Student Housing IX-</i>		
<i>A</i>	<i>17929</i>	<i>\$41,071,000</i>	
<i>James Madison University</i>	<i>Student Housing</i>		

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	<i>Phase I</i>	<i>17949</i>	<i>\$50,-</i>
<i>000,000</i>			
<i>Old Dominion University</i>	<i>Renovate Student</i>		
	<i>Housing, Phase 2</i>	<i>17945</i>	<i>\$23,-</i>
<i>113,000</i>			
<i>Radford University</i>	<i>Renovate Washing-</i>		
	<i>ton Hall</i>	<i>17948</i>	<i>\$ 5,-</i>
<i>410,000</i>			
<i>The College of William</i>	<i>Renovate Dormitory</i>		
<i>and Mary in Virginia</i>		<i>17933</i>	<i>\$ 5,-</i>
<i>000,000</i>			
<i>The College of William</i>	<i>Construct New</i>		
<i>and Mary in Virginia</i>	<i>Dormitory</i>	<i>17808</i>	<i>\$ 1,-</i>
<i>000,000</i>			
<i>Total</i>			<i>\$125,-</i>
<i>594,000</i>			

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii)*

*refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall*

*bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this Act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

**§ 11. Refunding bonds and BANs.**

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12. Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 102 Dental hygienists; remote supervision by a public health dentist.**

An Act to amend and reenact § [54.1-2722](#) of the Code of Virginia and to repeal the third enactments of Chapters 99 and 561 of the Acts of Assembly of 2009, as amended by

Chapter 289 of the Acts of Assembly of 2011, relating to dental hygienists' scope of practice.

[\[S 146\]](#)

Approved March 6, 2012

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2722](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2722](#). License; application; qualifications; practice of dental hygiene.

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing, and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of an accredited dental hygiene program offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B ~~of this section~~; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § [54.1-2706](#); and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient. Pursuant to subsection V of § [54.1-3408](#), a licensed dental hygienist may administer topical oral fluorides under an oral or written order or a standing protocol issued by a dentist or a doctor of medicine or osteopathic medicine.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall

establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

*For the purposes of this section, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have done an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.*

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. (Expires July 1, 2012) Notwithstanding any provision of law ~~or regulation to the contrary~~, a dental hygienist employed by the Virginia Department of Health who holds a license issued by the Board of Dentistry may provide educational and preventative dental care in the ~~Cumberland Plateau, Southside, and Lenowisco Health Districts,~~ which are designated as Virginia Dental Health Professional Shortage Areas by the ~~Virginia Department of Health~~ *Commonwealth under the remote supervision of a dentist employed by the Department of Health*. A dental hygienist providing such services shall practice pursuant to a protocol *adopted by the Commissioner of Health on September 23, 2010, having been developed jointly by (i) the medical directors of each of the districts, the Cumberland Plateau, Southside, and Lenowisco Health Districts; (ii) dental hygienists employed by the Department of Health; (iii) the Director of the Dental Health Division of the Department of Health; (iv) one representative of the Virginia Dental Association; and (v) one representative of the Virginia Dental Hygienists' Association. Such protocol shall be adopted by the Board as regulations.*

F. A report of services provided by dental hygienists pursuant to such protocol, including their impact upon the oral health of the citizens of ~~these districts~~ *the Commonwealth*, shall be prepared and submitted by ~~the medical directors of the three health districts~~ *the Department of Health* to the Virginia Secretary of Health and Human Resources ~~by January 1, 2012~~ *annually*. Nothing in this section shall be construed to authorize or establish the independent practice of dental hygiene.

2. That the third enactments of Chapters 99 and 561 of the Acts of Assembly of 2009, as amended by Chapter 289 of the Acts of Assembly of 2011, are repealed.

## **Chapter 154 The Road to Revolution; expands potential for sites on state heritage trail.**

An Act to amend and reenact § 1 of Chapter 852 of the Acts of Assembly of 2007, relating to The Road to Revolution.

[\[H 1185\]](#)

Approved March 7, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 852 of the Acts of Assembly of 2007 is amended and reenacted as follows:

§ 1. There is hereby established The Road to Revolution, a *state* heritage trail ~~of sites significant to Patrick Henry, orator of the American Revolution and independent Virginia's first governor, to highlight and celebrate Henry's~~ *that honors men and women of the founding generation who played a leading role in liberating Virginia from Colonial rule to independence and establishing a constitutional republic.* The Trail shall consist of the following sites: Henry's birthplace at Studley, Virginia; Rural Plains at Mechanicsville, Virginia; Pine Slash at Studley, Virginia; Hampden-Sydney College at Hampden-Sydney, Virginia; St. John's Church at Richmond, Virginia; Scotchtown at Beaverdam, Virginia; Hanover Tavern at Hanover, Virginia; the Hanover County Courthouse at Hanover, Virginia; Historic Polegreen Church at Mechanicsville, Virginia; Leatherwood Plantation at Henry County, Virginia; Red Hill Plantation and the Patrick Henry National Memorial, at Brookneal, Virginia; *and all additional sites determined to meet the criteria established by The Road to Revolution Heritage Trail Consortium in sole partnership with the Richmond Metropolitan Convention and Visitors Bureau. Criteria for sites shall include places and related events of significance to the lives of those who contributed to the establishment of these United States.* The Virginia Department of Transportation shall erect one identifying sign in the Department's right-of-way at each site only by request of a local government, historical organization, or foundation with custodial responsibilities for that site. Directional signs for travelers to these sites may be erected and maintained by similar request. Directional signage shall be placed at the

nearest intersection to each site in the Department's right-of-way if there is no conflict with other Department signage. All signs shall consist of a common sign design developed by a committee consisting of one representative of each historical organization, foundation, or local governing body and the Director of the Department of Historic Resources. Sign panels and posts shall meet Department of Transportation specifications. All costs associated with manufacturing, erection, and maintenance of signs under this section shall be borne by the requesting party. Signs erected by the Virginia Department of Transportation under this section shall be developed in accordance with applicable provisions of § [10.1-2209](#) and placed in accordance with all applicable Virginia Department of Transportation regulations.

### **Chapter 205 Humphries, Kevin W.; transfers his service pistol to his widow, Kristen P. Humphries.**

An Act to transfer a service pistol to the widow of Trooper Kevin W. Humphries.

[\[S 682\]](#)

Approved March 8, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Kristen P. Humphries, the widow of Trooper Kevin W. Humphries, be, and hereby is, vested with title to, and authorized to possess and retain as her own, for payment of \$1.05, Trooper Kevin W. Humphries' service pistol, which he used as a member of the Virginia Department of State Police. This transfer is made as a visible and expressed token of appreciation of the General Assembly for the professionalism, devotion, and dedication of Trooper Kevin W. Humphries and for his seven years and seven months of service prior to his sudden death.*

### **Chapter 231 Rural Retreat Lake Park in Wythe County; DGIF to waive facility use permit fee.**

An Act to waive the facility use permit fee at Rural Retreat Lake Park in Wythe County.

[\[H 307\]](#)

Approved March 13, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Game and Inland Fisheries shall waive the facility use permit fee for any person who is engaged in land-based recreational activity at Rural Retreat Lake Park in Wythe County.*

2. That an emergency exists and this act is in force from its passage.

### **Chapter 310 Sergeants David Lambert Highway & Brandon Asbury Highway; designates portions of Routes 19 and 609.**

An Act to designate a portion of Virginia Route 19 the "Sergeant Brandon Asbury Highway" and all of Virginia Route 609 the "Sergeant David Lambert Highway."

[\[H 1217\]](#)

Approved March 21, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the portion of Virginia Route 19 between Tazewell, Virginia, and Claypool Hill, Virginia, is hereby designated the "Sergeant Brandon Asbury Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

*§ 2. The entire length of Virginia Route 609 in Tazewell County is hereby designated the "Sergeant David Lambert Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## Chapter 254 Tax amnesty program; expands scope of City of Richmond to include local taxes and accrued interest.

An Act to amend and reenact § 1 of Chapter 200 of the Acts of Assembly of 2010, relating to the City of Richmond local tax amnesty program.

[\[S 42\]](#)

Approved March 13, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 200 of the Acts of Assembly of 2010 is amended and reenacted as follows:

§ 1. City of Richmond tax amnesty program established.

A. There is hereby established the City of Richmond tax amnesty program. The program shall be administered by the director of finance, and any person, individual, corporation, estate, trust, or partnership required to file a ~~personal property or machinery and tools~~ *local* tax return or to pay any local ~~personal property tax, machinery and tool tax or real property~~ tax shall be eligible to participate, subject to the requirements set forth below and guidelines established by the director of finance. The director of finance may require participants in the program to complete an amnesty application and such other forms as he may prescribe, and to furnish any additional information he deems necessary to make a determination regarding the validity of such amnesty application.

B. The tax amnesty program may have the following features:

1. ~~Civil penalties assessed or assessable and interest, either or both,~~ as provided for in Title 58.1, which are the result of nonpayment, underpayment, nonreporting or underreporting of ~~personal property, machinery and tools, or real property~~ *one or more types of local* tax liabilities, may be waived upon receipt of the payment of the amount of those taxes and interest, *if interest is not waived*, owed with the following exceptions:

a. No person, individual, corporation, estate, trust, or partnership currently, or at the inception of this program, under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.

b. Any other parameters as deemed reasonable and fiscally responsible by the Mayor and the City Council.

C. For purposes of computing the outstanding balance due to the nonpayment, underpayment, nonreporting or underreporting of any ~~personal~~

~~property, machinery and tools, or real property~~ *local* tax liability which has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § [58.1-3916](#) shall be applicable *unless interest is waived pursuant to subsection B.*

### **Chapter 388 Real Estate Appraiser Board; shall develop continuing education curriculum for licensees, report.**

An Act to direct the Real Estate Appraiser Board to develop continuing education curriculum for licensees; report.

[\[S 507\]](#)

Approved March 23, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Real Estate Appraiser Board shall evaluate the development of a continuing education curriculum for licensees that includes the effects of the use of energy efficiency and renewable energy equipment on the determination of the fair market value in the appraisal of non-income-producing residential real estate.*

*§ 2. On or before November 1, 2012, the Real Estate Appraiser Board shall report its findings to the (i) Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology and (ii) Housing Commission.*

### **Chapter 439 Sale of property; City of Newport News to sell certain property for nominal amount.**

An Act to allow the City of Newport News to sell certain property for a nominal amount.

[\[H 726\]](#)

Approved March 30, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The City of Newport News may by ordinance provide for the sale of property that is*

*not suitable for development for the nominal amount of one dollar if such property (i) was owned by the city on January 1, 2012, and (ii) is a parcel of 2,501 square feet or less.*

2. That the provisions of this act shall expire on July 1, 2014.

## **Chapter 495 Virginia Bicentennial of American War of 1812 Commission; extends time Commission may be funded.**

An Act to amend and reenact the second enactment of Chapter 436 of the Acts of Assembly of 2009, relating to the Virginia Bicentennial of the American War of 1812 Commission.

[\[H 349\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 436 of the Acts of Assembly of 2009 is amended and reenacted as follows:
2. For the ~~2009, 2010, and 2011-2012~~ *and 2013* interims, the Commission may be funded from the operating budgets of the Clerk of the Senate and the Clerk of the House of Delegates upon the approval of the Joint Rules Committee. If the Commission is not funded by a separate appropriation in the appropriation act for the ~~2012-2014-2014-2016~~ biennium, this chapter shall expire on July 1 of the fiscal year that the Commission fails to receive such funding.

## **Chapter 460 Real property; VDOT to exchange real property in Tazewell County for private property.**

An Act to authorize an exchange of real property controlled by the Department of Transportation.

[\[H 1224\]](#)

Approved March 30, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, the Virginia Department of Transportation, with the approval of the Governor, is hereby authorized to convey that portion of a parcel of land bounded by Virginia Route 19, Virginia Route 1015, and Virginia Route 610 in Tazewell County no longer needed for highway rights-of-way or purposes incidental to the construction, reconstruction, maintenance, repair, or improvement of public highways in exchange for real property and such other considerations determined by the Department is necessary to render the property received by the Department suitable for use as an equipment shop facility. The total consideration received by the Department shall be of comparable value to the property conveyed by the Department in exchange.*

*§ 2. The exchange, and all documentation pursuant thereto, shall be in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents pursuant to appropriate law and as may be necessary to accomplish the exchange.*

## **Chapter 496 Tax amnesty program; expands scope of City of Richmond to include local taxes and accrued interest.**

An Act to amend and reenact § 1 of Chapter 200 of the Acts of Assembly of 2010, relating to City of Richmond tax amnesty program.

[\[H 358\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 200 of the Acts of Assembly of 2010 is amended and reenacted as follows:

§ 1. City of Richmond tax amnesty program established.

A. There is hereby established the City of Richmond tax amnesty program. The program shall be administered by the director of finance, and any person, individual, corporation, estate, trust, or partnership required to file a ~~personal property or machinery and tools~~ local tax return or to pay any local ~~personal property tax, machinery and tools tax or real property tax~~ shall be eligible to participate, subject to the requirements set forth below and guidelines established by the director of finance. The director of finance may

require participants in the program to complete an amnesty application and such other forms as he may prescribe, and to furnish any additional information he deems necessary to make a determination regarding the validity of such amnesty application.

B. The tax amnesty program may have the following features:

1. Civil penalties assessed or assessable *and interest, either or both*, as provided for in Title 58.1, which are the result of nonpayment, underpayment, nonreporting or underreporting of ~~personal property, machinery and tools, or real property~~ *one or more types of local tax liabilities*, may be waived upon receipt of the payment of the amount of those taxes and interest, *if interest is not waived*, owed with the following exceptions:

a. No person, individual, corporation, estate, trust, or partnership currently, or at the inception of this program, under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.

b. Any other parameters as deemed reasonable and fiscally responsible by the Mayor and the City Council.

C. For purposes of computing the outstanding balance due to the nonpayment, underpayment, nonreporting or underreporting of any ~~personal property, machinery and tools, or real property~~ *local tax liability* which has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § [58.1-3916](#) shall be applicable *unless interest is waived pursuant to subsection B*.

## **Chapter 535 Real estate tax; commercial and industrial property in localities in Northern Virginia.**

An Act to amend and reenact the second enactment of Chapter 822 of the Acts of Assembly of 2009, relating to real property tax on certain commercial and industrial property in Northern Virginia.

[\[H 1068\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 822 of the Acts of Assembly of 2009 is amended and reenacted as follows:
2. That the provisions of this act amending subsections B and D of § [58.1-3221.3](#) to reduce the maximum tax rate that may be imposed by any locality embraced by the

Northern Virginia Transportation Authority from \$0.25 per \$100 of real property value to \$0.125 per \$100 of real property value shall expire on June 30, 20132018.

### **Chapter 571 Woodrow Wilson's Presidency, Virginia Commission on the Centennial of; extends date for funding.**

An Act to amend and reenact the third enactment of Chapter 667 of the Acts of Assembly of 2010, relating to the Virginia Commission on the Centennial of the Woodrow Wilson Presidency.

[\[S 395\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 667 of the Acts of Assembly of 2010 is amended and reenacted as follows:

~~3. That the provisions of this act shall not become effective until nonpublic funds have been received by the Commission to support the conduct of its work. If, if the Commission is not funded by nonpublic funds by July 1, 20122013, this chapter shall expire on July 1 of the fiscal year that the Commission fails to receive such funding.~~

### **Chapter 508 Housing crisis; extends sunset date for several measures related to various land use approvals, etc.**

An Act to amend and reenact §§ [15.2-2209.1](#) and [15.2-2303.1:1](#) of the Code of Virginia and to amend and reenact the second enactment of Chapter 193 of the Acts of Assembly of 2009, relating to extension of measures to address housing crisis.

[\[H 571\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-2209.1](#) and [15.2-2303.1:1](#) of the Code of Virginia are amended and reenacted as follows:

§ [15.2-2209.1](#). Extension of approvals to address housing crisis.

A. Notwithstanding the time limits for validity set out in § [15.2-2260](#) or [15.2-2261](#), or the provisions of subsection F of § [15.2-2260](#), any subdivision plat valid under § [15.2-2260](#) and outstanding as of January 1, ~~2009~~2011, and any recorded plat or final site plan valid under § [15.2-2261](#) and outstanding as of January 1, ~~2009~~ 2011, shall remain valid until July 1, ~~2014~~2017, or such later date provided for by the terms of the locality's approval, local ordinance, resolution or regulation, or for a longer period as agreed to by the locality. Any other plan or permit associated with such plat or site plan extended by this subsection shall likewise be extended for the same time period.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit outstanding as of January 1, ~~2009~~2011, and related to new residential or commercial development, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, shall be extended until July 1, ~~2014~~ 2017, or longer as agreed to by the locality. The provisions of this subsection shall not apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit, or other agreement or zoning action be terminated or ended by a certain date or within a set number of years.

C. Notwithstanding any other provision of this chapter, for any rezoning action approved pursuant to § [15.2-2297](#), [15.2-2298](#), or [15.2-2303](#), valid and outstanding as of January 1, ~~2009~~2011, and related to new residential or commercial development, any proffered condition that requires the landowner or developer to incur significant expenses upon an event related to a stage or level of development shall be extended until July 1, ~~2014~~2017, or longer as agreed to by the locality. However, the extensions in this subsection shall not apply (i) to land or right-of-way dedications pursuant to § [15.2-2297](#), [15.2-2298](#), or [15.2-2303](#), (ii) when completion of the event related to the stage or level of development has occurred, or (iii) to events required to occur on a specified date certain or within a specified time period. Any proffered condition included in a special exception, special use permit, or conditional use permit shall only be extended if it satisfies the provisions of this subsection.

D. The extension of validity provided in subsection A and the extension of certain deadlines as provided in subsection B shall not be effective unless any *unreleased* performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force; however, if the locality has enacted a bonding moratorium or deferral option, the performance bonds and agreements or other financial guarantees of completion may be

waived or modified by the locality, in which case the extension of validity provided in subsection A and the extension of certain deadlines provided in subsection B shall apply. The landowner or developer must comply with the terms of any bonding moratorium or deferral agreement with the locality in order for the extensions referred to in this subsection to be effective.

§ [15.2-2303.1:1](#). (Expires July 1, 2017) When certain cash proffers collected or accepted.

A. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § [15.2-2298](#), [15.2-2303](#), or [15.2-2303.1](#) for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

B. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with this section.

C. The provisions of this section shall expire on July 1, ~~2015~~ 2017.

2. That the second enactment of Chapter 193 of the Acts of Assembly of 2009 is amended and reenacted as follows:

2. That the provisions of this act shall expire on July 1, ~~2014~~2017; however, any certified check, cash escrow, bond, or letter of credit offered or renewed after July 1, ~~2009~~2011, and prior to July 1, ~~2014~~2017, and meeting the requirements of this statute shall be deemed to continue to meet the requirements of subdivision 5 of § [15.2-2241](#) of the Code of Virginia after expiration of this act.

### **Chapter 533 Constitutional amendment; General Assembly to delay reconvened session (voter referendum).**

An Act to provide for the submission to the voters of a proposed amendment to Section 6 of Article IV of the Constitution of Virginia, relating to legislative sessions.

[\[H 1021\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2012, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6 of Article IV of the Constitution of Virginia as follows:

#### ARTICLE IV

#### LEGISLATURE

#### Section 6. Legislative sessions.

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.

The General Assembly shall reconvene on the sixth Wednesday after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment and bills and items of appropriation bills which may have been returned by the Governor with his objections. No other business shall be considered at a reconvened session. Such reconvened session shall not continue longer than three days unless the session be extended, for a period not exceeding seven additional days, upon the vote of the majority of the members elected to each house. *The General Assembly may provide, by a joint resolution approved during a regular or special session by the vote of the majority of the members elected to each house, that it shall reconvene on a date after the sixth Wednesday after adjournment of the regular or special session but no later than the seventh Wednesday after adjournment.*

§ 2. The ballot shall contain the following question:

"Question: Shall Section 6 of Article IV (Legislature) of the Constitution of Virginia concerning legislative sessions be amended to allow the General Assembly to delay by no more than one week the fixed starting date for the reconvened or "veto" session when the General Assembly meets after a session to consider the bills returned to it by the Governor with vetoes or amendments?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2013.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 597 Retail Sales and Use Tax; extends sunset dates for limited exemption periods for certain products.**

An Act to amend and reenact the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007 and the third enactment of Chapter 608 of the Acts of Assembly of 2007, relating to sales and use tax exemption; sunset dates.

[\[H 513\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007 are amended and reenacted as follows:
2. That the provisions of this act shall expire on July 1, ~~2012~~ 2017.
2. That the third enactment of Chapter 608 of the Acts of Assembly of 2007 is amended and reenacted as follows:
3. That the provisions of this act shall expire on July 1, ~~2012~~ 2017.

### **Chapter 564 Constitutional amendment; taking or damaging of private property for public use (voter referendum).**

An Act to provide for the submission to the voters of a proposed amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

[\[S 240\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2012, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking *or damaging* of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

§ 2. The ballot shall contain the following question:

Question: "Shall Section 11 of Article I (Bill of Rights) of the Constitution of Virginia be amended (i) to require that eminent domain only be exercised where the property taken or damaged is for public use and, except for utilities or the elimination of a public nuisance, not where the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development; (ii) to define what is included in just compensation for such taking or damaging of property; and (iii) to prohibit the taking or damaging of more private property than is necessary for the public use?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall

cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2013.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 567 Sale of property; City of Newport News to sell certain property for nominal amount.**

An Act to allow the City of Newport News to sell certain property for a nominal amount.

[\[S 286\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The City of Newport News may by ordinance provide for the sale of property that is not suitable for development for the nominal amount of one dollar if such property (i) was owned by the city on January 1, 2012, and (ii) is a parcel of 2,501 square feet or less.*

2. That the provisions of this act shall expire on July 1, 2014.

## **Chapter 611 Claims; Thomas Edward Haynesworth.**

An Act for the relief of Thomas Edward Haynesworth.

[\[S 41\]](#)

Approved April 4, 2012

Whereas, on July 12, 1984, Thomas Edward Haynesworth (Mr. Haynesworth) was convicted of rape in the Circuit Court for the City of Richmond and sentenced to serve 10 years; and

Whereas, on August 10, 1984, Mr. Haynesworth was convicted of rape, sodomy, abduction with intent to defile, and two counts of use of a firearm in the commission of a felony in the Circuit Court for the County of Henrico and sentenced to serve 36 years; and

Whereas, on October 11, 1984, Mr. Haynesworth was convicted of attempted robbery, abduction with intent to defile, and two counts of use of a firearm in the commission of a felony in the Circuit Court for the City of Richmond and sentenced to serve 28 years; and

Whereas, Mr. Haynesworth filed a Petition for Appeal with the Virginia Supreme Court for the convictions in the second case and on May 9, 1985, the Virginia Supreme Court entered an Order refusing the Petition; and

Whereas, Mr. Haynesworth filed a Petition for Appeal with the Virginia Supreme Court for the convictions in the third case, and on March 11, 1986, the Virginia Supreme Court entered an Order refusing the Petition; and

Whereas, in 2009, DNA evidence exonerated Mr. Haynesworth of the July 12, 1984, rape conviction and implicated another individual; and

Whereas, Mr. Haynesworth and the other individual resembled one another at the time the crimes were committed; and

Whereas, Mr. Haynesworth and the other individual lived in close proximity to each other when the crimes were committed; and

Whereas, the crimes for which Mr. Haynesworth was convicted included elements strikingly similar to elements of other crimes for which the other individual was convicted; and

Whereas, DNA evidence established that Mr. Haynesworth was misidentified by two victims of attacks; and

Whereas, Mr. Haynesworth filed a Petition for Writ of Actual Innocence with the Virginia Supreme Court for the July 12, 1984, conviction of rape; and

Whereas, on September 18, 2009, based on DNA evidence, the Virginia Supreme Court issued a Writ of Actual Innocence for the July 12, 1984, rape conviction; and

Whereas, Mr. Haynesworth was released from prison on March 21, 2011; and

Whereas, Mr. Haynesworth filed a Petition for a Writ of Actual Innocence with the Virginia Court of Appeals for the convictions in the second and third cases; and

Whereas, the Virginia Court of Appeals issued a Writ of Actual Innocence on December 6, 2011, for the convictions in the second and third cases; and

Whereas, Mr. Haynesworth has been granted writs of actual innocence for all convictions in all cases; and

Whereas, Mr. Haynesworth has always maintained his innocence; and

Whereas, Mr. Haynesworth was incarcerated for 27 years for crimes he did not commit; and

Whereas, Mr. Haynesworth had no convictions prior to July 12, 1984; and

Whereas, Mr. Haynesworth has also suffered severe physical, emotional, and psychological damage as a result of this wrongful incarceration and has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the balance of the general fund compensation in the amount of \$1,075,178 for the relief of Thomas Edward Haynesworth (Mr. Haynesworth) upon execution of a release by Mr. Haynesworth from any present or future claims he may have in connection with the aforesaid occurrence against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof and any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (i) an initial lump sum of \$215,036 to be paid to Mr. Haynesworth by check issued by the State Treasurer on warrant of the Comptroller within the 60 days immediately following the execution of such release; (ii) the sum of \$759,232 to purchase an annuity no later than September 30, 2012, for the primary benefit of Mr. Haynesworth with the terms of such annuity structured in Mr. Haynesworth's best interests based on consultation between Mr. Haynesworth or his representatives, the State Treasurer, and other necessary parties; and (iii) the sum of \$100,910, for an annuity, pursuant to § 4 of this act.*

*The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions*

*providing for the annuity's continued disbursement in the event of Mr. Haynesworth's death.*

*§ 2. That Mr. Haynesworth shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2017.*

*§ 3. That Mr. Haynesworth shall immediately be ineligible to receive any unpaid amounts from the compensation and his beneficiaries shall be ineligible to receive any payments under the annuities purchased pursuant to §§ 1 and 4 of this act upon any conviction on or after January 1, 2012, of Mr. Haynesworth for any felony. Any unpaid amounts remaining under the annuity purchased pursuant to § 1 of this act shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury. Any unpaid amounts remaining under the annuity purchased pursuant to § 4 of this act shall become the property of the Virginia Retirement System. In addition, Mr. Haynesworth shall be ineligible to receive any unused portion of the tuition for career and technical training provided within the Virginia Community College System pursuant to § 2 of this act.*

*§ 4. That a payment in the amount of \$100,910 shall be made to the Virginia Retirement System, pursuant to § 1 of this act, for the purpose of providing Mr. Haynesworth a single life annuity that will provide a monthly income stream of \$1,516, provided that (i) the income stream will not begin until Mr. Haynesworth reaches age 60 or until Mr. Haynesworth commences a retirement allowance from the Virginia Retirement System, whichever is later, and (ii) once it commences, the monthly payment shall be increased by cost of living adjustments determined and paid on the same basis as post-retirement supplements under § [51.1-166](#) for a person who becomes a member on or after July 1, 2010, as that statute may be amended from time to time. The annuity shall contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Haynesworth's death.*

## **Chapter 724 Hampton Roads Sanitation District; amends enabling act, etc.**

An Act to amend and reenact §§ 4 and 8, as amended, § 9, § 10, as amended, § 12, § 13, as amended, and §§ 21 and 40 of Chapter 66 of the Acts of Assembly of 1960, which

created the Hampton Roads Sanitation District, relating to the operation of the Hampton Roads Sanitation District.

[\[S 672\]](#)

Approved April 9, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 4 and 8, as amended, § 9, § 10, as amended, § 12, § 13, as amended, and §§ 21 and 40 of Chapter 66 of the Acts of Assembly of 1960 are amended and reenacted as follows:

§ 4. Each member of the Commission shall, before entering upon the discharge of his duties, take and subscribe the oath of office required by Article II, § 7, Constitution of Virginia (1971). Each such Commissioner shall be covered by a public official's liability policy in the amount of at least \$1,000,000, ~~with a \$10,000 deductible available through the Commonwealth.~~ The premium of such insurance policies shall be paid by the Commission.

§ 8. As used in this act the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "District" means the Hampton Roads Sanitation District hereinabove mentioned.

(b) The word "Commission" means the Hampton Roads Sanitation District Commission hereinabove mentioned, or if said Commission shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or upon whom the powers given by this act to said Commission shall be conferred by law.

(c) The word "sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building, together with such Industrial wastes as may be present.

(d) The term "industrial wastes" means liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource.

(e) The term "sewage disposal system" means and shall include any plant, system, facility or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, including industrial wastes, or any integral part thereof, and, without limiting the generality of the foregoing

definition, shall embrace treatment plants, pumping stations, intercepting sewers, force mains, gravity mains, laterals, reclaimed water distribution lines, and all necessary appurtenances and equipment, and shall include all lands, property, rights, rights of way, easements and franchises relating to any such system and deemed necessary or convenient for the operation thereof.

(f) The term "sewer improvements" shall embrace sewer mains and laterals for the reception of sewage from premises connected therewith and carrying such sewage to a sewage disposal system.

(g) The term "sewerage system" shall embrace sewage disposal systems, sewer improvements and all other real and personal property operated by the Commission for the purposes of this act.

(h) The word "cost" as applied to a sewage disposal system or to extensions or additions thereto or to sewer improvements shall include the cost of construction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, rights of way, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the Commission, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, provisions for working capital and a reserve for interest, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized.

(i) The word "owner" shall include all individuals, copartnerships, *limited liability companies*, associations ~~or~~ and corporations and also counties, cities, towns and other political subdivisions and all public agencies and instrumentalities.

(j) The word "bonds" or the words "revenue bonds" shall embrace revenue bonds, notes and other obligations of the District issued under the provisions of this act.

(k) The word "pollution" means the condition of water resulting directly or indirectly from any of the following acts:

- (1) contaminating such water;
- (2) rendering such water unclean or impure;
- (3) rendering such water injurious to public health, or unfit for public use;
- (4) rendering such water harmful for cattle, stock or other animals;
- (5) rendering such water deleterious to, or unfit for, fish or shellfish, or fish or shellfish propagation, or aquatic animals, or plant life in such water;
- (6) rendering such water unfit for commercial use; or
- (7) rendering such water harmful to fish or shellfish used for human consumption.

§ 9. Revenue bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any county, city, town or political subdivision thereof, or a pledge of the faith and credit of the Commonwealth or of any county, city, town or political subdivision thereof, but such bonds shall be payable solely from the funds herein provided therefor from revenues. The issuance of revenue bonds under the provisions of this act shall not directly or indirectly or contingently obligate the Commonwealth or any county, city, town or political subdivision thereof to levy or to pledge any form of taxation whatever therefor. ~~All~~ *The text of* such revenue bonds shall contain a statement ~~on their face~~ substantially to the foregoing effect.

All expenses incurred in carrying out the provisions of this act shall be payable solely from funds provided under the provisions of this act and no liability or obligation shall be incurred by the Commission hereunder beyond the extent to which moneys shall have been provided under the provisions of this act.

§ 10. The Commission is hereby authorized and empowered:

- (a) to adopt bylaws and to make rules and regulations for the management of its affairs and the conduct of its business;
- (b) to adopt an official seal and alter the same at pleasure;
- (c) to sue and to be sued;
- (d) to construct, and to improve, extend, enlarge, reconstruct, maintain, equip, repair and operate a sewage disposal system or systems, enter within or without or partly within and partly without the corporate limits of the District, and to construct sewer improvements within the corporate limits of the District;
- (e) to issue revenue bonds, notes or other obligations of the District for any of its authorized purposes, payable solely from the special funds provided under the authority of this act and pledged for their payment, all as provided in this act;
- (f) to fix and collect rates, fees and other charges for the services and facilities furnished by any such sewage disposal system or sewer improvements, and to fix and collect charges for making connections *with any such system or improvements*;
- (g) to acquire in the name of the District, either by purchase, lease, grant, or the exercise of the right of eminent domain, such lands, structures, property, rights, rights of way, easements, franchises and other interests in or relating to lands, including lands under water and riparian rights, and to acquire such personal property, as it may deem necessary in connection with the construction, improvement, extension, enlargement or operation of any sewage disposal system or sewer improvements, and to hold and dispose of all real and personal property under its control;

(h) to employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, managers, and such other officers, employees and agents as may be necessary in its judgment, and to fix their compensation;

(i) to exercise jurisdiction, control and supervision over any sewage disposal system or systems or sewer improvements operated or maintained by the Commission and to make and enforce such rules and regulations for the maintenance and operation of any such sewage disposal system or systems or sewer improvements as may, in the judgment of the Commission, be necessary or desirable for the efficient operation of any such system or improvements and for accomplishing the purposes of this act;

(j) to enter on any lands, water or premises located within or without the District to make surveys, borings, soundings or examinations for the purposes of this act;

(k) to construct and operate trunk, intercepting or outlet sewers, sewer mains, laterals, conduits or pipelines in, along or under any streets, alleys, highways or other public places within or without the District; in so constructing its facilities, it shall see that the public use of such streets, alleys, highways, and other public places is not unnecessarily interrupted or interfered with and that such streets, alleys, highways and other public places are restored to their former usefulness and condition within a reasonable time; to this end the Commission shall cooperate with the Commonwealth Transportation Board and the appropriate officers of the respective counties, cities and towns having an interest in such matters;

(l) to restrain, enjoin or otherwise prevent any county, city, town or political subdivision and any person or corporation, public or private, from discharging into any waters within the District, any sewage, industrial wastes or other refuse which would contribute or tend to contribute to the pollution of such waters, and to restrain, enjoin or otherwise prevent the violation of any provision of this act or of any resolution, rule or regulation adopted pursuant to the powers granted by this act;

(m) to use and connect with any sewage disposal system or sewer improvement within the District and, if deemed necessary by the Commission to close off and seal any outlets and outfalls therefrom;

(n) subject to such provisions and restrictions as may be set forth in the resolution authorizing any revenue bonds or in the trust agreement hereinafter mentioned securing the same, to enter into contracts with the United States of America or any agency or instrumentality thereof, or with any county, city, town or political subdivision or any sanitary district, private corporation, copartnership, association or individual providing for or relating to the treatment and disposal of sewage;

(o) to receive and accept from the United States of America or any agency or instrumentality thereof grants for or in aid of the planning, construction or financing of any sewage disposal system or sewer improvements, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(p) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act;

(q) to do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contracts with any persons;

(r) to execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the Commission or to carry out the powers expressly given in this act; and

(s) to seek civil penalties or civil charges against owners who have been charged with violation of or found to be in violation of the pretreatment standards incorporated in the permit or other requirements of the District's approved industrial waste control program. The penalties which the District may seek, and the procedures to be followed by the District, shall be the same as those set forth for the State Water Control Board, as set forth in [§ 62.1-44.32](#) of the Code of Virginia.

1. For purposes of this subsection, the term "owner" shall include the definition contained in ~~§9(i)~~ *subsection (i) of § 8* and, in addition, any corporate officer designated in the permit issued by the District, if any.

2. With the consent of any owner who has violated a provision of this subsection, or is charged by the District with having violated the provision of this subsection, the District may provide, in an order issued by it against such owner, for the payment of civil charges for such violations in specific sums not to exceed those set forth in [§ 62.1-44.32](#) of the Code of Virginia for each violation. Each day of violation shall constitute a separate offense. Such civil charges shall be instead of any appropriate civil or criminal penalty imposed under the provisions of this subsection.

§ 12. The Commission is hereby authorized to provide by resolution for the issuance, at one time or from time to time, of revenue bonds of the District for any one or more of the following purposes:

(a) refunding any bonds heretofore issued by the Commission and any revenue bonds, notes and other obligations issued under the provisions of this act and then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption thereof; provided, however, that no bonds issued after

the effective date of this act shall be refunded at a net interest cost exceeding that of such bonds to be refunded *unless, prior to the issuance of such refunding bonds, the Commission shall have determined that the issuance of such refunding bonds will be in the best interests of the District,*

(b) paying the cost of a sewage disposal system or systems,

(c) paying the cost of extensions and additions thereto, and

(d) paying the cost of sewer improvements.

§ 13. The principal of and the interest on revenue bonds issued under the provisions of this act shall be payable solely from the funds therein provided for such payment. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the Commission, *shall bear interest at such time or times and at such rate or rates as may be determined by the Commission,* and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The Commission shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such person or persons as at the actual time of the execution of such bond shall be the proper officer or officers to sign such bond although at the date of such bond such person or persons may not have been such officer or officers. The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the District, ~~but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six percent per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of~~

~~bond values excluding, however, from such computation, the amount of any premium to be paid on the redemption of any bonds prior to maturity.~~

§ 21. In the discretion of the Commission the revenue bonds of any issue may be secured by a trust agreement by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Any such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any sewage disposal system or sewer improvements or any part thereof. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition of property and the construction, improvement, extension, enlargement, reconstruction, maintenance, equipment, repair, operation and insurance of the properties of the District, and the custody, safeguarding and application of all moneys. Any such trust agreement may provide for or permit the issuance of additional bonds from time to time for the further extension of the sewerage system. *If the Commission issues bonds that may be tendered for purchase by the holders thereof, any such trust agreement may provide that, for all purposes of the laws of the Commonwealth, the indebtedness of the District evidenced by such bonds shall not be deemed extinguished upon the purchase thereof by the District unless such bonds are delivered by the District to the trustee under such trust agreement with written instructions to cancel such bonds.* It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement or resolution may be treated as a part of the cost of operation.

No such trust agreement or resolution need be filed or recorded except in the records of the Commission.

§ 40. No county, city, town or other political subdivision or person or corporation, public or private, shall discharge, or suffer to be discharged, directly or indirectly into any waters within the District any sewage, industrial wastes or other refuse which may or will

cause or contribute to pollution of any such waters. No county, city, town or other political subdivision or person or corporation, public or private, shall discharge, or suffer to be discharged, directly or indirectly, into any sewage disposal system or any other facilities of or provided by the Commission, any matter or thing which is or may be injurious or deleterious to such sewage disposal system or other facilities. No county, city, town or other political subdivision or person or corporation, public or private, shall plan, construct or place in service any new sewer improvement in the District which will or may thereafter be served by the Commission's sewerage system and which will or may thereafter, in the opinion of the Commission, cause overloading of the sewerage system or the entrance into the sewerage system of excessive ground or surface water or other matter or thing which is injurious or deleterious to the sewerage system. In order to carry out the provisions of this paragraph every county, city, town or other political subdivision or person or corporation, public or private, if requested by the Commission to do so, shall furnish to the Commission plans and specifications for such sewer improvements and shall provide access for Commission inspection of all new sewer construction work as it proceeds and of all construction records and materials used. In addition to other powers granted the Commission, it shall have the right to refuse service to any new sewer extension or improvement constructed or operated in violation of this paragraph.

## **Chapter 745 Tappahannock-Essex County Airport Authority; removes Tappahannock's name from Authority.**

An Act to amend and reenact §§ 1, 3, and 5 of Chapter 871 of the Acts of Assembly of 1988, relating to the Tappahannock-Essex County Airport Authority.

[\[H 120\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 1, 3, and 5 of Chapter 871 of the Acts of Assembly of 1988 are amended and reenacted as follows:

§ 1. Definitions.-As used in this act the words and terms herein shall have the following meanings, unless the context shall indicate another or different meaning or intent:

A. The word "Authority" shall mean the Tappahannock-Essex County Airport Authority hereinafter created or, if the authority shall be abolished, the board, body, commission,

or agency succeeding to the principal functions thereof or upon whom the powers given by this act to the Authority shall be conferred by law. *The Authority is the same political subdivision formerly known as the Tappahannock-Essex County Airport Authority. As such, the Authority has all rights, obligations, and duties of the Tappahannock-Essex County Airport Authority, including but not limited to all leases, contracts, grants-in-aid, bonds, and all other agreements of whatsoever nature; holds title to all realty and personalty held by the former Tappahannock-Essex County Airport Authority; and may exercise all powers that might at any time past have been exercised by the Tappahannock-Essex County Airport Authority.*

B. The word "project" shall mean an airport for general, commercial, and private use acquired, *maintained*, constructed, or reconstructed by the Authority under the provisions of this act, together with all necessary and convenient approaches, air navigation equipment, roads, and streets used in connection with such airport.

C. The term "cost of the project" shall embrace the cost of acquisition, construction or reconstruction (including improvements), landscaping, and conservation; the cost of acquisition of all land, rights-of-way, property, rights, easements, and interests acquired by the Authority for the operation of the project; the cost of demolishing or removing any buildings or structures on land acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest prior to and during construction or reconstruction, and, if deemed advisable by the Authority for a period not exceeding one year after completion of the project, the cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, provision for working capital and a reserve for interest; other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incident to the project, the financing, and the placing of the project in operation.

D. The word "bonds" or the words "revenue bonds" shall mean revenue bonds or refunding bonds of the Authority, notes, interim certificates and any other evidences of indebtedness issued under the provisions of this act.

§ 3. "~~Tappahannock-Essex County Airport Authority.~~"-There is hereby created and constituted a political subdivision of the Commonwealth to be known as the "~~Tappahannock-Essex County Airport Authority.~~" The exercise by the Authority of the powers conferred by this act in the acquisition, construction, reconstruction, operation, and maintenance of the project authorized by this act shall be deemed and held to be the performance of an essential governmental function.

~~The~~ *Until July 1, 2013, the Authority shall consist of seven members; three members shall be appointed by the Tappahannock Town Council, and four members shall be appointed by the Board of Supervisors of Essex County. As of and after July 1, 2013, the Authority shall consist of seven* *five* ~~members; three of these members shall be appointed by the Tappahannock Town Council and four members who shall be appointed by the Board of Supervisors of Essex County with at least one member residing in the Town of Tappahannock; on that date, the terms of members previously appointed by the Tappahannock Town Council shall be deemed expired, but the terms of members previously appointed by the Board of Supervisors of Essex County shall not be affected hereby, with two members' terms to end June 30, 2013; one member's term to end June 30, 2014; one member's term to end June 30, 2015; and the new member residing in the Town of Tappahannock to be appointed by the Board of Supervisors shall have an initial term expiring June 30, 2014.~~ All appointments shall require only a simple resolution motion passed by majority vote of the body concerned. Members shall be subject to removal from office under provisions of Article 1.1, Chapter 6, Title 24.1, Code of Virginia, 1950 as amended.

~~Members of the Authority shall serve for a term of three years; except that, to insure membership continuity, initial appointments by the two governing bodies shall be delegated as follows: one of the three members from the Town of Tappahannock shall be appointed for a term ending on June 30, 1988, one member for a term ending on June 30, 1989, and one member for a term ending on June 30, 1990; one of the four members from the County of Essex shall be appointed for a term ending on June 30, 1988; one member for a term ending on June 30, 1989; one member for a term ending on June 30, 1990; and one member for a term ending on June 30, 1991; with succeeding appointments to be for a full three-year term, thus requiring the appointment or reappointment of one member of the Authority by each governing body every year and may be reappointed.~~ Interim vacancies occurring in the membership of the Authority due to deaths, resignations, etc., will be filled only for the unexpired term of that member. A member shall continue to serve until his successor shall be duly appointed and qualified.

The Authority shall annually in July elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary-treasurer, who may or may not be a member of the Authority.

The secretary-treasurer shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority and of the minute book or journal of the Authority and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the

Authority and to give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates.

~~Four~~ *Three* members of the Authority shall constitute a quorum and ~~the affirmative vote of four members shall be necessary for any action taken by the Authority.~~ No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the other rights and perform all the duties of the Authority, and no vacancy in the membership of the Authority shall impair the validity of any bonds or other evidences of indebtedness issued by the Authority.

The Authority shall meet at least monthly, at a time and place to be determined by the members and at such other ~~dutiestimes~~ as the members may deem necessary or appropriate; minutes of all meetings shall be recorded with copies provided to ~~each governing body~~ *the Board of Supervisors of Essex County.*

~~Each governing body will provide interim administrative support until such time as the Authority is fully organized and self-sufficient.~~

~~Before the issuance of any revenue bonds under the provisions of this act the secretary-treasurer of the Authority shall execute a surety bond in the penal sum of \$50,000, such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the Commonwealth as surety and to be approved by the Attorney General and filed in the office of the Secretary of the Commonwealth.~~

The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties, but otherwise shall serve without compensation.

§ 5. Acquisition of property.-A. The Authority is hereby authorized and empowered to acquire by eminent domain in accordance with the *applicable* provisions of ~~Chapters 1.1 and 6 of Title 25~~ § [5.1-34](#) and *Title 25.1* of the Code of Virginia, as amended, or by purchase from funds provided under the provisions of this act, and such other moneys as may be provided by federal, state and local governments or by gift, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the project, upon such terms and conditions as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

All public agencies and commissions of the Commonwealth, with the approval of the Governor, and, notwithstanding any contrary provisions of law, general or special, ~~the Town of Tappahannock and the County of Essex~~ *and all other local governments of the*

*Commonwealth*, without the necessity for any advertisement, order of court, or other action or formality, are hereby authorized and empowered to lease, lend, grant, give, transfer, or convey to the Authority at its request upon such terms and conditions as may be mutually agreed upon any real, personal, or mixed property, including money, which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public highways and other property already devoted to public use.-  
~~Four-sevenths of required local appropriation shall be provided by the County of Essex, and three-sevenths of any required local appropriation shall be provided by the Town of Tappahannock. All agreements or arrangements entered into by the Town of Tappahannock and the County of Essex to provide support for bonds or other obligations of the Authority issued or incurred before July 1, 2013, are hereby continued and shall remain in force and effect in accordance with their terms, provided that four-sevenths of any payment made pursuant to any such agreement or arrangement shall be provided by the County of Essex and three-sevenths of any such payment shall be provided by the Town of Tappahannock.~~

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Title to any property acquired by the Authority shall be taken in the name of the Authority.

## **Chapter 780 Circuit court; Prince William County authorizing clerk to charge convenience fee for land records.**

An Act to amend and reenact §§ [17.1-275](#) and [17.1-276](#) of the Code of Virginia and to repeal the second enactment of Chapters 76 and 723 of the Acts of Assembly of 2009, relating to remote access to land records; fees collected by clerks; debit cards.

[\[H 926\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [17.1-275](#) and [17.1-276](#) of the Code of Virginia are amended and reenacted as follows:

§ [17.1-275](#). Fees collected by clerks of circuit courts, generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. [Repealed.]

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, \$16 for an instrument or document consisting of 10 or fewer pages or sheets; \$30 for an instrument or document consisting of 11 to 30 pages or sheets; and \$50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. One dollar and fifty cents of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10.

6. For making out any bond, other than those under § [17.1-267](#) or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 in all other cases.

8. For making out a copy of any paper, record, or electronic record to go out of the office, which is not otherwise specifically provided for herein, a fee of \$0.50 for each page or, if an electronic record, each image. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies shall

include lease and maintenance agreements for the equipment used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § [2.2-3704](#). However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § [18.2-251](#), the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § [18.2-251](#) which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund.

11. In any case in which a person is convicted of a violation of any provision of Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 or is subject to a disposition under § [18.2-251](#), the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § [18.2-251](#), which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § [17.1-275.8](#).

12. Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be \$100 in cases seeking recovery not exceeding \$49,999; \$200 in cases seeking recovery exceeding \$49,999, but not exceeding \$100,000; \$250 in cases seeking recovery exceeding \$100,000, but not exceeding \$500,000; and \$300 in cases seeking recovery exceeding \$500,000. Ten dollars of each such fee shall be apportioned to the Courts Technology Fund established under § [17.1-132](#). A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation case, in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the time of filing the petition.

14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by confession under §§ [8.01-432](#) through [8.01-440](#), the clerk shall tax as costs (i) the cost of registered or certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, \$10.

16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of ~~this~~ *the* Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § [8.01-451](#), but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § [8.01-452](#), a fee of \$5; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of \$20.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19, 20. [Repealed.]

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § [8.01-529](#), \$1.

22. For all services rendered by the clerk in any proceeding pursuant to § [57-8](#) or [57-15](#), \$10.

23. For preparation and issuance of a subpoena duces tecum, \$5.

24. For all services rendered by the clerk in matters under § [8.01-217](#) relating to change of name, \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, \$0.50.

26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be \$60, \$10 of which shall be apportioned to the Courts Technology Fund established under § [17.1-132](#) to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged for (i) the filing of a cross-claim or setoff in any pending suit or (ii) the filing of a counterclaim or any other responsive pleading in any annulment, divorce, or separate maintenance proceeding. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit *or debit* cards in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect from the person presenting such credit *or debit* card a reasonable convenience fee *for the processing of such credit or debit card. Such convenience fee shall not to* exceed four percent of the amount paid *for the transaction or a flat fee of \$2 per transaction. Nothing herein shall be construed to prohibit the clerk from outsourcing the processing of credit and debit card transactions to a third-party private vendor engaged by the clerk.*

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit *or debit* card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of \$20 or 10 percent of the amount to be paid, whichever is greater, in accordance with § [19.2-353.3](#).

29. For all services rendered, except in cases in which costs are assessed pursuant to § [17.1-275.1](#), [17.1-275.2](#), [17.1-275.3](#), or [17.1-275.4](#), in an adoption proceeding, a fee of \$20, in addition to the fee imposed under § [63.2-1246](#), to be paid by the petitioner or petitioners. For each petition for adoption filed pursuant to § [63.2-1201](#), except those filed pursuant to subdivisions 5 and 6 of § [63.2-1210](#), an additional \$50 filing fee as required under § [63.2-1201](#) shall be deposited in the Putative Father Registry Fund pursuant to § [63.2-1249](#).

30. For issuing a duplicate license for one lost or destroyed as provided in § [29.1-334](#), a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ [33.1-124](#), [33.1-125](#), and [33.1-129](#), a fee of \$5 to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § [33.1-122](#), as well as for any order of the court relating

thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to § [17.1-275.1](#), [17.1-275.2](#), [17.1-275.3](#), [17.1-275.4](#), [17.1-275.7](#), [17.1-275.8](#), or [17.1-275.9](#), a fee of \$20.

33. [Repealed.]

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ [55-142.1](#) et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § [55-218.1](#), a fee of \$10.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § [59.1-74](#), a fee of \$10.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ [59.1-406](#) et seq.), the fee as prescribed in § [59.1-411](#).

39. For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of \$2.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ [37.2-1001](#) and [37.2-1013](#), the fee shall be \$10.

44. For issuing any execution, and recording the return thereof, a fee of \$1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of \$5. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of \$1.50, in accordance with subdivision A 44.

B. In accordance with § [17.1-281](#), the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § [17.1-278](#), the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § [42.1-70](#), the clerk shall collect fees under subdivisions A 7, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29, and A 31 to be designated for public law libraries.

E. *All fees collected pursuant to subdivision A 27 and § [17.1-276](#) shall be deposited by the clerk into a special revenue fund held by the clerk, which will restrict the funds to their statutory purpose.*

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ [17.1-276](#). Fee allowed for providing secure remote access to land records.

A. A clerk of the circuit court who provides secure remote access to land records pursuant to § [17.1-294](#) may charge a fee as provided in this section established by the clerk to cover the operational expenses. Operational expenses shall include, but not be limited to, (i) computer support, maintenance, enhancements, upgrades, and replacements and office automation and information technology equipment including software and conversion services; (ii) preserving, maintaining, and enhancing court records, including, but not limited to, the costs of repairs, maintenance, consulting services, service contracts, redaction of social security numbers from land or other records, and system replacements or upgrades; and (iii) improving public access to records maintained by the clerk. A flat fee may be assessed for each subscriber, as defined in § [17.1-295](#), in an amount not to exceed \$50 per month. The fee shall be paid to the clerk's office and deposited by the clerk into the clerk's non-reverting local fund to be used to cover operational expenses. The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to have remote access, in accordance with the security standards established by the Virginia Information Technologies Agency.

The Office of the Attorney General, Division of Debt Collection, the Department of Transportation, and the Department of Rail and Public Transportation shall be exempt from paying any fee for remote access to land records. If any clerk contracts with an outside vendor to provide remote access to land records to subscribers, such contract shall contain a provision exempting the Office of the Attorney General, Division of Debt Collection, the Department of Transportation, and the Department of Rail and Public Transportation from paying any access or subscription fee.

B. The clerk of the Circuit Court of Prince William County may establish a pilot program under which the clerk assesses a *daily reasonable convenience fee that shall not exceed \$2 per transaction* for remote access to land records and a separate fee per image downloaded in an amount not to exceed the fee provided in subdivision A 8 of § [17.1-275](#).

The clerk shall make a report on any such pilot program to the House Committee for

~~Courts of Justice and the Senate Committee for Courts of Justice on or before September 30, 2012. The report shall provide a summary of the pilot program and include the level of participation, the costs of the program, and the revenues generated by the program.~~

2. That the second enactment of Chapters 76 and 723 of the Acts of Assembly of 2009 are repealed.

## **Chapter 601 Supreme Court of Virginia; required to develop weighted caseload system to assess caseloads, report.**

An Act to require the development of a weighted caseload system by the Supreme Court of Virginia and report findings to the General Assembly.

[\[H 745\]](#)

Approved April 4, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Supreme Court shall develop and implement a weighted caseload system to precisely measure and compare judicial caseloads throughout the Commonwealth on the circuit court, general district court, and juvenile and domestic relations district court levels. The system shall include the development of a comprehensive workload model, an objective means of determining the need for judicial positions, an assessment of the optimum distribution of judicial positions throughout the Commonwealth, and a recommended plan for the realignment of the circuit and district boundaries.*

*§ 2. The Supreme Court shall report to the General Assembly by November 15, 2013, on the weighted caseload in each court in each county and city, and in each circuit and district based on the current circuit and district boundaries. The report shall include the current number of judges assigned to each court in each county and city. The Court shall also recommend a plan for the realignment of the circuit and district boundaries and the number of judges the Court recommends for assignment to each court in each county and city within the new circuits and districts.*

2. That no funds shall be expended for the development and implementation of a weighted caseload system, as provided in this act, unless appropriated directly to the

National Center for State Courts to provide for the development and implementation of the system pursuant to a contract with the Supreme Court of Virginia.

### **Chapter 647 Workers' compensation; uninsured employer's fund financing tax.**

An Act to amend and reenact the second enactment of Chapter 219 of the Acts of Assembly of 2009, relating to financing the uninsured employer's fund established under the Workers' Compensation Act.

[\[S 576\]](#)

Approved April 5, 2012

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 219 of the Acts of Assembly of 2009 is amended and reenacted as follows:
2. That the provisions of this act shall expire on July 1, ~~2012~~2015.

### **Chapter 648 Back of Dragon; designates portion of Route 16 in Tazewell and Smyth Counties.**

An Act to designate a portion of Virginia Route 16 the "Back of the Dragon."

[\[S 593\]](#)

Approved April 5, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 16 between Frog Level in Tazewell County and Marion in Smyth County is hereby designated the "Back of the Dragon." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 727 Education, Department of; shall annually publish disciplinary offense and outcome data.**

An Act to require the Department of Education to report certain disciplinary offense and outcome data.

[\[H 367\]](#)

Approved April 9, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Education shall annually publish disciplinary offense and outcome data by race, ethnicity, gender, and disability for each public school in the Commonwealth on its website. The data shall be published in a manner that protects the identities of individual students.*

## **Chapter 786 Physical education; Board of Education to develop guidelines governing requirements in schools.**

An Act to require the Board of Education to develop physical education program guidelines for public elementary and middle schools.

[\[H 1092\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall develop physical education program guidelines for public elementary and middle schools.*

2. That the Board of Education, in developing the guidelines pursuant to this act, shall work with the American Heart Association, the American Cancer Society, the American Academy of Pediatrics, Virginia Chapter, the Virginia Association of School Superintendents, the Virginia School Boards Association and other interested stakeholders.

3. That the Board of Education shall develop the guidelines pursuant to this act prior to January 1, 2014.

## **Chapter 609 Claims; Melissa Scianna.**

An Act for the relief of Melissa Scianna.

[\[S 2\]](#)

Approved April 4, 2012

Whereas, Melissa Scianna (Ms. Scianna) resides at 14441 Rosebud Road, Chesterfield, Virginia also known as Lot 13, block I, Section E of the Physic Hill Subdivision; and  
Whereas, on or about November 26, 2001, the previous owner of the property requested a certification letter from the local health department (LHD) to install a conventional system to serve a three-bedroom house; and

Whereas, after the completion of a soil evaluation summary, the LHD issued a certification letter for a four-bedroom house on or about March 22, 2002; and

Whereas, a construction permit was subsequently issued to install a sewage system to serve a four-bedroom house; and

Whereas, on August 26, 2003, the LHD approved the installation of a substitute sewage system and issued an operation permit to use the sewage system; and

Whereas, on January 15, 2004, the LHD received a complaint that the sewage system had failed; and

Whereas, after inspection the LHD issued a Notice of Violation to the owner; and

Whereas, on March 15, 2004, the LHD approved repairs that were made and the system returned to normal function; and

Whereas, at some time subsequent to the approval, Ms. Scianna purchased the property; and

Whereas, on April 4, 2008, Ms. Scianna applied for a repair permit for the system, and on May 22, 2008, after an inspection, the LHD issued a Notice of Violation; and

Whereas, on April 30, 2008, the LHD confirmed that the sewage system for the property was failing; and

Whereas, on May 22, 2008, the LHD denied a conventional system repair based on "insufficient area of suitable soil for conventional drainfield and insufficient depth of suitable soil for conventional drainfield"; and

Whereas, on April 30, 2008, Ms. Scianna applied for a second repair permit, which was approved by the LHD on April 26, 2008; and

Whereas, on or about May 14, 2009, Ms. Scianna filed a claim with the State Health Department seeking under the Onsite Sewage Indemnification Fund (the Fund) the amount of \$19,299.06 to cover the costs of repairing the system; and

Whereas, as a part of her claim, Ms. Scianna included documentation asserting that financial hardship prevented her from repairing the sewage system; and

Whereas, § [32.1-164.1:01](#), in pertinent part, authorizes payment of a claim from the Fund if the system or components of the system fail within three years of the construction and the claim for recovery is filed within one year of the date that the system failed; and

Whereas, by letter dated February 24, 2010, Ms. Scianna was informed by the Department that the claim was denied because (i) the system failed over four years from the time that the system was returned to normal function under the previous owner and was therefore beyond the three-year time limit and (ii) her claim for recovery was filed approximately 13 months after she had submitted the application for the repair of the failed system; and

Whereas, Melissa Scianna has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there shall be paid for the relief of Melissa Scianna from the Onsite Sewage Indemnification Fund, upon execution of a release of all claims she may have against the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision in connection with the aforesaid occurrence, an amount equivalent to the actual cost to design and install an onsite sewage system in accordance with Board of Health regulations, with such amount not to exceed the amount specified by subsection E of § [32.1-164.1:01](#) and to be paid by check issued by the State Treasurer on warrant of the Comptroller, as follows:*

*A. Up to \$12,500 upon Melissa Scianna's execution of a contract with a licensed onsite sewage system installer for the installation of a new onsite sewage system;*

*B. The balance of the actual cost of installation to be paid upon satisfactory completion of the installation as determined by the Department of Health and the presentation of a certified invoice from the installer; and*

*C. All construction shall be completed by December 31, 2012.*

## **Chapter 663 Biscuit Run; DCR to negotiate land exchange of certain acres in Albemarle County.**

An Act to authorize the Department of Conservation and Recreation to negotiate a land exchange of certain parcels in an area known as Biscuit Run in Albemarle County, Virginia.

[\[H 1113\]](#)

Approved April 6, 2012

Whereas, the Department of Conservation and Recreation (the Department) acquired the 1,191-acre Biscuit Run tract (the Park Property) for a state park by Deed, dated December 28, 2009, recorded in the Clerk's Office of the Circuit Court of Albemarle County in Deed Book 3835, at Page 706 ff., (the Deed of Bargain and Sale), utilizing *federal* funds ~~provided by a federal Transportation Enhancement grant~~ administered by the Virginia Department of Transportation; and

Whereas, the deed of conveyance perpetually limited the use of the Park Property to outdoor recreation or education of the general public or for open-space protection, which restrictions may only be extinguished with judicial approval; and

Whereas, the Park Property borders a 100-acre parcel of the Habitat Property owned by Southwood Charlottesville, LLC, a wholly owned subsidiary of Habitat for Humanity of Greater Charlottesville (Habitat); and

Whereas, a portion of the Habitat Property may have significant conservation value pending the outcome of site analysis by the Department, and may enhance the Park Property by providing a natural buffer area for the Park Property, watershed protection, or additional recreational opportunities; and

Whereas, a portion of the Park Property, if transferred to Habitat, can enhance the efficient utilization of the Habitat Property and provide some community amenities that would not be permitted in the Park; and

Whereas, both the Department and Habitat are interested in facilitating the orderly redevelopment of the Habitat Property in a manner consistent with the Albemarle County Comprehensive Plan and the findings of the County of Albemarle Community Recreational Facilities, Needs Assessment Study; and

Whereas, Albemarle County has, by resolution, expressed its interest in facilitating said redevelopment and the improvement of the natural buffers between the Habitat Property and the Park Property; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation is hereby authorized to convey to Southwood Charlottesville, LLC, its successors and assigns upon terms and conditions as the Department and the grantee deem proper, with the approval of the Governor and in a form approved by the Attorney General, all of its right, title, and interest in certain acreage, being a part of the Park Property in Albemarle County, Virginia, owned by the Department, or such other parcel or parcels of land in proximity to the Biscuit Run property that the Department acquires for the purpose of this exchange (the Exchange Property). The acreage and boundaries of the Exchange Property shall be determined by mutual agreement of the Department and the grantee. Such acreage and boundaries shall be approved by the Director of the Department of General Services. The Exchange Property shall continue to be subject to all the restrictions contained in the Deed of Bargain and Sale unless such restrictions are extinguished, with judicial approval if necessary, in accordance with § [10.1-1704](#) of the Code of Virginia.*

*§ 2. That in exchange for such conveyance, the Department is authorized to receive, subject to the approval of the Governor and in a form approved by the Attorney General in accordance with § [2.2-1149](#) of the Code of Virginia, all the respective right, title, and interest in a portion of the Habitat Property, or such other parcel or parcels of land adjacent to the Biscuit Run property that Habitat acquires for the purpose of this exchange, the boundaries of which shall be determined by mutual agreement of the Department and Southwood Charlottesville, LLC. The boundaries of such parcel shall be approved by the Director of the Department of General Services. The Virginia Department of Transportation shall review and concur that the property received under this § 2 complies with all applicable federal requirements for conversion of property acquired with federal funds.*

*§ 3. The monetary value of the Exchange Property shall be calculated as if the Exchange Property were unrestricted by the terms of the Deed of Bargain and Sale.*

*§ 4. The purpose of this exchange is to enhance the Park Property in a manner consistent with the mission of the Department and its state park system and the adjacent residential development consistent with the Albemarle County Comprehensive Plan.*

## **Chapter 684 Constitutional amendment; taking or damaging of private property for public use (voter referendum).**

An Act to provide for the submission to the voters of a proposed amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

[\[H 5\]](#)

Approved April 9, 2012

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2012, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking *or damaging* of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, ~~nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General~~ Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

§ 2. The ballot shall contain the following question:

Question: "Shall Section 11 of Article I (Bill of Rights) of the Constitution of Virginia be amended (i) to require that eminent domain only be exercised where the property taken or damaged is for public use and, except for utilities or the elimination of a public nuisance, not where the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development; (ii) to define what is included in just compensation for such taking or damaging of property; and (iii) to prohibit the taking or damaging of more private property than is necessary for the public use?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2013.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

### **Chapter 730 Nursing facility transfer & discharge procedures; workgroup to clarify requirements and guidelines.**

An Act to develop guidelines addressing nursing facility transfer and discharge procedures.

[\[H 1274\]](#)

Approved April 9, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Health shall convene a work group, utilizing to the extent practicable any ongoing work group, to clarify state and federal requirements and develop guidelines applicable to nursing facility resident transfers and discharges, including but not limited to related notice requirements and transfer procedures for inpatient medical care. The work group shall consist of five representatives of the Virginia Elder Rights Coalition; a total of five representatives of providers designated jointly by the Virginia Hospital & Healthcare Association, the Virginia Health Care Association and the Virginia Association of Nonprofit Homes for the Aging; two representatives of the*

*Department of Behavioral Health and Developmental Services; one representative of community services boards; one representative of the Department of Medical Assistance Services; one representative of the Virginia Academy of Emergency Physicians; and a representative of the Virginia Bar Association. The Commissioner will report the work group's progress to the Secretary of Health and Human Resources and the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by December 1, 2012.*

## **Chapter 736 Constitutional amendment; taking or damaging of private property for public use (second reference).**

HOUSE JOINT RESOLUTION NO. 3

Proposing an amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

Agreed to by the House of Delegates, February 13, 2012

Agreed to by the Senate, February 27, 2012

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2011 and referred to this, the next regular session held after the 2011 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking *or damaging* of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, ~~nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly~~; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

## **Chapter 737 Constitutional amendment; General Assembly to delay reconvened session (second reference).**

HOUSE JOINT RESOLUTION NO. 138

Proposing an amendment to Section 6 of Article IV of the Constitution of Virginia, relating to legislative sessions.

Agreed to by the House of Delegates, February 7, 2012

Agreed to by the Senate, March 2, 2012

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2011 and referred to this, the next regular session held after the 2011 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article IV of the Constitution of Virginia as follows:

#### ARTICLE IV

#### LEGISLATURE

#### Section 6. Legislative sessions.

The General Assembly shall meet once each year on the second Wednesday in January. Except as herein provided for reconvened sessions, no regular session of the General Assembly convened in an even-numbered year shall continue longer than sixty days; no regular session of the General Assembly convened in an odd-numbered year shall continue longer than thirty days; but with the concurrence of two-thirds of the members elected to each house, any regular session may be extended for a period not exceeding thirty days. Neither house shall, without the consent of the other, adjourn to another place, nor for more than three days.

The Governor may convene a special session of the General Assembly when, in his opinion, the interest of the Commonwealth may require and shall convene a special session upon the application of two-thirds of the members elected to each house.

The General Assembly shall reconvene on the sixth Wednesday after adjournment of each regular or special session for the purpose of considering bills which may have been returned by the Governor with recommendations for their amendment and bills and items of appropriation bills which may have been returned by the Governor with his objections. No other business shall be considered at a reconvened session. Such reconvened session shall not continue longer than three days unless the session be extended, for a period not exceeding seven additional days, upon the vote of the majority of the members elected to each house. *The General Assembly may provide, by a joint*

*resolution approved during a regular or special session by the vote of the majority of the members elected to each house, that it shall reconvene on a date after the sixth Wednesday after adjournment of the regular or special session but no later than the seventh Wednesday after adjournment.*

## **Chapter 738 Constitutional amendment; taking or damaging of private property for public use (second reference).**

SENATE JOINT RESOLUTION NO. 3

Proposing an amendment to Section 11 of Article I of the Constitution of Virginia, relating to taking or damaging of private property.

Agreed to by the Senate, February 13, 2012

Agreed to by the House of Delegates, March 6, 2012

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2011 and referred to this, the next regular session held after the 2011 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 11 of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 11. Due process of law; obligation of contracts; taking *or damaging* of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, ~~nor any law whereby private property shall be taken or damaged for public uses,~~

~~without just compensation, the term "public uses" to be defined by the General Assembly;~~ and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

*That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. No private property shall be damaged or taken for public use without just compensation to the owner thereof. No more private property may be taken than necessary to achieve the stated public use. Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking. The terms "lost profits" and "lost access" are to be defined by the General Assembly. A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemnor bears the burden of proving that the use is public, without a presumption that it is.*

## **Chapter 744 Accreditation of schools; delayed implementation of statutes and regulations.**

An Act to amend and reenact § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, and Chapters 391 and 411 of the Acts of Assembly of 2011, relating to the delayed implementation of certain regulations and state statutes related to the accreditation of schools.

[\[H 96\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, and Chapter 391 of the Acts of Assembly of 2011, is amended and reenacted as follows:

§ 1. That no statutes or regulations *related to the implementation of an Academic and Career Plan* prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2012~~ 2013, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, 2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in 2012-2013 based on assessments administered during the 2011-2012 school year shall be the same passing rates required for full accreditation during the 2008-2009 school year. Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011-2012. Furthermore, notwithstanding the provisions of this section, regulations prescribing economics and financial literacy as a graduation requirement and related changes to the standard and advanced studies ~~diplomas~~ *diploma*, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective July 1, 2011.

2. That § 1 of Chapter 463 of the Acts of Assembly of 2009, as amended by Chapters 398 and 604 of the Acts of Assembly of 2010, and Chapter 411 of the Acts of Assembly of 2011, is amended and reenacted as follows:

§ 1. That no statutes or regulations *related to the implementation of an Academic and Career Plan* prescribing additional requirements upon which the accreditation rating of schools in the Commonwealth is based, pursuant to § [22.1-253.13:3](#) of the Code of Virginia, beyond those already in effect on July 1, 2008, shall become effective before July 1, ~~2012~~ 2013, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, that no statutes or regulations prescribing additional graduation requirements, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective before July 1, 2012, unless such statutes or regulations are also specifically required by federal code, federal regulation, or court action. Furthermore, the passing rates required for full accreditation in 2012-2013 based on

assessments administered during the 2011-2012 school year shall be the same passing rates required for full accreditation during the 2008-2009 school year. Notwithstanding the provisions of this section, schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index, as prescribed by the Board of Education, for accreditation ratings for 2011-2012. Furthermore, notwithstanding the provisions of this section, regulations prescribing economics and financial literacy as a graduation requirement and related changes to the standard and advanced studies diploma, pursuant to § [22.1-253.13:4](#) of the Code of Virginia, shall become effective July 1, 2011.

## **Chapter 792 Unlawful detention of U.S. citizens; prevents any agency, etc., from assisting in investigation.**

An Act to prevent any agency, political subdivision, employee, or member of the military of Virginia from assisting an agency of the armed forces of the United States in the detention of a citizen in violation of the United States Constitution, the Constitution of Virginia, or any Virginia law or regulation.

[\[H 1160\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any contrary provision of law, no agency of the Commonwealth as defined in § [8.01-385](#) of the Code of Virginia, political subdivision of the Commonwealth as defined in § [8.01-385](#) of the Code of Virginia, employee of either acting in his official capacity, or member of the Virginia National Guard or Virginia Defense Force, when such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty, shall knowingly aid an agency of the armed forces of the United States in the detention of any citizen pursuant to 50 U.S.C. § 1541 as provided by the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81, § 1021) if such aid would knowingly place any state agency, political subdivision, employee of such state agency or political subdivision, or aforementioned member of the Virginia National Guard or the Virginia Defense Force in violation of the United States Constitution, the Constitution of Virginia, any provision of the Code of Virginia, any act of the General*

*Assembly, or any regulation of the Virginia Administrative Code.*

*The provisions of this section shall not apply to participation by state or local law enforcement or Virginia National Guard or Virginia Defense Force in joint task forces, partnerships, or other similar cooperative agreements with federal law enforcement as long as they are not for the purpose of participating in such detentions under § 1021 of the National Defense Authorization Act for Fiscal Year 2012.*

## **Chapter 799 VDOT Integrated Directional Sign Program; maintenance, etc., of signs and impact of changes.**

An Act to evaluate the Department of Transportation's Integrated Directional Sign Program.

[\[H 1263\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commissioner of Highways shall evaluate (i) whether entities participating in the Supplemental Guide Sign portion of the Integrated Directional Sign Program should continue to be responsible for new construction, maintenance, and replacement of such signs; (ii) potential cost savings to such participants if the Department's private contractor responsible for this program were authorized to receive bids from other private contractors recommended by the participant for the manufacture or installation of such signs; and (iii) the costs to the Commissioner of Highways for the current operation of the Supplemental Guide Sign portion of the Integrated Directional Sign Program and the fiscal impact of potential changes in the current program criteria. The Commissioner of Highways shall report his findings to the Chairmen of the House Committee on Transportation and the Senate Committee on Transportation on or before February 1, 2014.*

## **Chapter 805 State mandates; eliminating on local and regional government entities relating to education, etc.**

An Act to amend and reenact §§ [2.2-1124](#), [2.2-4303](#), [2.2-4343](#), [5.1-40](#), [15.2-968.1](#), [15.2-1643](#), [15.2-2223.1](#), [22.1-18.1](#), [22.1-92](#), [22.1-129](#), [22.1-275.1](#), [37.2-504](#), [37.2-508](#), [42.1-](#)

[36.1](#), and [51.5-89](#) of the Code of Virginia and to repeal § 2 of the first enactment of Chapter 814 of the Acts of Assembly of 2010, relating to the elimination of various mandates on local and regional entities relating to procurement procedures, education, and land use.

[\[H 1295\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1124](#), [2.2-4303](#), [2.2-4343](#), [5.1-40](#), [15.2-968.1](#), [15.2-1643](#), [15.2-2223.1](#), [22.1-18.1](#), [22.1-92](#), [22.1-129](#), [22.1-275.1](#), [37.2-504](#), [37.2-508](#), [42.1-36.1](#), and [51.5-89](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-1124](#). Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § [2.2-1147](#) that is determined to be surplus. Surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, including online public auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to § [15.2-955](#)

any surplus materials prior to such public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;
  5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as children's homes;
  6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;
  7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;
  8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.);
  9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;
  10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;
  11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § [2.2-1802](#) and report the deposit to the State Comptroller;
  12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program;
  13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials;
  14. Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection B of § [23-38.88](#) and § [23-38.112](#) (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ [23-38.91](#) et seq.) of Chapter 4.10 of Title 23);
- and

15. Require, to the extent practicable, the recycling and disposal of computers and other information technology assets. Additionally, for computers or information technology assets that may contain confidential state data or personal identifying information of citizens of the Commonwealth, the Department shall ensure all policies for the transfer or other disposition of computers or information technology assets are consistent with data and information security policies developed by the Virginia Information Technologies Agency.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § [44-146.18:2](#) or [44-146.28](#);
2. As set forth in the budget bill as defined by § [2.2-1509](#), provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;
3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or
4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

F. The Department may make available to any local public body of the Commonwealth the services or facilities authorized by this section; however, the furnishing of any such services shall not limit or impair any services normally rendered any department,

division, institution or agency of the Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus Property Program under the guidelines established pursuant to this section and the surplus property policies and procedures of the Department. Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies. [§ 2.2-4303](#). Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in [§ 2.2-4301](#). The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under [§ 2.2-4306](#);
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction

management basis and shall otherwise be in compliance with the provisions of this section, § [2.2-4308](#), and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § [2.2-4301](#); or

4. As otherwise provided in § [2.2-4308](#).

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic pro-

curement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. *For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.*

~~Purchases~~*For state public bodies, purchases* under this subsection that are expected to exceed \$30,000 shall require the ~~(i)~~ written informal solicitation of a minimum of four bidders or offerors.~~and (ii) posting of~~ *All public bodies proceeding with purchases under this subsection shall post* a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. A *state* public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ [2.2-4343](#). Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ [62.1-128](#) et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program.

This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § [51.1-124.30](#).

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § [2.2-4514](#), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § [23-44.1](#), [23-50.10:01](#), [23-76.1](#), or [23-122.1](#). However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ [55-268.11](#) et seq.) as required by §§ [23-44.1](#), [23-50.10:01](#), [23-76.1](#), and [23-122.1](#).

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § [23-38.80](#).

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § [2.2-2011](#) apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § [2.2-4300](#), remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § [2.2-4300](#), remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § [2.2-4303](#), and §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#), [2.2-4317](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § [2.2-4301](#) in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the

cost of the professional service is expected to exceed ~~\$50,000~~ \$60,000 in the aggregate or for the sum of all phases of a contract or project. For procurements where the cost of the professional service is not expected to exceed \$50,000 in the aggregate or for the sum of all phases of a contract or project, subsection H of § [2.2-4303](#) shall apply. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § [22.1-212.2:2](#) shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ [2.2-4311](#) and [2.2-4367](#) through [2.2-4377](#).

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ [56-265.14](#) et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ [55-268.11](#) et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § [10.1-200.1](#) and

designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.

19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § [23-77.4](#).

20. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § [2.2-4310](#) or by a chief administrative officer of a county, city or town pursuant to § [15.2-965.1](#).

21. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § [37.2-512](#) or [37.2-615](#).

22. (Contingent expiration date, see note.) Procurement of any construction or planning and design services and contracts with or assigned to George Mason University by the corporation or other legal entity created by the board of visitors of George Mason University for the establishment and operation of the branch campus of George Mason University in the Republic of Korea, pursuant to § [23-91.29:1](#).

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ [5.1-40](#). Lease of land acquired; approval by Department.

~~Any city, town or county~~ *political subdivision or privately owned, licensed public use airport* acquiring land under the provisions of this article may individually, or jointly where so operated, lease the same, or any part thereof, to any individual or corporation desiring to use the same for the purpose of operating an airport or landing field, or for the purpose of landing or starting airplanes therefrom or for other aviation purposes, and on such terms and subject to such conditions and regulations as may be provided; and any ~~city, town or county~~ *political subdivision or privately owned, licensed public use airport* may enter into a contract in the form of a lease providing for the use of such land, or any

part thereof, by the government of the United States for the use by the government of such land for aviation, mail delivery or other aviation purposes upon nominal or other rental or without consideration; provided that such lease to an individual or corporation or to the government of the United States shall not be of any force, effect or validity until the same shall be approved by the Department *the political subdivision or privately owned, licensed public use airport certifies that the lease meets the terms and provisions of any and all state and federal grants.*

§ [15.2-968.1](#). Use of photo-monitoring systems to enforce traffic light signals.

A. The governing body of any county, city, or town may provide by ordinance for the establishment of a traffic signal enforcement program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than one intersection for every 10,000 residents within each county, city, or town at any one time, provided, however, that within planning District 8, each such locality may install and operate traffic light signal photo-monitoring systems at no more than 10 intersections, or at no more than one intersection for every 10,000 residents within each county, city, or town, whichever is greater, at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a law-enforcement officer employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution for a violation of any local ordinance adopted as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of such ordinance, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle,

shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of § [46.2-833](#), [46.2-835](#), or [46.2-836](#). For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed \$50, nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § [19.2-76.2](#). Notwithstanding the provisions of § [19.2-76](#), a summons for a violation of this section may be executed by mailing by first class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of the Department of Motor Vehicles; in the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall

be executed in the manner set out in § [19.2-76.3](#). No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. Any summons executed for a violation of this section shall provide to the person summoned at least 30 business days from the mailing of the summons to inspect information collected by a traffic light signal violation monitoring system in connection with the violation.

H. Information collected by a traffic light signal violation monitoring system installed and operated pursuant to subsection A shall be limited exclusively to that information that is necessary for the enforcement of traffic light violations. On behalf of a locality, a private entity that operates a traffic light signal violation monitoring system may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B 21 of § [46.2-208](#), to obtain vehicle owner information regarding the registered owners of vehicles that fail to comply with a traffic light signal. Information provided to the operator of a traffic light signal violation monitoring system shall be protected in a database with security comparable to that of the Department of Motor Vehicles' system, and used only for enforcement against individuals who violate the provisions of this section. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other personal information collected by a traffic light signal violation monitoring system shall be used exclusively for enforcing traffic light violations and shall not (i) be open to the public; (ii) be sold or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the enforcement of a traffic light violation or to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § [46.2-833](#), [46.2-835](#), or [46.2-836](#) or requested upon order from a court of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be purged and not retained later than 60 days after the collection of any civil penalties. If a locality does not execute a summons for a violation of this section within 10 business days, all information collected pertaining to that suspected violation shall be purged within two business days. Any locality operating a traffic light signal violation monitoring system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000 per disclosure. Any unauthorized use or disclosure of such personal

information shall be grounds for termination of the agreement between the Department of Motor Vehicles and the private entity.

I. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only a law-enforcement officer employed by a locality may swear to or affirm the certificate required by subsection C. No locality shall enter into an agreement for compensation based on the number of violations or monetary penalties imposed.

J. When selecting potential intersections for a traffic light signal violation monitoring system, a locality shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the violation. Localities may consider the risk to pedestrians as a factor, if applicable. ~~A locality shall submit a list of intersections to the Virginia Department of Transportation for final approval.~~

K. Before the implementation of a traffic light signal violation monitoring system at an intersection, the locality shall complete an engineering safety analysis that addresses signal timing and other location-specific safety features. The length of the yellow phase shall be established based on the recommended methodology of the Institute of Transportation Engineers. All traffic light signal violation monitoring systems shall provide a minimum 0.5-second grace period between the time the signal turns red and the time the first violation is recorded. If recommended by the engineering safety analysis, the locality shall make reasonable location-specific safety improvements, including signs and pavement markings.

L. Any locality that uses a traffic light signal violation monitoring system shall evaluate the system on a monthly basis to ensure all cameras and traffic signals are functioning properly. Evaluation results shall be made available to the public.

M. Any locality that uses a traffic light signal violation monitoring system to enforce traffic light signals shall place conspicuous signs within 500 feet of the intersection approach at which a traffic light signal violation monitoring system is used. There shall be a rebuttable presumption that such signs were in place at the time of the commission of the traffic light signal violation.

N. Prior to or coincident with the implementation or expansion of a traffic light signal violation monitoring system, a locality shall conduct a public awareness program, advising

the public that the locality is implementing or expanding a traffic light signal violation monitoring system.

O. Notwithstanding any other provision of this section, if a vehicle depicted in images recorded by a traffic light signal photo-monitoring system is owned, leased, or rented by a county, city, or town, then the county, city, or town may access and use the recorded images and associated information for employee disciplinary purposes.

§ [15.2-1643](#). Circuit courts to order court facilities to be repaired.

A. When it appears to the circuit court for any county or city, from the report of persons appointed to examine the court facilities, or otherwise, that the court facilities of such county or city are insecure, out of repair, or otherwise pose a danger to the health, welfare and safety of court employees or the public, the court shall enter an order, in the name and on behalf of the Commonwealth against the supervisors of the county, or the members of the council of the city, as the case may be, to show cause why a mandamus should not issue, commanding them to cause the court facilities of such county or city to be made secure, or put in good repair, or rendered otherwise safe as the case may be, and to proceed as in other cases of mandamus, to cause the necessary work to be done. The court shall cause a copy of such order to be served upon each supervisor or member of the council, as the case may be.

B. Upon the entry of such order, as provided in subsection A hereof, the chief judge of the circuit shall forthwith notify the Chief Justice of the Supreme Court of the entry thereof. Upon receipt of the notice, the Chief Justice shall assign a judge of a circuit remote from the circuit wherein the repairs are alleged to be necessary to hear and determine whether, after consideration of such matters as set forth in subdivisions 1 through 4 ~~of this subsection~~, the court facilities are in fact insecure or out of repair or otherwise pose a danger to the health, welfare and safety of court employees or the public and the extent to which repairs, if any, are necessary.

Before a mandamus is issued, if the concerned governing body elects, or if the pleadings allege that the court facilities are in fact insecure or out of repair, or otherwise pose a danger to the health, welfare and safety of court employees or the public, ~~orthat areplacement oradditionalcourthousemaybeneeded~~, the local governing body shall appoint a five-member panel, three of whom shall be qualified by training and experience as either an architect or a professional engineer, not representing the same firms, to review the court facilities in question and make recommendations to the local governing body and circuit court judge assigned by the Chief Justice concerning the construction or repairs deemed necessary.

In making their recommendations, the panel shall consider matters such as, but not limited to, the following:

1. Security provisions to safeguard court personnel, participants and the public;
2. Efficient layout and circulation patterns to maximize public access, promote efficient operations, and accommodate the diverse users;
3. Provision of administrative and service areas, judges' chambers, hearing rooms, conference rooms, prison holding areas, and public information areas; and
4. Comfort, safety and obsolescence of the existing facility or any part thereof.

The existing facilities shall be considered in relationship to their location and the extent of their use, and their failure to meet any of these general considerations shall not necessarily be deemed a cause for determining them inadequate.

In making their recommendations, the panel may consult recognized national standard works in the field.

All costs, fees and expenses of the five-member panel, after approval by the local governing body, shall be paid by the county or city that appointed the panel.

C. If, after hearing, the court finds that the court facilities are not insecure or out of repair or otherwise unsafe, or having been in such condition, that the necessary repairs have been made, the court shall vacate the order. If the court finds that the court facilities are insecure or out of repair or otherwise unsafe, it shall issue its mandamus as provided in subsection A. ~~No mandamus shall require a county or city to erect a replacement or additional courthouse unless such replacement or additional courthouse has been recommended by the panel appointed pursuant to the provisions of subsection B.~~

D. Appeals shall be allowed to the Supreme Court of Virginia as appeals from courts of equity are allowed.

*E. Nothing in this section shall be construed to authorize a circuit court to require that an additional or replacement courthouse be constructed.*

§ [15.2-2223.1](#). Comprehensive plan to include urban development areas.

A. For purposes of this section:

"Commercial" means property devoted to usual and customary business purposes for the sale of goods and services and includes, but is not limited to, retail operations, hotels, motels and offices. "Commercial" does not include residential dwelling units, including apartments and condominiums, or agricultural or forestal production, or manufacturing, processing, assembling, storing, warehousing, or distributing.

"Commission" means the Commission on Local Government.

"Developable acreage," solely for the purposes of calculating density within the urban development area, means land that is not included in (i) existing parks, rights-of-way of

arterial and collector streets, railways, and public utilities and (ii) other existing public lands and facilities.

"Population growth" means the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. In computing its population growth, a locality may exclude the inmate population of any new or expanded correctional facility that opened within the time period between the two censuses.

"Urban development area" means an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

B. Every locality that has adopted zoning pursuant to Article 7 (§ [15.2-2280](#) et seq.) ~~of this chapter~~ and that (i) has a population of at least 20,000 and population growth of at least five percent or (ii) has population growth of 15 percent or more, shall, and any locality may, amend its comprehensive plan to incorporate one or more urban development areas.

1. The comprehensive plan of a locality having a population of less than 130,000 persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least four single-family residences, six townhouses, or 12 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.4 per acre for commercial development, or any proportional combination thereof.

2. The comprehensive plan of a locality having a population of 130,000 or more persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least eight single-family residences, 12 townhouses, or 24 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.8 per acre for commercial development, or any proportional combination thereof.

3. The urban development areas designated by a locality shall be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Where an urban development area in a county with the urban county executive form of government includes planned or existing rail transit, the planning horizon may be for an ensuing period of at least 10 but not more than 40 years.

Future residential and commercial growth shall be based on official estimates of either the Weldon Cooper Center for Public Service of the University of Virginia, the Virginia

Employment Commission, the United States Bureau of the Census, or other official government projections required for federal transportation planning purposes.

4. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the review of the comprehensive plan and in accordance with the most recent available population growth estimates and projections.

5. The boundaries of each urban development area shall be identified in the locality's comprehensive plan and shall be shown on future land use maps contained in such comprehensive plan.

6. The comprehensive plan shall incorporate principles of traditional neighborhood design in the urban development area, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) mixed-use neighborhoods, including mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth, (vi) reduction of front and side yard building setbacks, and (vii) reduction of subdivision street widths and turning radii at subdivision street intersections.

7. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

8. A portion of one or more urban development areas shall be designated as a receiving area for any transfer of development rights program established by the locality.

C. No locality that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

D. Any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B. Any locality that has adopted a resolution certifying compliance with subsection B prior to February 1, 2010, shall not be required to comply with this subsection until review of the locality's comprehensive plan as provided for in provision 4 of subsection B.

E. Localities shall consult with adjacent localities, as well as the relevant planning district commission and metropolitan planning organization, in establishing the appropriate

size and location of urban development areas to promote orderly and efficient development of their region.

F. Any county that amends its comprehensive plan pursuant to subsection B may designate one or more urban development areas in any incorporated town within such county, if the council of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county. However, if a town has established an urban development area within its corporate boundaries, the county within which the town is located shall not include the town's projected population and commercial growth when initially determining or reexamining the size and boundary of any other urban development area within the county.

G. To the extent possible, federal, state and local transportation, housing, water and sewer facility, economic development, and other public infrastructure funding for new and expanded facilities shall be directed to the urban development area, or in the case of a locality that adopts a resolution pursuant to subsection D, to the area that accommodates growth in a manner consistent with this section.

~~H. Documents describing all urban development area designations, as well as any resolution adopted pursuant to subsection D, together with associated written policies, zoning provisions and other ordinances, and the capital improvement program shall be forwarded, electronically or by other means, to the Commission within 90 days of the adoption or amendment of comprehensive plans and other written policies, zoning provisions and other ordinances. The Commission shall annually report to the Governor and General Assembly the overall compliance with this section including densities achieved within each urban development area. Before preparing the initial report, the Commission shall develop an appropriate format in concert with the relevant planning district commission. Other than the documents, policies, zoning provisions and other ordinances, resolutions, and the capital improvement program forwarded by the locality, the Commission shall not impose an additional administrative burden on localities in preparing the annual report required by this subsection.~~

I. Any locality that becomes subject to provision 2 of subsection B shall have until July 1, 2012, to amend its comprehensive plan in accordance with this section.

J. Any locality that becomes subject to this section due to population growth shall have two years following the report of the United States Bureau of the Census made pursuant to P.L. 94-171 to amend its comprehensive plan in accordance with this section.

§ [22.1-18.1](#). Annual report on gifted education required; local advisory committee on gifted education.

Each local school board shall submit the annual report, "Programs for Gifted Education," as required by Board regulations, to the Department of Education.

Each school board ~~shall~~ *may* appoint, in accordance with the regulations of the Board of Education, a local advisory committee on gifted education. ~~The~~ A local advisory committee on gifted education shall annually review the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The comments and recommendations of the local advisory committee on gifted education shall be submitted in writing directly to the school board and the superintendent.

A school board shall comply with Board regulations governing gifted education relative to the use of multiple criteria for the identification of gifted students.

With such funds as may be appropriated for this purpose, the Department of Education shall conduct an annual review of all local gifted education programs, on such date as it may determine, to ensure full implementation and compliance with federal and state laws and regulations governing gifted education. The Department may conduct the review as an on-site observation or require certification of compliance from the division superintendent.

§ [22.1-92](#). Estimate of moneys needed for public schools; notice of costs to be distributed.

A. It shall be the duty of each division superintendent to prepare, with the approval of the school board, and submit to the governing body or bodies appropriating funds for the school division, by the date specified in § [15.2-2503](#), the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division. The estimate shall set up the amount of money deemed to be needed for each major classification prescribed by the Board of Education and such other headings or items as may be necessary.

Upon preparing the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division, each division superintendent shall also prepare and distribute, within a reasonable time as prescribed by the Board of Education, notification of the estimated average per pupil cost for public education in the school division for the coming school year ~~to each parent,~~ guardian, or other person having control or charge of a child enrolled in the relevant school division; in accordance with the budget estimates provided to the local governing body or bodies. Such notification shall also include actual per pupil state and local education expenditures for the previous school year. The notice may also include federal funds expended for public education in the school division.

The notice shall be made available in a form provided by the Department of Education and shall be published on the school division's website or in hard copy upon request. To promote uniformity and allow for comparisons, the Department of Education shall develop a form for this notice and distribute such form to the school divisions for publication.

B. Before any school board gives final approval to its budget for submission to the governing body, the school board shall hold at least one public hearing to receive the views of citizens within the school division. A school board shall cause public notice to be given at least ~~ten~~ 10 days prior to any hearing by publication in a newspaper having a general circulation within the school division. The passage of the budget by the local government shall be conclusive evidence of compliance with the requirements of this section.

§ [22.1-129](#). Surplus property; sale, exchange or lease of real and personal property.

A. Whenever a school board determines that it has no use for some of its real property, the school board may sell such property and may retain all or a portion of the proceeds of such sale upon approval of the local governing body and after the school board has held a public hearing on such sale and retention of proceeds, or may convey the title to such real property to the county or city or town comprising the school division or, if the school division is composed of more than one county or city, to the county or city in which the property is located. To convey the title, the school board shall adopt a resolution that such real property is surplus and shall record such resolution along with the deed to the property with the clerk of the circuit court for the county or city where such property is located. Upon the recording of the resolution and the deed, the title shall vest in the appropriate county, city or town.

~~If a school board sells surplus real property, a capital improvement fund shall be established by such school board and the proceeds of such sale retained by the school board shall accrue to such capital improvement fund. The capital improvement fund shall only be used for new school construction, school renovation, and major school maintenance projects.~~

B. A school board shall have the power to exchange real and personal property, to lease real and personal property either as lessor or lessee, to grant easements on real property, to convey real property in trust to secure loans, to convey real property to adjust the boundaries of the property and to sell personal property in such manner and upon such terms as it deems proper. As lessee of real property, a school board shall have the power to expend funds for capital repairs and improvements on such property, if the lease is for a term equal to or longer than the useful life of such repairs or improvements.

C. Notwithstanding the provisions of subsections A and B, a school board shall have the power to sell career and technical education projects and associated land pursuant to [§ 22.1-234](#).

Notwithstanding the provisions of subsections A and B, a school board of the City of Virginia Beach shall have the power to sell property to the Virginia Department of Transportation or the Commissioner of Highways when the Commissioner has determined that (i) such conveyance is necessary and (ii) when eminent domain has been authorized for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, and for all other purposes incidental thereto, including, but not limited to, the relocation of public utilities as may be required.

D. School boards may donate obsolete educational technology hardware and software that is being replaced pursuant to subdivision B 4 of [§ 22.1-199.1](#). Any such donations shall be offered to other school divisions, to students, as provided in Board of Education guidelines, and to preschool programs in the Commonwealth. In addition, elected school boards may donate such obsolete educational technology hardware and software and other obsolete personal property to a Virginia nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

[§ 22.1-275.1](#). School health advisory board.

Each school board ~~shall~~*may* establish a school health advisory board of no more than twenty members which shall consist of broad-based community representation including, but not limited to, parents, students, health professionals, educators, and others. ~~The~~ *If established, the* school health advisory board shall assist with the development of health policy in the school division and the evaluation of the status of school health, health education, the school environment, and health services.

~~The~~ *Any* school health advisory board shall hold meetings at least semi-annually and shall annually report on the status and needs of student health in the school division to any relevant school, the school board, the Virginia Department of Health, and the Virginia Department of Education.

The local school board may request that the school health advisory board recommend to the local school board procedures relating to children with acute or chronic illnesses or conditions, including, but not limited to, appropriate emergency procedures for any life-threatening conditions and designation of school personnel to implement the appropriate emergency procedures. The procedures relating to children with acute or chronic illnesses or conditions shall be developed with due consideration of the size and staffing of the schools within the jurisdiction.

§ [37.2-504](#). Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § [37.2-508](#), submit to the governing body of each city or county that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

6. In the case of an operating board, appoint an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the

executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 of this section and § [37.2-508](#) and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision, consistent with the provisions of § [37.2-511](#), and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8.

8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.

9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § [37.2-315](#).

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.

16. Notwithstanding the provisions of § [37.2-400](#) or any regulations adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

18. In the case of operating boards, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, mental retardation, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.

4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.
5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.
6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.
7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ [37.2-508](#). Performance contract for mental health, mental retardation, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, mental retardation, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds. Six months prior to the *end of an existing contract or, if no contract exists, six months prior to the beginning* of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days. *Such contracts shall be for a fixed term and shall provide for annual renewal by the Board if the term exceeds one year.*

B. Any community services board may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract ~~for the next fiscal year~~ together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of

the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide ~~upto~~<sup>six</sup> semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved *or renewed*.

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.

D. No community services board shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved *or renewed* by the governing body of each city or county that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § [37.2-400](#) or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii) it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a community services board remains in substantial noncompliance with its

performance contract with the Department, the Department may, after affording the community services board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each city or county that established the board, may negotiate a performance contract with another board, a behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ [42.1-36.1](#). Power and duty of library boards and certain governing bodies regarding acceptable Internet use policies.

A. ~~On or before December 1, 1999, and biennially thereafter, (i) every~~ *Every (i)* library board established pursuant to § [42.1-35](#) or (ii) ~~the governing body of any county, city, or town that, pursuant to § 42.1-36, has not established a library board pursuant to § 42.1-35,~~ shall file with the Librarian of Virginia an acceptable use policy for the Internet. *At a minimum, the policy shall contain provisions that (i) are establish an acceptable use policy for the Internet designed to (a) prohibit use by library employees and patrons of the library's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet, (ii) seek to (b) prevent access by library patrons under the age of 18 to material that is harmful to juveniles, and (iii) (c) establish appropriate measures to be taken against persons who violate the policy. For libraries established under § 42.1-33, the policy shall also require the selection, installation and activation of, on those computers that are accessible to the public and have Internet access, a technology protection measure to filter or block Internet access through such computers to child pornography as defined in § 18.2-374.1:1, obscenity as defined in § 18.2-372, and, with respect to minors, materials deemed harmful to juveniles as defined in § 18.2-390. Such policy shall provide that a person authorized by the library board shall disable or otherwise bypass the technology protection measure required by this section at the request of a patron to enable access for bona fide research or other lawful purposes. The policy required by this section shall be posted online; however, if the library does not have a website, the policy shall be available to the public upon request.*

The library board or the governing body may include such other terms, conditions, and requirements in the library's policy as it deems appropriate, such as requiring written parental authorization for Internet use by juveniles or differentiating acceptable uses between elementary, middle, and high school students.

B. The library board or the governing body shall take such steps as it deems appropriate to implement and enforce the library's policy which may include, but are not limited to, (i) the use of software programs designed to block access by (a) library employees and patrons to illegal material or (b) library patrons under the age of 18 to material that is harmful to juveniles or (c) both; (ii) charging library employees to casually monitor patrons' Internet use; or (iii) installing privacy screens on computers that access the Internet. For libraries established under § [42.1-33](#), the library board or governing body shall direct such libraries to select and install on those computers that are accessible to the public and have Internet access a technology protection measure as required by the policy established pursuant to subsection A. No state funding shall be withheld and no other adverse action taken against a library by the Librarian of Virginia or any other official of state government when the technology protection measure fails, provided that such library promptly has taken reasonable steps to rectify and prevent such failures in the future.

~~C. On or before December 1, 2000, and biennially thereafter, the Librarian of Virginia shall submit a report to the Chairmen of the House Committee on Education, the House Committee on Science and Technology, and the Senate Committee on Education and Health which summarizes the acceptable use policies filed with the Librarian pursuant to this section and the status thereof.~~

§ [51.5-89](#). Placement of blind persons in vacancies by Department; vending stands in Capitol; regulations.

When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department. The Department acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or business enterprise through placement of a properly trained blind person in such vacancy. This section shall not apply to vending stands or other business enterprises operated in (i) *local government buildings*, (ii) the State Capitol ~~or~~, or (iii) the legislative office buildings that shall be subject to the control of the Rules Committee of the House of Delegates and the Rules Committee of the Senate. *Notwithstanding the provisions of this section, any locality may, by ordinance or resolution, provide for the Department to have first priority in assuming the operation of any vending stand or business enterprise located in a local government building.*

2. That § 2 of the first enactment of Chapter 814 of the Acts of Assembly of 2010 is repealed.

## **Chapter 836 State mandates; eliminating on local and regional government entities relating to education, etc.**

An Act to amend and reenact §§ [2.2-1124](#), [2.2-4303](#), [2.2-4343](#), [5.1-40](#), [15.2-968.1](#), [15.2-1643](#), [15.2-2223.1](#), [22.1-18.1](#), [22.1-92](#), [22.1-129](#), [22.1-275.1](#), [37.2-504](#), [37.2-508](#), [42.1-36.1](#), and [51.5-89](#) of the Code of Virginia and to repeal § 2 of the first enactment of Chapter 814 of the Acts of Assembly of 2010, relating to the elimination of various mandates on local and regional entities relating to procurement procedures, education, and land use.

[\[S 679\]](#)

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-1124](#), [2.2-4303](#), [2.2-4343](#), [5.1-40](#), [15.2-968.1](#), [15.2-1643](#), [15.2-2223.1](#), [22.1-18.1](#), [22.1-92](#), [22.1-129](#), [22.1-275.1](#), [37.2-504](#), [37.2-508](#), [42.1-36.1](#), and [51.5-89](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-1124](#). Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § [2.2-1147](#) that is determined to be surplus. Surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;
2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care

- services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;
3. Permit public sales or auctions, including online public auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to [§ 15.2-955](#) any surplus materials prior to such public sale or auction;
  4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;
  5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as children's homes;
  6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;
  7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;
  8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act ([§ 2.2-3100](#) et seq.);
  9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;
  10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;
  11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with [§ 2.2-1802](#) and report the deposit to the State Comptroller;
  12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program;
  13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials;

14. Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection B of § [23-38.88](#) and § [23-38.112](#) (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ [23-38.91](#) et seq.) of Chapter 4.10 of Title 23); and

15. Require, to the extent practicable, the recycling and disposal of computers and other information technology assets. Additionally, for computers or information technology assets that may contain confidential state data or personal identifying information of citizens of the Commonwealth, the Department shall ensure all policies for the transfer or other disposition of computers or information technology assets are consistent with data and information security policies developed by the Virginia Information Technologies Agency.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § [44-146.18:2](#) or [44-146.28](#);
2. As set forth in the budget bill as defined by § [2.2-1509](#), provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;
3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or
4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

F. The Department may make available to any local public body of the Commonwealth the services or facilities authorized by this section; however, the furnishing of any such services shall not limit or impair any services normally rendered any department, division, institution or agency of the Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus Property Program under the guidelines established pursuant to this section and the surplus property policies and procedures of the Department. Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies.

§ [2.2-4303](#). Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § [2.2-4301](#). The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § [2.2-4306](#);
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § [2.2-4308](#), and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § [2.2-4301](#); or
4. As otherwise provided in § [2.2-4308](#).

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic

procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. *For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.*

~~Purchases~~*For state public bodies, purchases* under this subsection that are expected to exceed \$30,000 shall require the ~~(i)~~ written informal solicitation of a minimum of four bidders or offerors.~~and (ii) posting of~~ *All public bodies proceeding with purchases under this subsection shall post* a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. A *state* public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this

determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions. J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ [2.2-4343](#). Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ [62.1-128](#) et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.
2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § [51.1-124.30](#).
3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § [2.2-4514](#), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.
4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.
5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § [23-44.1](#), [23-50.10:01](#), [23-76.1](#), or [23-122.1](#). However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ [55-268.11](#) et seq.) as required by §§ [23-44.1](#), [23-50.10:01](#), [23-76.1](#), and [23-122.1](#).
6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or

agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § [23-38.80](#).

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § [2.2-2011](#) apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § [2.2-4300](#), remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § [2.2-4300](#), remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § [2.2-4303](#), and §§ [2.2-4305](#), [2.2-4308](#), [2.2-4311](#), [2.2-4315](#),

[2.2-4317](#), [2.2-4330](#), [2.2-4333](#) through [2.2-4338](#), [2.2-4343.1](#), and [2.2-4367](#) through [2.2-4377](#) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § [2.2-4301](#) in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed ~~\$50,000~~ [\\$60,000](#) in the aggregate or for the sum of all phases of a contract or project. ~~For procurements where the cost of the professional service is not expected to exceed \$50,000 in the aggregate or for the sum of all phases of a contract or project, subsection H of §~~ [2.2-4303](#) shall apply. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § [22.1-212.2:2](#) shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ [2.2-4311](#) and [2.2-4367](#) through [2.2-4377](#).

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ [56-265.14](#) et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ [55-268.11](#) et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § [10.1-200.1](#) and designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.

19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § [23-77.4](#).

20. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § [2.2-4310](#) or by a chief administrative officer of a county, city or town pursuant to § [15.2-965.1](#).

21. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § [37.2-512](#) or [37.2-615](#).

22. (Contingent expiration date, see note.) Procurement of any construction or planning and design services and contracts with or assigned to George Mason University by the corporation or other legal entity created by the board of visitors of George Mason University for the establishment and operation of the branch campus of George Mason University in the Republic of Korea, pursuant to § [23-91.29:1](#).

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ [5.1-40](#). Lease of land acquired; approval by Department.

Any ~~city, town or county~~ *political subdivision or privately owned, licensed public use airport* acquiring land under the provisions of this article may individually, or jointly where so

operated, lease the same, or any part thereof, to any individual or corporation desiring to use the same for the purpose of operating an airport or landing field, or for the purpose of landing or starting airplanes therefrom or for other aviation purposes, and on such terms and subject to such conditions and regulations as may be provided; and any ~~city, town or county~~ *political subdivision or privately owned, licensed public use airport* may enter into a contract in the form of a lease providing for the use of such land, or any part thereof, by the government of the United States for the use by the government of such land for aviation, mail delivery or other aviation purposes upon nominal or other rental or without consideration; provided that ~~such lease to an individual or corporation or to the government of the United States shall not be of any force, effect or validity until the same shall be approved by the Department~~ *the political subdivision or privately owned, licensed public use airport certifies that the lease meets the terms and provisions of any and all state and federal grants.*

§ [15.2-968.1](#). Use of photo-monitoring systems to enforce traffic light signals.

A. The governing body of any county, city, or town may provide by ordinance for the establishment of a traffic signal enforcement program imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than one intersection for every 10,000 residents within each county, city, or town at any one time, provided, however, that within planning District 8, each such locality may install and operate traffic light signal photo-monitoring systems at no more than 10 intersections, or at no more than one intersection for every 10,000 residents within each county, city, or town, whichever is greater, at any one time.

B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a law-enforcement officer employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any

proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution for a violation of any local ordinance adopted as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of such ordinance, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of § [46.2-833](#), [46.2-835](#), or [46.2-836](#). For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed \$50, nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § [19.2-76.2](#). Notwithstanding the provisions of § [19.2-76](#), a summons for a violation of this section may be executed by mailing by first class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of the Department of Motor Vehicles; in the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records

of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § [19.2-76.3](#). No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. Any summons executed for a violation of this section shall provide to the person summoned at least 30 business days from the mailing of the summons to inspect information collected by a traffic light signal violation monitoring system in connection with the violation.

H. Information collected by a traffic light signal violation monitoring system installed and operated pursuant to subsection A shall be limited exclusively to that information that is necessary for the enforcement of traffic light violations. On behalf of a locality, a private entity that operates a traffic light signal violation monitoring system may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B 21 of § [46.2-208](#), to obtain vehicle owner information regarding the registered owners of vehicles that fail to comply with a traffic light signal. Information provided to the operator of a traffic light signal violation monitoring system shall be protected in a database with security comparable to that of the Department of Motor Vehicles' system, and used only for enforcement against individuals who violate the provisions of this section. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other personal information collected by a traffic light signal violation monitoring system shall be used exclusively for enforcing traffic light violations and shall not (i) be open to the public; (ii) be sold or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the enforcement of a traffic light violation or to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § [46.2-833](#), [46.2-835](#), or [46.2-836](#) or requested upon order from a court of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be purged and not retained later than 60 days after the collection of any civil penalties. If a locality does not execute a summons for a violation of this section within 10 business days, all information collected pertaining to that suspected violation shall be purged within two business days. Any locality operating a traffic light signal violation monitoring system shall annually certify

compliance with this section and make all records pertaining to such system available for inspection and audit by the Commissioner of Highways or the Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000 per disclosure. Any unauthorized use or disclosure of such personal information shall be grounds for termination of the agreement between the Department of Motor Vehicles and the private entity.

I. A private entity may enter into an agreement with a locality to be compensated for providing the traffic light signal violation monitoring system or equipment, and all related support services, to include consulting, operations and administration. However, only a law-enforcement officer employed by a locality may swear to or affirm the certificate required by subsection C. No locality shall enter into an agreement for compensation based on the number of violations or monetary penalties imposed.

J. When selecting potential intersections for a traffic light signal violation monitoring system, a locality shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the violation. Localities may consider the risk to pedestrians as a factor, if applicable. ~~A locality shall submit a list of intersections to the Virginia Department of Transportation for final approval.~~

K. Before the implementation of a traffic light signal violation monitoring system at an intersection, the locality shall complete an engineering safety analysis that addresses signal timing and other location-specific safety features. The length of the yellow phase shall be established based on the recommended methodology of the Institute of Transportation Engineers. All traffic light signal violation monitoring systems shall provide a minimum 0.5-second grace period between the time the signal turns red and the time the first violation is recorded. If recommended by the engineering safety analysis, the locality shall make reasonable location-specific safety improvements, including signs and pavement markings.

L. Any locality that uses a traffic light signal violation monitoring system shall evaluate the system on a monthly basis to ensure all cameras and traffic signals are functioning properly. Evaluation results shall be made available to the public.

M. Any locality that uses a traffic light signal violation monitoring system to enforce traffic light signals shall place conspicuous signs within 500 feet of the intersection approach at which a traffic light signal violation monitoring system is used. There shall be a

rebuttable presumption that such signs were in place at the time of the commission of the traffic light signal violation.

N. Prior to or coincident with the implementation or expansion of a traffic light signal violation monitoring system, a locality shall conduct a public awareness program, advising the public that the locality is implementing or expanding a traffic light signal violation monitoring system.

O. Notwithstanding any other provision of this section, if a vehicle depicted in images recorded by a traffic light signal photo-monitoring system is owned, leased, or rented by a county, city, or town, then the county, city, or town may access and use the recorded images and associated information for employee disciplinary purposes.

§ [15.2-1643](#). Circuit courts to order court facilities to be repaired.

A. When it appears to the circuit court for any county or city, from the report of persons appointed to examine the court facilities, or otherwise, that the court facilities of such county or city are insecure, out of repair, or otherwise pose a danger to the health, welfare and safety of court employees or the public, the court shall enter an order, in the name and on behalf of the Commonwealth against the supervisors of the county, or the members of the council of the city, as the case may be, to show cause why a mandamus should not issue, commanding them to cause the court facilities of such county or city to be made secure, or put in good repair, or rendered otherwise safe as the case may be, and to proceed as in other cases of mandamus, to cause the necessary work to be done. The court shall cause a copy of such order to be served upon each supervisor or member of the council, as the case may be.

B. Upon the entry of such order, as provided in subsection A hereof, the chief judge of the circuit shall forthwith notify the Chief Justice of the Supreme Court of the entry thereof. Upon receipt of the notice, the Chief Justice shall assign a judge of a circuit remote from the circuit wherein the repairs are alleged to be necessary to hear and determine whether, after consideration of such matters as set forth in subdivisions 1 through 4 of this subsection, the court facilities are in fact insecure or out of repair or otherwise pose a danger to the health, welfare and safety of court employees or the public and the extent to which repairs, if any, are necessary.

Before a mandamus is issued, if the concerned governing body elects, or if the pleadings allege that the court facilities are in fact insecure or out of repair, or otherwise pose a danger to the health, welfare and safety of court employees or the public, ~~or that a replacement or additional courthouse may be needed~~, the local governing body shall appoint a five-member panel, three of whom shall be qualified by training and experience as either an architect or a professional engineer, not representing the same

firms, to review the court facilities in question and make recommendations to the local governing body and circuit court judge assigned by the Chief Justice concerning the construction or repairs deemed necessary.

In making their recommendations, the panel shall consider matters such as, but not limited to, the following:

1. Security provisions to safeguard court personnel, participants and the public;
2. Efficient layout and circulation patterns to maximize public access, promote efficient operations, and accommodate the diverse users;
3. Provision of administrative and service areas, judges' chambers, hearing rooms, conference rooms, prison holding areas, and public information areas; and
4. Comfort, safety and obsolescence of the existing facility or any part thereof.

The existing facilities shall be considered in relationship to their location and the extent of their use, and their failure to meet any of these general considerations shall not necessarily be deemed a cause for determining them inadequate.

In making their recommendations, the panel may consult recognized national standard works in the field.

All costs, fees and expenses of the five-member panel, after approval by the local governing body, shall be paid by the county or city that appointed the panel.

C. If, after hearing, the court finds that the court facilities are not insecure or out of repair or otherwise unsafe, or having been in such condition, that the necessary repairs have been made, the court shall vacate the order. If the court finds that the court facilities are insecure or out of repair or otherwise unsafe, it shall issue its mandamus as provided in subsection A. ~~No mandamus shall require a county or city to erect a replacement or additional courthouse unless such replacement or additional courthouse has been recommended by the panel appointed pursuant to the provisions of subsection B.~~

D. Appeals shall be allowed to the Supreme Court of Virginia as appeals from courts of equity are allowed.

*E. Nothing in this section shall be construed to authorize a circuit court to require that an additional or replacement courthouse be constructed.*

§ [15.2-2223.1](#). Comprehensive plan to include urban development areas.

A. For purposes of this section:

"Commercial" means property devoted to usual and customary business purposes for the sale of goods and services and includes, but is not limited to, retail operations, hotels, motels and offices. "Commercial" does not include residential dwelling units, including apartments and condominiums, or agricultural or forestal production, or manufacturing, processing, assembling, storing, warehousing, or distributing.

"Commission" means the Commission on Local Government.

"Developable acreage," solely for the purposes of calculating density within the urban development area, means land that is not included in (i) existing parks, rights-of-way of arterial and collector streets, railways, and public utilities and (ii) other existing public lands and facilities.

"Population growth" means the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. In computing its population growth, a locality may exclude the inmate population of any new or expanded correctional facility that opened within the time period between the two censuses.

"Urban development area" means an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

B. Every locality that has adopted zoning pursuant to Article 7 (§ [15.2-2280](#) et seq.) ~~of this chapter~~ and that (i) has a population of at least 20,000 and population growth of at least five percent or (ii) has population growth of 15 percent or more, shall, and any locality may, amend its comprehensive plan to incorporate one or more urban development areas.

1. The comprehensive plan of a locality having a population of less than 130,000 persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least four single-family residences, six townhouses, or 12 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.4 per acre for commercial development, or any proportional combination thereof.

2. The comprehensive plan of a locality having a population of 130,000 or more persons shall provide for urban development areas that are appropriate for development at a density on the developable acreage of at least eight single-family residences, 12 townhouses, or 24 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.8 per acre for commercial development, or any proportional combination thereof.

3. The urban development areas designated by a locality shall be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Where an urban development area in a county with the urban county executive form of government includes planned or existing rail transit, the

planning horizon may be for an ensuing period of at least 10 but not more than 40 years. Future residential and commercial growth shall be based on official estimates of either the Weldon Cooper Center for Public Service of the University of Virginia, the Virginia Employment Commission, the United States Bureau of the Census, or other official government projections required for federal transportation planning purposes.

4. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the review of the comprehensive plan and in accordance with the most recent available population growth estimates and projections.

5. The boundaries of each urban development area shall be identified in the locality's comprehensive plan and shall be shown on future land use maps contained in such comprehensive plan.

6. The comprehensive plan shall incorporate principles of traditional neighborhood design in the urban development area, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) mixed-use neighborhoods, including mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth, (vi) reduction of front and side yard building setbacks, and (vii) reduction of subdivision street widths and turning radii at subdivision street intersections.

7. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

8. A portion of one or more urban development areas shall be designated as a receiving area for any transfer of development rights program established by the locality.

C. No locality that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

D. Any locality that would be required to amend its plan pursuant to subsection B that determines that its plan accommodates growth in a manner consistent with subsection B, upon adoption of a resolution describing such accommodation and describing any financial and other incentives for development in the areas that accommodate such growth, shall not be required to further amend its plan pursuant to subsection B. Any locality that has adopted a resolution certifying compliance with subsection B prior to February 1, 2010, shall not be required to comply with this subsection until review of the locality's comprehensive plan as provided for in provision 4 of subsection B.

E. Localities shall consult with adjacent localities, as well as the relevant planning district commission and metropolitan planning organization, in establishing the appropriate size and location of urban development areas to promote orderly and efficient development of their region.

F. Any county that amends its comprehensive plan pursuant to subsection B may designate one or more urban development areas in any incorporated town within such county, if the council of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county. However, if a town has established an urban development area within its corporate boundaries, the county within which the town is located shall not include the town's projected population and commercial growth when initially determining or reexamining the size and boundary of any other urban development area within the county.

G. To the extent possible, federal, state and local transportation, housing, water and sewer facility, economic development, and other public infrastructure funding for new and expanded facilities shall be directed to the urban development area, or in the case of a locality that adopts a resolution pursuant to subsection D, to the area that accommodates growth in a manner consistent with this section.

~~H. Documents describing all urban development area designations, as well as any resolution adopted pursuant to subsection D, together with associated written policies, zoning provisions and other ordinances, and the capital improvement program shall be forwarded, electronically or by other means, to the Commission within 90 days of the adoption or amendment of comprehensive plans and other written policies, zoning provisions and other ordinances. The Commission shall annually report to the Governor and General Assembly the overall compliance with this section including densities achieved within each urban development area. Before preparing the initial report, the Commission shall develop an appropriate format in concert with the relevant planning district commission. Other than the documents, policies, zoning provisions and other ordinances, resolutions, and the capital improvement program forwarded by the locality, the Commission shall not impose an additional administrative burden on localities in preparing the annual report required by this subsection.~~

I. Any locality that becomes subject to provision 2 of subsection B shall have until July 1, 2012, to amend its comprehensive plan in accordance with this section.

J. Any locality that becomes subject to this section due to population growth shall have two years following the report of the United States Bureau of the Census made pursuant to P.L. 94-171 to amend its comprehensive plan in accordance with this section.

§ [22.1-18.1](#). Annual report on gifted education required; local advisory committee on gifted education.

Each local school board shall submit the annual report, "Programs for Gifted Education," as required by Board regulations, to the Department of Education.

Each school board ~~shall~~ *may* appoint, in accordance with the regulations of the Board of Education, a local advisory committee on gifted education. ~~The~~ A local advisory committee on gifted education shall annually review the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The comments and recommendations of the local advisory committee on gifted education shall be submitted in writing directly to the school board and the superintendent.

A school board shall comply with Board regulations governing gifted education relative to the use of multiple criteria for the identification of gifted students.

With such funds as may be appropriated for this purpose, the Department of Education shall conduct an annual review of all local gifted education programs, on such date as it may determine, to ensure full implementation and compliance with federal and state laws and regulations governing gifted education. The Department may conduct the review as an on-site observation or require certification of compliance from the division superintendent.

§ [22.1-92](#). Estimate of moneys needed for public schools; notice of costs to be distributed.

A. It shall be the duty of each division superintendent to prepare, with the approval of the school board, and submit to the governing body or bodies appropriating funds for the school division, by the date specified in § [15.2-2503](#), the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division. The estimate shall set up the amount of money deemed to be needed for each major classification prescribed by the Board of Education and such other headings or items as may be necessary.

Upon preparing the estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division, each division superintendent shall also prepare and distribute, within a reasonable time as prescribed by the Board of Education, notification of the estimated average per pupil cost for public education in the school division for the coming school year ~~to each parent,~~ guardian, or other person having control or charge of a child enrolled in the relevant school division, in accordance with the budget estimates provided to the local governing body or bodies. Such notification shall also include actual per pupil state and local education

expenditures for the previous school year. The notice may also include federal funds expended for public education in the school division.

The notice shall be made available in a form provided by the Department of Education and shall be published on the school division's website or in hard copy upon request. To promote uniformity and allow for comparisons, the Department of Education shall develop a form for this notice and distribute such form to the school divisions for publication.

B. Before any school board gives final approval to its budget for submission to the governing body, the school board shall hold at least one public hearing to receive the views of citizens within the school division. A school board shall cause public notice to be given at least ~~ten~~ 10 days prior to any hearing by publication in a newspaper having a general circulation within the school division. The passage of the budget by the local government shall be conclusive evidence of compliance with the requirements of this section.

§ [22.1-129](#). Surplus property; sale, exchange or lease of real and personal property.

A. Whenever a school board determines that it has no use for some of its real property, the school board may sell such property and may retain all or a portion of the proceeds of such sale upon approval of the local governing body and after the school board has held a public hearing on such sale and retention of proceeds, or may convey the title to such real property to the county or city or town comprising the school division or, if the school division is composed of more than one county or city, to the county or city in which the property is located. To convey the title, the school board shall adopt a resolution that such real property is surplus and shall record such resolution along with the deed to the property with the clerk of the circuit court for the county or city where such property is located. Upon the recording of the resolution and the deed, the title shall vest in the appropriate county, city or town.

~~If a school board sells surplus real property, a capital improvement fund shall be established by such school board and the proceeds of such sale retained by the school board shall accrue to such capital improvement fund. The capital improvement fund shall only be used for new school construction, school renovation, and major school maintenance projects.~~

B. A school board shall have the power to exchange real and personal property, to lease real and personal property either as lessor or lessee, to grant easements on real property, to convey real property in trust to secure loans, to convey real property to adjust the boundaries of the property and to sell personal property in such manner and upon such terms as it deems proper. As lessee of real property, a school board shall have the

power to expend funds for capital repairs and improvements on such property, if the lease is for a term equal to or longer than the useful life of such repairs or improvements. C. Notwithstanding the provisions of subsections A and B, a school board shall have the power to sell career and technical education projects and associated land pursuant to [§ 22.1-234](#).

Notwithstanding the provisions of subsections A and B, a school board of the City of Virginia Beach shall have the power to sell property to the Virginia Department of Transportation or the Commissioner of Highways when the Commissioner has determined that (i) such conveyance is necessary and (ii) when eminent domain has been authorized for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, and for all other purposes incidental thereto, including, but not limited to, the relocation of public utilities as may be required.

D. School boards may donate obsolete educational technology hardware and software that is being replaced pursuant to subdivision B 4 of [§ 22.1-199.1](#). Any such donations shall be offered to other school divisions, to students, as provided in Board of Education guidelines, and to preschool programs in the Commonwealth. In addition, elected school boards may donate such obsolete educational technology hardware and software and other obsolete personal property to a Virginia nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

[§ 22.1-275.1](#). School health advisory board.

Each school board ~~shall~~*may* establish a school health advisory board of no more than ~~twenty~~*20* members which shall consist of broad-based community representation including, but not limited to, parents, students, health professionals, educators, and others. ~~The~~ *If established, the* school health advisory board shall assist with the development of health policy in the school division and the evaluation of the status of school health, health education, the school environment, and health services.

~~The~~*Any* school health advisory board shall hold meetings at least semi-annually and shall annually report on the status and needs of student health in the school division to any relevant school, the school board, the Virginia Department of Health, and the Virginia Department of Education.

The local school board may request that the school health advisory board recommend to the local school board procedures relating to children with acute or chronic illnesses or conditions, including, but not limited to, appropriate emergency procedures for any life-threatening conditions and designation of school personnel to implement the appropriate emergency procedures. The procedures relating to children with acute or chronic ill-

nesses or conditions shall be developed with due consideration of the size and staffing of the schools within the jurisdiction.

§ [37.2-504](#). Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.
2. Pursuant to § [37.2-508](#), submit to the governing body of each city or county that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.
3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.
4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.
5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.
6. In the case of an operating board, appoint an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by

appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 of this section and § [37.2-508](#) and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision, consistent with the provisions of § [37.2-511](#), and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ [37.2-814](#) et seq.) of Chapter 8.

8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.

9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § [37.2-315](#).

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.

16. Notwithstanding the provisions of § [37.2-400](#) or any regulations adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

18. In the case of operating boards, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, mental retardation, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.
4. Review and comment on the ~~annual~~ performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.
5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.
6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.
7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ [37.2-508](#). Performance contract for mental health, mental retardation, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, mental retardation, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds. Six months prior to the *end of an existing contract or, if no contract exists, six months prior to the beginning* of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days. *Such contracts shall be for a fixed term and shall provide for annual renewal by the Board if the term exceeds one year.*

B. Any community services board may apply for the assistance provided in this chapter by submitting ~~annually~~ to the Department its proposed performance contract ~~for the next fiscal year~~ together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make

its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide ~~upto~~ six semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved *or renewed*.

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.

D. No community services board shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved *or renewed* by the governing body of each city or county that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § [37.2-400](#) or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii) it uses

standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a community services board remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the community services board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each city or county that established the board, may negotiate a performance contract with another board, a behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ [42.1-36.1](#). Power and duty of library boards and certain governing bodies regarding acceptable Internet use policies.

A. ~~On or before December 1, 1999, and biennially thereafter, (i) every~~ *Every (i)* library board established pursuant to § [42.1-35](#) or (ii) ~~the governing body of any county, city, or town that, pursuant to § [42.1-36](#), has not established a library board pursuant to § [42.1-35](#),~~ shall file with the Librarian of Virginia an acceptable use policy for the Internet. *At a minimum, the policy shall contain provisions that (i) are establish an acceptable use policy for the Internet designed to (a) prohibit use by library employees and patrons of the library's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet, (ii) seek to (b) prevent access by library patrons under the age of 18 to material that is harmful to juveniles, and (iii) (c) establish appropriate measures to be taken against persons who violate the policy. For libraries established under § [42.1-33](#), the policy shall also require the selection, installation and activation of, on those computers that are accessible to the public and have Internet access, a technology protection measure to filter or block Internet access through such computers to child pornography as defined in § [18.2-374.1:1](#), obscenity as defined in § [18.2-372](#), and, with respect to minors, materials deemed harmful to juveniles as defined in § [18.2-390](#). Such policy shall provide that a person authorized by the library board shall disable or otherwise bypass the technology protection measure required by this section at the request of a patron to enable access for bona fide research or other lawful purposes. *The policy required by this section shall be posted online; however, if the library does not have a website, the policy shall be available to the public upon request.**

The library board or the governing body may include such other terms, conditions, and requirements in the library's policy as it deems appropriate, such as requiring written parental authorization for Internet use by juveniles or differentiating acceptable uses between elementary, middle, and high school students.

B. The library board or the governing body shall take such steps as it deems appropriate to implement and enforce the library's policy which may include, but are not limited to, (i) the use of software programs designed to block access by (a) library employees and patrons to illegal material or (b) library patrons under the age of 18 to material that is harmful to juveniles or (c) both; (ii) charging library employees to casually monitor patrons' Internet use; or (iii) installing privacy screens on computers that access the Internet. For libraries established under § [42.1-33](#), the library board or governing body shall direct such libraries to select and install on those computers that are accessible to the public and have Internet access a technology protection measure as required by the policy established pursuant to subsection A. No state funding shall be withheld and no other adverse action taken against a library by the Librarian of Virginia or any other official of state government when the technology protection measure fails, provided that such library promptly has taken reasonable steps to rectify and prevent such failures in the future.

~~C. On or before December 1, 2000, and biennially thereafter, the Librarian of Virginia shall submit a report to the Chairmen of the House Committee on Education, the House Committee on Science and Technology, and the Senate Committee on Education and Health which summarizes the acceptable use policies filed with the Librarian pursuant to this section and the status thereof.~~

§ [51.5-89](#). Placement of blind persons in vacancies by Department; vending stands in Capitol; regulations.

When any vending stand or other business enterprise operated in a public building becomes vacant or a vacancy is created through the construction or acquisition of new public buildings or renovation or expansion of existing public buildings, the existence of such vacancies shall be made known to the Department. The Department acting on behalf of the blind shall have first priority in assuming the operation of such vending stand or business enterprise through placement of a properly trained blind person in such vacancy. This section shall not apply to vending stands or other business enterprises operated in (i) *local government buildings*, (ii) the State Capitol ~~or~~, or (iii) the legislative office buildings that shall be subject to the control of the Rules Committee of the House of Delegates and the Rules Committee of the Senate. *Notwithstanding the provisions of this section, any locality may, by ordinance or resolution, provide for the*

*Department to have first priority in assuming the operation of any vending stand or business enterprise located in a local government building.*

2. That § 2 of the first enactment of Chapter 814 of the Acts of Assembly of 2010 is repealed.

## **Chapter 842 Income tax, corporate; tax credits for donations to non-profit organizations, etc.**

An Act to amend and reenact §§ [58.1-439.18](#) through [58.1-439.21](#) and [58.1-439.24](#) of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered [58.1-439.25](#) through [58.1-439.28](#); and to repeal the third enactment of Chapter 851 of the Acts of Assembly of 2009, relating to tax credits for donations to organizations providing assistance to low-income families, including but not limited to scholarships for K through 12 students attending nonpublic schools.

[\[H 321\]](#)

Approved May 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ [58.1-439.18](#) through [58.1-439.21](#) and [58.1-439.24](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 58.1 an article numbered 13.3, consisting of sections numbered [58.1-439.25](#) through [58.1-439.28](#), as follows:

§ [58.1-439.18](#). Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ [58.1-320](#) et

seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26.

"Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ [58.1-360](#) et seq.) of Chapter 3.

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to ~~impoverished people~~ *low-income persons*.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of ~~impoverished people~~ *low-income persons* or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to an ~~individual who is impoverished~~ *a low-income person or an eligible student with a disability*.

*"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.*

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of ~~impoverished people~~ *low-income persons*.

~~"Impoverished people" means individuals with family annual income not in excess of 200 percent of the current poverty guidelines for proposals submitted by a non-profit entity requesting an allocation of tax credits under this article.~~

"Job training" means any type of instruction to an individual who is ~~impoverished~~ *a low-income person* that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

*"Low-income person" means an individual whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.*

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance ~~for impoverished people~~,

and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § [36-3](#).

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, or (ii) scholarships.

§ [58.1-439.19](#). Public policy; business firms; donations.

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of ~~impoverished people~~ *low-income persons*.

§ [58.1-439.20](#). Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal, other than education proposals, to the Commissioner of the State Department of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. Neighborhood organizations may submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization.

The proposal shall set forth the program to be conducted by the neighborhood organization, the ~~impoverished people~~ *low-income persons or eligible students with disabilities* to be assisted, the estimated amount to be donated to the program, and the plans for implementing the program.

B. The State Board of Social Services and the Board of Education are hereby authorized to adopt regulations (or, alternatively, guidelines in the case of the Board of Education)

for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations or guidelines shall contain a requirement that an annual audit, review, or compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations be provided by the neighborhood organization as a prerequisite for approval. Such regulations or guidelines shall also provide that at least 50 percent of the persons served by the neighborhood organization are ~~impoverished people~~ *low-income persons or eligible students with disabilities* as defined in § [58.1-439.18](#). Such regulations or guidelines shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations or guidelines shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction, as applicable.

Notwithstanding any other provision of law, (i) no more than an aggregate of ~~\$0.5~~ *\$0.825* million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all other proposals combined. *However, if the State Department of Social Services or the Department of Education after the initial allocation of tax credits to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood organization for a proposal that had been approved for tax credits during the initial allocation by the State Department of Social Services or the Department of Education, then (a) the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction, as applicable, shall reallocate the*

*remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax credits for the previously approved proposal and (b) the \$0.825 and \$0.5 million annual limitations for tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable to the extent of any balance of tax credits reallocated under clause (a). The balance of tax credits remaining for reallocation shall include the amount of any tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction has been provided notice by the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.*

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed ~~\$11.9~~ \$15 million allocated as follows: ~~\$4.9~~ \$8 million for education proposals for approval by the Superintendent of Public Instruction and \$7 million for all other proposals for approval by the Commissioner of the State Department of Social Services. ~~If the amount of tax credits requested by neighborhood organizations and approved by the Superintendent for education proposals is less than \$4.9 million, then the balance of such amount shall be allocated to programs for approval by the Commissioner of the State Department of Social Services.~~ The Superintendent and the Commissioner of the State Department of Social Services shall work cooperatively for purposes of ensuring that neighborhood organization proposals are submitted to the proper state agency. The Superintendent and the Commissioner of the State Department of Social Services may request the assistance of the Department of Taxation for purposes of determining whether or not anticipated donations for which tax credits are requested by a neighborhood organization likely qualify as a charitable donation under federal tax laws and regulations.

E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii) the Superintendent or the Department of Education relating to the review of neighborhood organization proposals and the allocation of tax credits to proposals shall be exempt from the provisions of the Administrative Process Act ([§ 2.2-4000](#) et seq.). Decisions of (a) the State Department of Social Services, or the Commissioner of the same, or (b) the Superintendent or the Department of Education shall be final and not subject to review or appeal.

F. The issuance of tax credits under this article shall expire on July 1, ~~2014~~ 2017.

[§ 58.1-439.21](#). Tax credit; amount; limitation; carry over.

A. The Superintendent of Public Instruction and the Commissioner of the State Department of Social Services shall certify to the Department of Taxation, or in the case of

business firms subject to a tax under Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25 or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ [58.1-320](#) et seq.), 6 (§ [58.1-360](#) et seq.), and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, in an amount equal to ~~40~~ 65 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § [58.1-439.20](#). Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit of less than \$400 shall be granted for any donation, ~~and a business firm shall not be allowed a tax credit in excess of \$175,000 per taxable year.~~ No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § [58.1-439.20](#). The certification shall identify the type and value of the donation received and the business firm making the donation. A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

§ [58.1-439.24](#). Donations by individuals.

For purposes of this section, the term "individual" means the same as that term is defined in § [58.1-302](#), but excluding any individual included in the definition of a "business firm" as such term is defined in § [58.1-439.18](#).

A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual making a monetary donation or a donation of marketable securities to a

neighborhood organization approved under this article shall be eligible for a credit against taxes imposed by § [58.1-320](#) as provided in this section.

B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation or a donation of marketable securities to an approved project shall be equal to ~~40~~ 65 percent of the value of such donation; however, tax credits shall not be issued for any donation made in the taxable year with a value of less than \$500, and no more than \$50,000 in tax credit shall be issued to an individual or to married persons in a taxable year.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this article are available.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services, shall not exceed the tax imposed pursuant to § [58.1-320](#) for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § [58.1-439.20](#). The certification shall identify the type and value of the donation received and the individual making the donation.

*Article 13.3.*

*Education Improvement Scholarships Tax Credits.*

§ [58.1-439.25](#). *Definitions.*

*As used in this article, unless the context requires a different meaning:*

*"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal*

*Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.*

*"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.*

*"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.*

*"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department of Education in accordance with the provisions of § [58.1-439.27](#); and (iii) established to provide financial aid for the education of students residing in the Commonwealth.*

*"Student" means a child who is a resident of Virginia and (i) is enrolled in the Commonwealth's public schools for the year prior to receiving a scholarship foundation scholarship, (ii) is a prior recipient of a scholarship foundation scholarship, (iii) is eligible to enter kindergarten or first grade, or (iv) was not a resident of Virginia during the preceding school year.*

*§ [58.1-439.26](#). Tax credit for donations to certain scholarship foundations.*

*A. For taxable years beginning on or after January 1, 2013, but before January 1, 2018, a person shall be eligible to earn a credit against any tax due under Article 2 (§ [58.1-320](#) et seq.) or Article 10 (§ [58.1-400](#) et seq.), Chapter 12 (§ [58.1-1200](#) et seq.), Chapter 25 (§ [58.1-2500](#) et seq.), or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26 in an amount equal to 65 percent of the monetary donation made by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § [58.1-439.28](#). The credit shall be allowed to be claimed for the taxable year following the year of such donation. For individuals and corporations making estimated tax payments pursuant to this chapter, the credit shall be prorated equally against the individual's or corporation's estimated tax payments made in the third and fourth quarters of the taxable year in which the credit may be claimed and the final tax payment.*

*No tax credit shall be allowed under this article if the monetary donation is less than \$500. In addition, no more than \$50,000 in tax credits shall be issued to an individual or*

*to married persons in a taxable year. However, such limitation on the amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.*

*B. Tax credits shall be awarded to persons making monetary donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:*

- 1. The total amount of tax credits that may be granted each fiscal year under this article shall not exceed \$25 million.*
- 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ [58.1-320](#) et seq.) or Article 10 (§ [58.1-400](#) et seq.), Chapter 12 (§ [58.1-1200](#) et seq.), Chapter 25 (§ [58.1-2500](#) et seq.), or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, as applicable, for the taxable year in which the credit is claimed. Any credit not usable for the taxable year following the taxable year of the monetary donation may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ [58.1-320](#) et seq.) or Article 10 (§ [58.1-400](#) et seq.), Chapter 12 (§ [58.1-1200](#) et seq.), Chapter 25 (§ [58.1-2500](#) et seq.), or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.*

*The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.*

- 3. Every person seeking the credit allowed under this article shall submit with the applicable tax return verification from each scholarship foundation to which monetary donations have been made by the person during the taxable year.*

*C. In a form approved by the Department of Education, the person seeking to make a monetary donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary donation from the person to the scholarship foundation, which shall, within 20 days, return the notice to the Department of Education certifying the amount of the monetary donation and date received. Preauthorization notices not acted upon within 180 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.*

§ [58.1-439.27](#). *Scholarship foundation eligibility and requirements; list of foundations receiving donations.*

A. *Persons seeking to receive and administer tax-credit-approved funds shall submit information to the Department of Education, which shall determine whether an applicant is a scholarship foundation as defined in § [58.1-439.25](#). The Department of Education shall prescribe through guidelines what reasonable information shall be submitted by such persons. Notice of approval or denial, including reasons for denial, shall be issued by the Department of Education to the applicant within 60 days after the complete information is submitted. Any approval shall not be withheld unreasonably.*

B. *The Department of Education shall submit a list of all scholarship foundations receiving donations for which tax credits were awarded under this article to the Chairmen of the House and Senate Finance Committees no later than December 1 of each year.*

§ [58.1-439.28](#). *Guidelines for scholarship foundations.*

A. *As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § [58.1-439.25](#) and included on the list published annually by the Department of Education pursuant to this section, shall disburse at least 90 percent of the amount of each donation for which a tax credit may be received under this article within one year of such donation for qualified educational expenses through scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to disburse at least 90 percent of any donated amount within one year shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.*

B. *By September 30 of each year, the scholarship foundation shall provide the following information to the Department of Education: (i) the total number and dollar amount of contributions received between September 1 of the prior calendar year and September 1 of the current calendar year, (ii) the dates when such contributions were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded for the school year that began during the current calendar year. Any scholarship foundation that fails to provide this report by September 30 shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds.*

C. *In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) provide scholarships for qualified educational expenses only to students whose*

*family's annual household income is not in excess of 300 percent of the current poverty guidelines or eligible students with a disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship payments, the eligible scholarship foundation shall include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to this article.*

*D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in § [22.1-19](#) and administered by the Virginia Council for Private Education or nonpublic schools that maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.*

*Eligible schools shall compile the results of any national norm-referenced achievement test for each of its students receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students with a copy of the results on an annual basis, beginning with the first year of testing of the student. Such schools also shall annually provide to the Department of Education for each such student the achievement test results, beginning with the first year of testing of the student, and student information that would allow the Department to aggregate the achievement test results by grade level, gender, family income level, number of years of participation in the scholarship program, and race. Beginning with the third year of testing of each such student and test-related data collection, the Department of Education shall ensure that the achievement test results and associated learning gains are published on the Department of Education's website in accordance with such classifications and in an aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students participating in the scholarship program in a manner consistent with nationally recognized standards. In publishing and disseminating achievement test results and other information, the Super-*

*intendent of Public Instruction and the Department of Education shall ensure compliance with all student privacy laws.*

*E. The aggregate amount of scholarships provided to each student for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.*

*F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly payments throughout the school year to ensure scholarships are portable.*

*G. An annual audit, review, or compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations shall be conducted on a scholarship foundation's tax-credit-derived funds. A summary report of the audit, review, or compilation shall be made available to the public and the Department of Education upon request.*

*The report shall include (i) the total number and dollar amount of donations per locality received during the previous calendar year; (ii) the total number and dollar amount of qualified educational expenses scholarships awarded during the previous calendar year to every (a) student whose family's annual household income was not in excess of 300 percent of the current poverty guidelines or (b) eligible student with a disability; and (iii) the percentage of first-time recipients of qualified educational expenses scholarships.*

*H. The Department of Education shall publish annually on its website a list of each scholarship foundation qualified under this article. Once a foundation has been qualified by the Department of Education, it shall remain qualified until the Department removes the foundation from its annual list. The Department of Education shall remove a foundation from the annual list if it no longer meets the requirements of this article. The Department of Education may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements of this article.*

*I. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.*

2. That the Department of Education shall develop guidelines implementing the provisions of Article 13.3 (§ [58.1-439.25](#) et seq.) of Chapter 3 of Title 58.1, as added by this

act. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.) of the Code of Virginia.

3. That the provisions of this act providing that a grouping of neighborhood organization affiliates shall not be approved for more than an aggregate of \$0.825 million in neighborhood assistance tax credits for all education proposals in any fiscal year shall not be applicable to any grouping of neighborhood organization affiliates that was approved for more than an aggregate of \$0.5 million in neighborhood assistance tax credits for education proposals in any fiscal year of the Commonwealth that ended prior to January 1, 2010.

4. That the third enactment of Chapter 851 of the Acts of Assembly of 2009 is repealed.

# Uncodified Acts of Assembly - 2012 Special Session I

## Chapter 2 Budget Bill.

An Act to amend and reenact Chapter 890 of the 2011 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2011, and the thirtieth day of June, 2012.

[\[H 1300\]](#)

Approved May 25, 2012

Be it enacted by the General Assembly of Virginia:

## Chapter 3 Budget Bill.

An Act for all appropriations of the Budget to provide a portion of revenues for the two years ending respectively on the thirtieth day of June, 2013, and the thirtieth day of June, 2014.

[\[H 1301\]](#)

Approved June 11, 2012

Be it enacted by the General Assembly of Virginia:

# Uncodified Acts of Assembly - 2013

## Chapter 8 Higher educational institutions; modifications to prior revenue bond bills, emergency.

An Act to amend and reenact § 2 of the first enactment of Chapters 207 and 604 of the Acts of Assembly of 2008 and § 2 of the first enactment of Chapters 490 and 556 of the Acts of Assembly of 2012, relating to modifications to prior revenue bond bills for institutions of higher education. Emergency.

[\[H 1392\]](#)

Approved February 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 207 of the Acts of Assembly of 2008 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Uncodified Acts of Assembly - 2013

ode	Institution Amount	Project Title	Project C-
	George Mason University	President's Park	17540
		Phase II Renovation	-
	\$15,633,000		
	George Mason University	Smithsonian CRC	17572
		Housing	-
	17,804,000		
	George Mason University	Housing VIII	17570 -
	102,460,000		
	Old Dominion University	Construct Residence	17342
		Hall, Phase II	-
	34,779,000		
	Radford University	<del>Construct</del> Renovate	17565
		Residence Halls	-
	36,000,000		
	The College of William	Renovate Graduate	17555
	and Mary In Virginia	Student Dormitories	-
	2,500,000		
	The College of William	Renovate Campus	17554
	and Mary In Virginia	Center and Trinkle Hall	-
	35,000,000		
	Virginia Polytechnic	Renovate Owens and	17558
	Institute and State	West End Market Food	
	University	Courts	-
	5,000,000		
	Virginia Polytechnic	Renovate Ambler	17557

Uncodified Acts of Assembly - 2013

Institute and State 55,000,000 University	Johnson Hall		-
Virginia Polytechnic 8,047,000 Institute and State University	New Residence Hall	16682	-
Virginia State University	Demolish Student Village and Construct	17531	
	Gateway 500, Phase II		-
38,342,000			
Total			-
\$350,565,000			

2. That § 2 of the first enactment of Chapter 604 of the Acts of Assembly of 2008 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Uncodified Acts of Assembly - 2013

Institution Amount	Project Title	Project Code	-
George Mason University	President's Park	17540	
	Phase II Renovation		1-
5,633,000			
George Mason University	Smithsonian CRC -	17572	
	Housing		1-
7,804,000			
George Mason University	Housing VIII	17570	10-
2,460,000			
Old Dominion University	Construct Residence	17342	
	Hall, Phase II		3-
4,779,000			
Radford University	<del>Construct</del> Renovate	17565	
	Residence Halls		3-
6,000,000			
The College of William	Renovate Graduate	17555	
	and Mary In Virginia	Student Dormitories	-
2,500,000			
The College of William	Renovate Campus	17554	
	and Mary In Virginia	Center and Trinkle Hall	3-
5,000,000			
Virginia Polytechnic	Renovate Owens and	17558	
Institute and State	West End Market Food		

Uncodified Acts of Assembly - 2013

University	Courts	-
5,000,000		
Virginia Polytechnic Institute and State	Renovate Ambler Johnson Hall	17557
University		5-
5,000,000		
Virginia Polytechnic Institute and State	New Residence Hall	16682
University		-
8,047,000		
Virginia State University	Demolish Student Village and Construct	17531
	Gateway 500, Phase II	3-
8,342,000		
Total		\$35-
0,565,000		

3. That § 2 of the first enactment of Chapters 490 and 556 of the Acts of Assembly of 2012 are amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding ~~\$125,594,000~~ \$135,244,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of

Uncodified Acts of Assembly - 2013

providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	-
Amount			
George Mason University	Construct Student Housing IX-		
A 17929 \$41,071,000			
James Madison University	Student Housing		
	Phase I	17949	\$5-
0,000,000			
Old Dominion University	Renovate Student Housing, Phase		
2 II 17945 \$23,113,000			
Radford University	Renovate Washing-		
	ton Hall	17948	\$ -
5,410,000			
The College of William	Renovate <del>Dormitory</del>		
and Mary in Virginia			
<i>Dormitories</i> 17933	<del>\$ 5,000,000</del>		
\$14,650,000			
The College of William	Construct New		
and Mary in Virginia	Dormitory	17808	\$ -
1,000,000			
<del>\$125,594,000</del>			

Total  
\$135,244,000

4. That an emergency exists and this act is in force from its passage.

## **Chapter 31 Veterans care center; construction in Northern Virginia.**

An Act to authorize the Governor to request federal funds and for the Director of the Department of Planning and Budget to approve a treasury loan for the construction of a new veterans care center.

[\[H 2175\]](#)

Approved February 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Governor is authorized to request federal funds to construct a new veterans care center with up to 240 beds located in the northern area of Virginia. After the United States Department of Veterans Affairs has determined that federal funds will be allocated for the new center, the Director of the Department of Planning and Budget shall approve a short-term, interest-free treasury loan in the amount of \$28,500,000 to the Department of Veterans Services for the state share of the construction cost, so that the project may proceed without further action by the Commonwealth, in accordance with 38 CFR 59.50 and 38 CFR 59.70(b). The treasury loan shall be repaid by such sources of funding as determined by the Governor and the General Assembly. The Director of the Department of Planning and Budget is authorized to sign and certify any federal documents or forms to acknowledge that the state share of funding for the Northern Virginia Veterans Care Center is available without further action by the Commonwealth.*

## **Chapter 33 William and Mary, The College of; management agreement between the Commonwealth.**

An Act to amend and reenact Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, relating to the management agreement between the

Commonwealth and *The* College of William and Mary; responsibilities of the Building Official.

[\[H 2249\]](#)

Approved February 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended and reenacted as follows:

EXHIBIT G

MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, ~~the~~ *The* College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-

authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

“Board of Visitors” or “Board” means the Rector and Visitors of ~~the~~ *The* College of William and Mary in Virginia.

“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

“College” means ~~the~~ *The* College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).

“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that

has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), and [51.1-126.3](#).

“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

### III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.

### IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College’s usual delegation policies and procedures.

#### V. CAPITAL PROGRAM.

The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.

It shall be College policy that each capital project program shall meet the College's mission and institutional objectives, and be appropriately authorized by the College.

Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the College's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.

#### VI. AUTHORIZATION OF CAPITAL PROJECTS.

The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the College that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement.

Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through his designee, to be justified.

Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

#### VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the College that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:

Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;

Making procurement rules clear in advance of any competition;

Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in

Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.

#### VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code. The President shall designate a Building Official responsible for building code compliance at the College, including the Virginia Institute of Marine Science and ~~Richard Bland College~~, by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be an employee of the College who has no other assigned duties or responsibilities at the institution and who is not employed by any firm or business providing facility services to the College, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee as required. When serving as the

College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects or engineers who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired under the College's personnel system as a member of the review unit shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

#### XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and

land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

A. Environmental and Land Use Considerations.

It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The College shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the College to comply with local zoning laws and ordinances.

B. Infrastructure and Site Condition.

The President, acting through his designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the College to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.

C. Title and Survey.

A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and

clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.

D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and

such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

## **Chapter 41 Chesapeake Bay Watershed Implementation Plan; directs state agencies to remove Lynnhaven River.**

An Act to exclude the Lynnhaven River watershed from the James River Basin for purposes of the Chesapeake Bay Watershed Implementation Plan.

[\[S 768\]](#)

Approved February 22, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That no state agency shall consider or include the Lynnhaven River watershed as part of the James River Basin when developing or implementing the Chesapeake Bay Watershed Implementation Plan.*

## **Chapter 46 G. Richard Thompson Wildlife Management Area; conveyance of certain land to Warren County.**

An Act to authorize the Board of Game and Inland Fisheries to convey certain lands in Warren County.

[\[S 985\]](#)

Approved February 22, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, the Board of Game and Inland*

*Fisheries is hereby authorized, at no cost to the Commonwealth, to convey by gift to Warren County, pursuant to § [2.2-1150](#), as the Board of Game and Inland Fisheries deems proper, with the approval of the Governor and the Secretary of Natural Resources, and after consultation with the Warren County Board of Supervisors, two parcels of land located in Warren County on Route 638 in the G. Richard Thompson Wildlife Management Area in Warren and Fauquier Counties. Such parcels measure 3.19 acres in total area and are identified as Parcels B-1 and B-2 on the survey prepared by Joseph G. Brogan, Sr., on November 8, 2012, with reference to the plat recorded in the clerk's office of the Warren County Circuit Court in D.B. 307, Page 686.*

*§ 2. The deeds of conveyance and other documents shall be in the form approved by the Attorney General.*

## **Chapter 47 Coal; repeals an obsolete chapter that regulates surface mining.**

An Act to amend and reenact §§ [10.1-571](#), [45.1-234](#), [45.1-261.1](#), and [45.1-361.2](#) of the Code of Virginia and to repeal Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ [45.1-198](#) through [45.1-220.5](#)) of Title 45.1, relating to the surface mining of coal.

[\[S 1014\]](#)

Approved February 22, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [10.1-571](#), [45.1-234](#), [45.1-261.1](#), and [45.1-361.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [10.1-571](#). No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ [62.1-44.2](#) et seq.) of Title 62.1; or the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ [45.1-180](#) et seq.), ~~17 (§ [45.1-198](#) et seq.)~~ and 19

(§ [45.1-226](#) et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ [45.1-361.1](#) et seq.).

§ [45.1-234](#). Permits required; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. On and after eight months from the date on which a permanent state regulatory program is approved for ~~this~~ *the* Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 17 (~~§ [45.1-198](#) et seq.~~) of this title ~~19~~ (§ [45.1-226](#) et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ [45.1-245](#), [45.1-246](#), [45.1-247](#), [45.1-249](#), [45.1-250](#), and [45.1-251](#) and the penalty and enforcement regulations implementing those sections, ~~provided that during the continuation of a permit issued under Chapter 17 of this title, there shall be no change in the performance standards required thereunder.~~

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

C. Coal surface mining permits issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under a permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations promulgated by him. The Director shall also promulgate regulations, meeting the requirements of § 506 of the federal act, for longer permit terms, successors in interest to the permittee, termination of permit for failure to commence operations, right of and procedure for permit renewal, and extension of boundaries of mining operations. § [45.1-261.1](#). Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation

Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ [45.1-270.1](#) et seq.) ~~of this chapter~~, provided the Director finds that the following conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to either Chapter 17 (§ [45.1-198](#) et seq.) or 19 (§ [45.1-226](#) et seq.), ~~or a combination of both, of this title~~ and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11, the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

§ [45.1-361.2](#). Regulation of coal surface mining not affected by chapter.

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of ~~Chapters 17~~ (§ [45.1-198](#) et seq.) ~~and Chapter 19~~ (§ [45.1-226](#) et seq.) ~~of this title~~, including ~~but not limited to~~ requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on areas for which a coal surface mining permit is in effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on areas ~~which~~ *that* have been reclaimed by the surface mine operator or the Director shall be treated as post-mining uses. The Director shall give special consideration to the development and promulgation of variances from the postmining use requirements of Chapter 19 ~~of this title~~ for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of the ~~Virginia Coal Surface Mining Control and Reclamation Act of 1979~~ (§ [45.1-226](#) et seq.) *Chapter 19*.

2. That Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ [45.1-198](#) through [45.1-220.5](#)) of Title 45.1, is repealed.

## **Chapter 59 Menhaden fish; allowable catch for those landed in State, etc., report. Emergency.**

An Act to amend and reenact §§ [2.2-4002](#), [28.2-204.1](#), [28.2-402](#), [28.2-403](#), and [28.2-1000.2](#) of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010; to amend the Code of Virginia by adding sections numbered [28.2-400.1](#) through

[28.2-400.6](#); and to repeal § [28.2-1000.2](#) of the Code of Virginia, relating to management of the menhaden fishery.

[\[S 1291\]](#)

Approved February 23, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-4002](#), [28.2-204.1](#), [28.2-402](#), [28.2-403](#), and [28.2-1000.2](#) of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [28.2-400.1](#) through [28.2-400.6](#) as follows:

§ [2.2-4002](#). Exemptions from chapter generally.

A. Although required to comply with § [2.2-4103](#) of the Virginia Register Act (§ [2.2-4100](#) et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ [2.2-4024](#), [2.2-4030](#), and [2.2-4031](#)::

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ [29.1-200](#) et seq.), 3 (§ [29.1-300](#) et seq.), 4 (§ [29.1-400](#) et seq.), 5 (§ [29.1-500](#) et seq.), and 7 (§ [29.1-700](#) et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth, provided that, with respect to § [2.2-4031](#), such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage,

and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § [2.2-1164](#).

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § [23-9.6:2](#).

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § [3.2-6002](#) and in adopting regulations pursuant to § [3.2-6023](#).

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § [3.2-3601](#), subsection B of § [3.2-3701](#), § [3.2-4002](#), subsections B and D of § [3.2-4801](#), §§ [3.2-5121](#) and [3.2-5206](#), and subsection A of § [3.2-5406](#).

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 of Title 54.1.

15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to subdivision 18 of § [2.2-2004](#).

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § [22.1-203.2](#).

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § [59.1-156](#).

21. The Insurance Continuing Education Board pursuant to § [38.2-1867](#).

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § [32.1-35](#) and in adopting, amending or repealing regulations pursuant to subsection C of § [35.1-14](#) that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. (Expires January 1, 2014) ~~The Secretary of Natural Resources~~ *Commissioner of the Marine Resources Commission* in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § [28.2-1000.2](#).

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § [54.1-3314.1](#).

25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § [58.1-3219.7](#).

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, militia, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of pools authorized by Chapter 47 (§ [2.2-4700](#) et seq.).
15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ [28.2-803](#) et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § [32.1-283.1](#).

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ [10.1-1197.1](#) et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § [59.1-372](#).

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ [2.2-4100](#) et seq.), made by the Virginia Code Commission pursuant to § [30-150](#), shall be exempt from the provisions of this chapter.

§ [28.2-204.1](#). Limited sale of gear licenses and permits; regulations.

A. The Commission may limit the number of gear licenses or permits to fish, except those licenses issued pursuant to *subdivisions 1 and 2 of* § [28.2-402](#), issued for use in a specific fishery. The Commission may, despite any such limits, issue such gear licenses or permits to fish to any person who has resided for at least five years on an island in the Commonwealth that is at least three miles from the mainland.

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;
2. Food production;
3. Dependence on the fishery by licensees;
4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

§ [28.2-400.1](#). *Criteria for qualifying for a limited entry purse seine menhaden bait license.*

A. *The Commission shall establish and administer a limited entry purse seine menhaden bait license that meets the requirements of this section.*

*B. In order to qualify for a limited entry purse seine menhaden bait license, an applicant shall have held a purse seine license, as established in § [28.2-402](#), in 2011 and shall have landed menhaden in the Commonwealth in each of the years 2009, 2010, and 2011. Such person shall also have used purse seine gear to harvest menhaden in at least one of those three years. Proof of landings and gear usage shall be in the form of receipts, landing reports, or other verifiable documents as designated by the Commission.*

*§ [28.2-400.2](#). Total allowable landings for menhaden.*

*A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be 144,272.84 metric tons per year.*

*B. If the total allowable landings specified in subsection A are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in § [28.2-400.3](#).*

*C. The Commissioner may request a transfer of menhaden landings from any other state that is a member of the Atlantic States Marine Fisheries Commission. If the Commonwealth receives a transfer of menhaden in any year from another state, the total allowable landings for only that year shall increase by the amount of transferred landings. The Commissioner may transfer menhaden to another state only if there are unused landings after December 15.*

*D. Any portion of the one percent of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable landings for that year.*

*§ [28.2-400.3](#). Allocation of the total allowable landings for menhaden.*

*A. The total allowable landings for menhaden specified in § [28.2-400.2](#) shall be allocated among the purse seine menhaden reduction sector, purse seine menhaden bait sector, and non-purse seine menhaden bait sector in proportion to each sector's share of average landings in 2002 through 2011, and in proportion to each gear type landings within the non-purse seine bait sector during that period.*

*B. The Commission shall establish an Individual Transferable Quota System for any purse seine menhaden bait licensee that meets the requirements of § [28.2-400.1](#). The Commission shall not consider a limited entry purse seine menhaden bait licensee's*

*landings of menhaden for reduction purposes for any purposes under the Individual Transferable Quota System required by this subsection.*

*C. Any landings of menhaden by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports required to be submitted under § [28.2-400.5](#), shall be attributed to the menhaden reduction sector for all purposes under this chapter. A qualified menhaden processing factory is one located in the Commonwealth and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.*

*§ [28.2-400.4](#). Administration of the menhaden management program.*

*A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the mandatory daily landings reports required to be submitted under § [28.2-400.5](#) by the:*

- 1. Purse seine menhaden reduction sector and promptly announce the date of closure when the portion of the total allowable landings allocated to the purse seine menhaden reduction sector under § [28.2-400.3](#) are projected to be taken. The Commissioner shall also notify the operators of any qualified menhaden processing factory of the date of closure by the most convenient and expeditious means available;*
- 2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the purse seine fishery for bait under § [28.2-400.3](#) is projected to be taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available; and*
- 3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the non-purse seine fishery for bait under § [28.2-400.3](#) is projected to be taken. The Commissioner shall also notify the operators of the non-purse seine bait fishery of the date of closure by the most convenient and expeditious means available. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws and regulations.*

*B. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports have been received, the portion of the total allowable landings has not been harvested by that sector. The Commission may establish any regulations it deems necessary and advisable, including trip limits or a time-limited reopening, to ensure that the*

*allowable landings for a reopened sector is not exceeded. Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the fishery.*

*C. The Commission shall maintain on its website a periodically updated tally of the menhaden harvest for each sector receiving an allocation under this section.*

*D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction purposes after the portion of the total allowable landings for the sector in which that person holds a license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor.*

*§ [28.2-400.5](#). Reporting requirements.*

*A. Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-week-end or non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain's Daily Fishing Report produced by the National Marine Fisheries Service.*

*B. Persons licensed for the non-purse seine menhaden bait sector shall submit a report on a form and on a schedule established by the Commission. The reporting period established by the Commission shall be longer than one week.*

*C. The reporting form required to be developed by the Commission shall require the following information:*

- 1. Trip start date;*
- 2. Vessel identification number;*
- 3. Individual fisherman identifier;*
- 4. Identification of dealer purchasing landings;*
- 5. Trip number;*
- 6. Species harvested;*
- 7. Quantity of fish landed and discarded in pounds or metric tons;*
- 8. Disposition of the landings;*
- 9. County or port landed;*
- 10. Gear type used;*
- 11. Quantity of gear used;*
- 12. Number of sets made during each trip;*
- 13. Time fishing gear is in the water;*
- 14. Days or hours at sea;*
- 15. Number of crewmembers;*
- 16. Area fished; and*
- 17. Date of unloading.*

§ [28.2-400.6](#). *Biological sampling program and adult abundance index.*

A. *The Commission shall:*

1. *Establish a biological sampling program to collect one 10-fish sample per 200 landed metric tons for length and weight-at-age data from the commercial menhaden harvest; and*

2. *Initiate a program to add Atlantic menhaden to the Virginia Marine Resources Commission's finfish biological sampling program in order to develop an adult menhaden survey index from Virginia pound nets.*

B. *By no later than December 1, 2013, the Commission shall submit a report to the General Assembly and the Governor that (i) describes progress in establishing the biological sampling program and development of the adult menhaden survey index called for by this section, (ii) discusses any difficulties in implementing the requirements of this section, including a lack of resources to properly implement the program, and (iii) provides a list of resources the Commission believes are necessary to properly implement the sampling program and index, with detailed justification, including an estimate of the cost of each item requested.*

§ [28.2-402](#). License fee to take menhaden with purse nets.

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § [28.2-201](#):

1. ~~On each boat or vessel under seventy 70 gross tons fishing with purse net, \$3 per gross ton, but not more than \$150 for the purse seine menhaden reduction sector, \$249.~~

2. ~~On each vessel over seventy 70 gross tons or over fishing with purse net, \$5 per gross ton, provided the maximum license fee for such vessels shall not be more than \$600 for the purse seine menhaden reduction sector, \$996.~~

3. ~~On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector, \$249.~~

4. ~~On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector, \$996.~~

~~The officer or agent shall thereupon grant a license to use such net or other device and state in the license the name or names of the person or persons who shall use the same and the amount of the license fee.~~

§ [28.2-403](#). Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals.

A. If the Commissioner is satisfied that the disclosures required by § [28.2-400](#) have been made and that the application conforms in other respects to the provisions of that section *or to* § [28.2-400.1](#), and upon payment of the license fee specified in § [28.2-402](#), the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.

If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer's action, together with the appellant's objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.

§ [28.2-1000.2](#). (Expires January 1, 2014) Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

A. For the purpose of this section:

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"Purse seine fishery for Atlantic menhaden" means those vessels licensed pursuant to § [28.2-402](#) that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

B. Upon ~~notification by the National Marine Fisheries Service of the date on which a~~ *determination* that the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the ~~Secretary of Natural Resources~~

*Commissioner* shall promptly publish a notice in the Virginia Register announcing the date of closure. ~~The Secretary of Natural Resources~~ *Commissioner* shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily ~~catch-landings~~ reports submitted to the ~~National Marine Fisheries Service~~ *required to be submitted under § 28.2-400.5* by the purse seine fishery for Atlantic menhaden.

C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be ~~109,020~~ 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed ~~122,740~~ 98,192 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed ~~109,020~~ 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.

~~E. The 2007 harvest cap for the purse seine fishery for Atlantic menhaden shall be adjusted for any underage or overage, as specified in subsection D, from the actual 2006 harvest of the purse seine fishery for Atlantic menhaden.~~

~~F. No person shall take Atlantic menhaden by purse seine for reduction purposes from the Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date that actual notice is provided of such closure pursuant to subsection B. Any person violating this provision shall be guilty of a Class 1 misdemeanor.~~

2. That the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, is amended and reenacted as follows:

**2. That the provisions of this act shall expire on January 1, 2014 2015.**

3. That § [28.2-1000.2](#) of the Code of Virginia is repealed effective January 1, 2015.

4. That the provisions of this act shall expire on January 1, 2015.

5. That an emergency exists and this act is in force from its passage.

## **Chapter 112 Congressman William Wampler, Sr., Memorial Highway; designating portion of Interstate Route 81.**

An Act to designate a portion of Interstate Route 81 the "Congressman William Wampler, Sr., Memorial Highway."

[\[H 1508\]](#)

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Interstate Route 81 between mile marker 1 at the Virginia/Tennessee boundary and Exit 118 is hereby designated the "Congressman William Wampler, Sr., Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 129 Coal; repeals an obsolete chapter that regulates surface mining.**

An Act to amend and reenact §§ [10.1-571](#), [45.1-234](#), [45.1-261.1](#), and [45.1-361.2](#) of the Code of Virginia and to repeal Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ [45.1-198](#) through [45.1-220.5](#)) of Title 45.1, relating to the surface mining of coal.

[\[H 2111\]](#)

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [10.1-571](#), [45.1-234](#), [45.1-261.1](#), and [45.1-361.2](#) of the Code of Virginia are amended and reenacted as follows:

§ [10.1-571](#). No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ [62.1-44.2](#) et seq.) of Title 62.1; or the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ [45.1-180](#) et seq.), ~~17 (§ [45.1-198](#) et seq.)~~ and 19 (§ [45.1-226](#) et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ [45.1-361.1](#) et seq.).

§ [45.1-234](#). Permits required; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. On and after eight months from the date on which a permanent state regulatory program is approved for ~~this~~ *the* Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter ~~17 (§ [45.1-198](#) et seq.)~~ *of this title* ~~19~~ (§ [45.1-226](#) et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ [45.1-245](#), [45.1-246](#), [45.1-247](#), [45.1-249](#), [45.1-250](#), and [45.1-251](#) and the penalty and enforcement regulations implementing those sections; ~~provided that during the continuation of a permit issued under Chapter 17 of this title, there shall be no change in the performance standards required thereunder.~~

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

C. Coal surface mining permits issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under a permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations promulgated by him. The Director shall also promulgate regulations, meeting the requirements of § 506 of the federal act, for longer permit terms, successors in interest to the permittee, termination of permit for failure to commence operations, right of and procedure for permit renewal, and extension of boundaries of mining operations.

§ [45.1-261.1](#). Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ [45.1-270.1](#) et seq.) ~~of this chapter~~, provided the Director finds that the following conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to either Chapter 17 (§ [45.1-198](#) et seq.) or 19 (§ [45.1-226](#) et seq.), ~~or a combination of both, of this title~~ and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11, the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

§ [45.1-361.2](#). Regulation of coal surface mining not affected by chapter.

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of ~~Chapters 17~~ (§ [45.1-198](#) et seq.) ~~and Chapter 19~~ (§ [45.1-226](#) et seq.) ~~of this title~~, including ~~but not limited to~~ requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on areas for which a coal surface mining permit is in effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on areas ~~which~~ *that* have been reclaimed by the surface mine operator or the Director shall be treated as post-mining uses. The Director shall give special consideration to the development and promulgation of variances from the postmining use requirements of Chapter 19 ~~of this title~~ for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of the ~~Virginia Coal Surface Mining Control and Reclamation Act of 1979~~ (§ [45.1-226](#) et seq.) *Chapter 19*.

2. That Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ [45.1-198](#) through [45.1-220.5](#)) of Title 45.1, is repealed.

## **Chapter 134 Charles K. "Pete" Estes Memorial Bridge; designating newly replaced U.S. Route 522 bridge.**

An Act to designate the newly replaced U.S. Route 522 bridge in Sperryville the "Charles K. 'Pete' Estes Memorial Bridge."

[\[H 2215\]](#)

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The newly replaced U.S. Route 522 bridge in Sperryville is hereby designated the "Charles K. 'Pete' Estes Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 309 Capital outlay; establishes revised six-year plan for projects.**

An Act to repeal Chapter 46 of the Acts of Assembly of 2009 and replace it with a revised capital outlay plan, relating to establishing a revised six-year capital outlay plan for projects to be funded entirely or partially from general fund-supported resources.

[\[H 2194\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the following capital outlay projects and descriptive information shall constitute the Commonwealth's capital outlay plan, pursuant to § [2.2-1518](#) of the Code of Virginia, for the capital projects supported entirely or partially from the general fund for the six-year period beginning July 1, 2013.*

<i>Agency Code/Agency</i>	<i>Priority</i>	<i>Project Name</i>	<i>Category</i>
<i>146--The Science Museum of Virginia</i>			
	<i>1</i>	<i>Construct Event Space and Upgrade Museum Exhibits</i>	<i>\$10,000,001 to \$25,000,000</i>
	<i>2</i>	<i>Construct Discovery Park</i>	<i>\$0 to \$10,000,000</i>
<i>156--Department of State Police</i>			
	<i>1</i>	<i>Construct State Police Castlewood BCI Office</i>	<i>\$0 to \$10,000,000</i>
<i>194--Department of General Services</i>			
	<i>1</i>	<i>Renovate 9th Street Office Building and Construct Parking Deck</i>	<i>\$75,000,001 to \$100,000,000</i>
	<i>2</i>	<i>Renovate Supreme Court Interior</i>	<i>Above \$100,000,000</i>
	<i>3</i>	<i>Capitol Complex Infrastructure and Security Improvements</i>	<i>Above \$100,000,000</i>
	<i>4</i>	<i>Renovate Old City Hall</i>	<i>\$25,000,001 to \$50,000,000</i>

- 5 *Renovate Morson Row* \$0 to \$10,000,000
- 6 *Demolish Zincke and Aluminum Buildings* \$0 to \$10,000,000
- 7 *Capital Projects Space Improvement for Dept. of Conservation and Recreation* \$0 to \$10,000,000
- 8 *Repair Exterior of Monroe Building and Replace Jefferson Building Windows* \$0 to \$10,000,000

*199--Department of Conservation & Recreation*

- 1 *Construct Phase I Development and Campground, Widewater State Park* \$10,000,001 to \$25,000,000
- 2 *Complete Cabin Complexes, Multiple State Parks* \$10,000,001 to \$25,000,000
- 3 *Complete Phase I Development, Powhatan State Park* \$0 to \$10,000,000
- 4 *Construct On-Site Residences, Various State Parks* \$0 to \$10,000,000
- 5 *Improve Natural Areas Access* \$0 to \$10,000,000
- 6 *Construct Visitor Centers at Douthat, Kiptopeke, & High Bridge State Parks* \$0 to \$10,000,000

7	<i>Construct Improvements at Natural Areas</i>	<i>\$0 to \$10,000,000</i>
8	<i>Construct Visitor Centers at Twin Lakes, Sky Meadows, and Fairy Stone State Parks</i>	<i>\$0 to \$10,000,000</i>
9	<i>Construct Visitor Center/Environmental Education Center, Five State Parks</i>	<i>\$10,000,001 to \$25,000,000</i>
10	<i>Develop Infrastructure, New River Trail State Park</i>	<i>\$10,000,001 to \$25,000,000</i>
11	<i>Dredge Boat Ramp and Repair Shoreline Erosion, Belle Isle State Park</i>	<i>\$0 to \$10,000,000</i>
12	<i>Acquire Property for Mayo River State Park</i>	<i>\$0 to \$10,000,000</i>
13	<i>Repair and Upgrade State Parks Owned Dams</i>	<i>\$0 to \$10,000,000</i>

*203--Woodrow Wilson  
Rehabilitation Center*

1	<i>Renovate Anderson Vocational Building, Phase I</i>	<i>\$0 to \$10,000,000</i>
2	<i>Renovate Dining Hall and Activities Building, Phase II</i>	<i>\$0 to \$10,000,000</i>
3	<i>Roof Replacement, Birdsall-Hoover</i>	<i>\$0 to</i>

	<i>Medical Administration Building</i>	<i>\$10,000,000</i>
4	<i>Asbestos Abatement, Phase IV</i>	<i>\$0 to \$10,000,000</i>
5	<i>Implement ADA Compliance Measures Campuswide</i>	<i>\$0 to \$10,000,000</i>

*204--The College of William and Mary*

1	<i>Construct Integrated Science Center, Phase III</i>	<i>\$75,000,001 to \$100,000,000</i>
2	<i>Renovate Tucker Hall</i>	<i>\$10,000,001 to \$25,000,000</i>
3	<i>Renovate Tyler Hall</i>	<i>\$10,000,001 to \$25,000,000</i>
4	<i>Construct Cooling Plant and Replace Utilities, Phase IV</i>	<i>\$0 to \$10,000,000</i>
5	<i>Renovate the Brafferton and Brafferton Kitchen</i>	<i>\$0 to \$10,000,000</i>
6	<i>Fine Arts Facility, Phase I</i>	<i>\$0 to \$10,000,000</i>
7	<i>Improve Lake Matoaka Dam Spillway</i>	<i>\$0 to \$10,000,000</i>
8	<i>Improve Campus Stormwater Infra-</i>	<i>\$0 to</i>

*structure* \$10,000,000

9 *Improve Accessibility Infrastructure* \$0 to  
\$10,000,000

*207--University of Virginia*

1 *Renovate New Cabell Hall* \$50,000,001  
to  
\$75,000,000

2 *Renovate Ruffner Hall* \$10,000,001  
to  
\$25,000,000

3 *Renovate the Rotunda* \$25,000,001  
to  
\$50,000,000

4 *Construct Ivy Foundation Trans-  
lational Research Building* \$50,000,001  
to  
\$75,000,000

5 *Replace North Grounds Boiler and  
Chiller Plant* \$10,000,001  
to  
\$25,000,000

6 *Renovate Rugby Administrative Build-  
ing* \$10,000,001  
to  
\$25,000,000

*208--Virginia Polytechnic  
Institute and State University*

1 *Address Fire Alarm Systems and  
Access* \$0 to  
\$10,000,000

2	<i>Renovate Davidson Hall</i>	\$25,000,001 to \$50,000,000
3	<i>Construct Engineering Signature Building</i>	\$75,000,001 to \$100,000,000
4	<i>Construct Chiller Plant, Phase I</i>	\$10,000,001 to \$25,000,000
5	<i>Construct Classroom Building</i>	\$25,000,001 to \$50,000,000
6	<i>Renovate/Renew Academic Buildings</i>	\$10,000,001 to \$25,000,000
7	<i>Construct Undergraduate Science Building</i>	\$25,000,001 to \$50,000,000
8	<i>Construct Translational Medicine Laboratory</i>	\$50,000,001 to \$75,000,000
9	<i>Construct Chiller Plant, Phase II</i>	\$10,000,001 to \$25,000,000
10	<i>Renovate Military Sciences Building</i>	\$10,000,001 to \$25,000,000



7	<i>Renovate Moody Hall</i>	\$10,000,001 to \$25,000,000
8	<i>Improve Historic Preservation Sites, Phase I</i>	\$0 to \$10,000,000
9	<i>Improve Public Safety and Security on Post, Phase I</i>	\$0 to \$10,000,000

*212--Virginia State  
University*

1	<i>Construct a Multipurpose Center</i>	\$75,000,001 to \$100,000,000
2	<i>Renovate Lockett Hall</i>	\$10,000,001 to \$25,000,000
3	<i>Construct Water Storage Tank</i>	\$0 to \$10,000,000
4	<i>Erosion and Sediment Control Storm- water Master Plan/Retention Pond</i>	\$0 to \$10,000,000
5	<i>Renovate and Expand Daniel Gym</i>	\$25,000,001 to \$50,000,000

*213--Norfolk State  
University*

1	<i>Construct a New Nursing and General Classroom Building</i>	\$25,000,001 to
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		\$50,000,000
2	<i>Renovate the Wilder Center</i>	\$0 to \$10,000,000
3	<i>Replace Brown Hall</i>	\$50,000,001 to \$75,000,000
4	<i>Renovate and Expand the Hamm Fine Arts Building</i>	\$25,000,001 to \$50,000,000
5	<i>Improve Signage, Roads and Campus Boundary, Phase I</i>	\$0 to \$10,000,000
6	<i>Construct Science Building</i>	\$10,000,001 to \$25,000,000

214--Longwood University

1	<i>Construct New Academic Building</i>	\$10,000,001 to \$25,000,000
2	<i>Renovate French Hall for Relocated Technology Center</i>	\$10,000,001 to \$25,000,000
3	<i>Install New Biomass Boiler</i>	\$0 to \$10,000,000
4	<i>Replace Willett Hall HVAC</i>	\$0 to \$10,000,000

5	<i>Construct Student Success Center</i>	<i>\$0 to \$10,000,000</i>
6	<i>Construct Physical Plant Building</i>	<i>\$25,000,001 to \$50,000,000</i>
7	<i>Renovate Heating Plant Facility</i>	<i>\$10,000,001 to \$25,000,000</i>
8	<i>Renovate Wygal Hall</i>	<i>\$0 to \$10,000,000</i>
9	<i>Construct New Admissions Office</i>	<i>\$0 to \$10,000,000</i>

*215--University of Mary  
Washington*

1	<i>Renovate Mercer and Woodward Halls</i>	<i>\$0 to \$10,000,000</i>
2	<i>Construct Jepson Science Center Addition</i>	<i>\$10,000,001 to \$25,000,000</i>
3	<i>Repair/Replace Underground Utilities</i>	<i>\$0 to \$10,000,000</i>
4	<i>Improve Storm Water Management</i>	<i>\$0 to \$10,000,000</i>
5	<i>Install University Card Access System</i>	<i>\$0 to \$10,000,000</i>

6	<i>Construct Information and Technology Convergence Center</i>	\$25,000,001 to \$50,000,000
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*216--James Madison  
University*

1	<i>Renovate West Wing Rockingham Hospital</i>	\$50,000,001 to \$75,000,000
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2	<i>Renovate and Expand Duke Hall</i>	\$25,000,001 to \$50,000,000
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3	<i>Construct Health and Engineering Academic Facility</i>	\$50,000,001 to \$75,000,000
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4	<i>Renovate Moody Hall</i>	\$10,000,001 to \$25,000,000
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5	<i>Renovate Johnston Hall</i>	\$0 to \$10,000,000
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6	<i>Construct Technology Infrastructure, Phases I &amp; II</i>	\$0 to \$10,000,000
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7	<i>Replace Boiler and Infrastructure, Phase II</i>	\$0 to \$10,000,000
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8	<i>Repair Newman Lake Dam</i>	\$0 to \$10,000,000
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*217--Radford University*

1	<i>Construct New Computational Sciences Building</i>	<i>\$25,000,001 to \$50,000,000</i>
2	<i>Construct New Academic Building, Phases I &amp; II</i>	<i>\$50,000,001 to \$75,000,000</i>
3	<i>Renovate Curie Hall</i>	<i>\$25,000,001 to \$50,000,000</i>
4	<i>Renovate Whitt Hall</i>	<i>\$0 to \$10,000,000</i>

*218--Virginia School for the Deaf and the Blind*

1	<i>Renovate Main Hall</i>	<i>\$10,000,001 to \$25,000,000</i>
2	<i>Repair Chapel</i>	<i>\$0 to \$10,000,000</i>
3	<i>Renovate Bradford Hall</i>	<i>\$0 to \$10,000,000</i>
4	<i>Increase Campus Security, ADA and Other Regulatory Compliance</i>	<i>\$0 to \$10,000,000</i>
5	<i>Install Sprinklers in Byrd Hall</i>	<i>\$0 to \$10,000,000</i>

*221--Old Dominion*

*University*

1	<i>Construct New School of Education</i>	<i>\$25,000,001 to \$50,000,000</i>
2	<i>Construct a Systems Research and Academic Building</i>	<i>\$10,000,001 to \$25,000,000</i>
3	<i>Replace Mechanical Systems in Oceanography and Physics Building</i>	<i>\$0 to \$10,000,000</i>
4	<i>Construct Joint Policing Facility</i>	<i>\$10,000,001 to \$25,000,000</i>
5	<i>Renovate Spong and Rollins Halls</i>	<i>\$25,000,001 to \$50,000,000</i>
6	<i>Construct a New Facilities Support Building</i>	<i>\$25,000,001 to \$50,000,000</i>
7	<i>Renovate the Education Building</i>	<i>\$10,000,001 to \$25,000,000</i>

*229--Virginia Cooperative Extension and Agriculture Experiment Station*

1	<i>Construct Human &amp; Agricultural Biosciences Building I</i>	<i>\$50,000,001 to \$75,000,000</i>
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2	<i>Improve Kentland Facilities, Phase I</i>	\$10,000,001 to \$25,000,000
3	<i>Construct Animal Production Facility</i>	\$0 to \$10,000,000
4	<i>Construct Human and Agricultural Bioscience Facility, Phase II</i>	\$75,000,001 to \$100,000,000

*236--Virginia Commonwealth University*

1	<i>Construct Classroom Building</i>	\$50,000,001 to \$75,000,000
2	<i>Renovate Sanger Hall, Phase II</i>	\$25,000,001 to \$50,000,000
3	<i>Construct Information Commons and Renovate Libraries</i>	\$50,000,001 to \$75,000,000
4	<i>Renovate Student Services Building, MCV Campus</i>	\$0 to \$10,000,000
5	<i>Renovate East Wing of the Oliver Hall Building</i>	\$0 to \$10,000,000
6	<i>Renovate Raleigh Building</i>	\$0 to \$10,000,000

*238--Virginia Museum of  
Fine Arts*

<i>1</i>	<i>Renovate Robinson House</i>	<i>\$0 to \$10,000,000</i>
<i>2</i>	<i>Replace Roof, 1985 Addition</i>	<i>\$0 to \$10,000,000</i>

*239--Frontier Culture  
Museum of Virginia*

<i>1</i>	<i>Construct Early American Industry Exhibit</i>	<i>\$0 to \$10,000,000</i>
<i>2</i>	<i>Expand Infrastructure</i>	<i>\$0 to \$10,000,000</i>

*241--Richard Bland College*

<i>1</i>	<i>Renovate Ernst Hall</i>	<i>\$0 to \$10,000,000</i>
<i>2</i>	<i>Umbrella Maintenance Project</i>	<i>\$0 to \$10,000,000</i>
<i>3</i>	<i>Construct Police Depart- ment/Technology Services Building</i>	<i>\$0 to \$10,000,000</i>

*242--Christopher Newport  
University*

<i>1</i>	<i>Construct Student Success Center</i>	<i>\$25,000,001 to \$50,000,000</i>
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2	<i>Construct Integrated Science Center, Phases I &amp; II</i>	<i>\$75,000,001 to \$100,000,000</i>
3	<i>Construct Luter School of Business</i>	<i>\$50,000,001 to \$75,000,000</i>
4	<i>Construct Library, Phase II</i>	<i>\$25,000,001 to \$50,000,000</i>
5	<i>Improve Student Security Infrastructure</i>	<i>\$0 to \$10,000,000</i>

*246--UVA's College at Wise*

1	<i>Construct New Library</i>	<i>\$25,000,001 to \$50,000,000</i>
2	<i>Dam Safety Modifications</i>	<i>\$0 to \$10,000,000</i>
3	<i>Renovate/Convert Wyllie Library</i>	<i>\$10,000,001 to \$25,000,000</i>
4	<i>Construct Proscenium Theatre Building</i>	<i>\$25,000,001 to \$50,000,000</i>

*247--George Mason University*

1	<i>Renovate Fine Arts Building</i>	<i>\$0 to</i>
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		\$10,000,000
2	<i>Construct Satellite Cooling and Heating Plant</i>	\$10,000,001 to \$25,000,000
3	<i>Expand Central Utility Plant</i>	\$0 to \$10,000,000
4	<i>Construct Campus Library Addition, Phase I</i>	\$50,000,001 to \$75,000,000
5	<i>Construct Potomac Science Center</i>	\$25,000,001 to \$50,000,000
6	<i>Construct Academic VII/Research III, Phase I</i>	\$50,000,001 to \$75,000,000
7	<i>Construct Life Sciences Building, Prince William Campus</i>	\$25,000,001 to \$50,000,000
8	<i>Hylton Center</i>	\$0 to \$10,000,000
9	<i>Renovate Robinson Hall and Harris Theater</i>	\$50,000,001 to \$75,000,000
10	<i>Construct Facilities Complex, Fairfax Campus</i>	\$25,000,001 to \$50,000,000

11 *Improve Telecommunications Infra-structure* \$0 to \$10,000,000

260--Virginia Community College System

1 *Construct Replacement for Tyler Academic Building, Northern Virginia - Alexandria Campus* \$25,000,001 to \$50,000,000

2 *Renovate and Expand Brault Building, Northern Virginia - Annandale Campus* \$10,000,001 to \$25,000,000

3 *Construct Learning Resources Building, Southside Virginia* \$10,000,001 to \$25,000,000

4 *Construct Workforce Training Center, Northern Virginia - Woodbridge Campus* \$10,000,001 to \$25,000,000

5 *Construct New Classroom and Administration Building, Blue Ridge* \$10,000,001 to \$25,000,000

6 *Construct Phase III Academic Building, Midlothian Campus, John Tyler CC* \$25,000,001 to \$50,000,000

7 *Renovate Bayside Building, Virginia Beach Campus, Tidewater CC* \$10,000,001 to \$25,000,000

8 *Renovate Building B, J. Sargeant Reynolds - Parham Road Campus* \$10,000,001 to

		\$25,000,000
9	<i>Renovate Reynolds Academic Building, Loudoun Campus, Northern Virginia CC</i>	\$10,000,001 to \$25,000,000
10	<i>Renovate Main Building, Lord Fairfax</i>	\$0 to \$10,000,000
11	<i>Renovate Anderson Hall, Virginia Western</i>	\$10,000,001 to \$25,000,000
12	<i>Expand Workforce Development Center, Danville</i>	\$0 to \$10,000,000
13	<i>Renovate Phase I Academic and Administration Building, Eastern Shore</i>	\$0 to \$10,000,000
14	<i>Construct Bioscience Building, Blue Ridge CC</i>	\$10,000,001 to \$25,000,000
15	<i>Construct Phase VII Academic Building, Annandale Campus, Northern Virginia CC</i>	\$25,000,001 to \$50,000,000
16	<i>Renovate Engineering and Industrial Technology Building, Danville CC</i>	\$10,000,001 to \$25,000,000
17	<i>Construct Academic Building CN6, Chesapeake Campus, Tidewater CC</i>	\$25,000,001 to \$50,000,000

18	<i>Construct Student Service &amp; Learning Resources Center, Christanna Campus, Southside Virginia</i>	\$10,000,001 to \$25,000,000
19	<i>Construct New Building for Trucking Program, Tidewater - Portsmouth Campus</i>	\$10,000,001 to \$25,000,000
20	<i>Improve Heating, Ventilation, and Air Conditioning, Rappahannock</i>	\$0 to \$10,000,000
21	<i>Construct Science Building, Chester Campus, John Tyler CC</i>	\$10,000,001 to \$25,000,000
22	<i>Construct Academic Building, Middletown Campus, Lord Fairfax CC</i>	\$10,000,001 to \$25,000,000
23	<i>Construct Academic Health and Wellness Center, Hampton Campus, Thomas Nelson CC</i>	\$10,000,001 to \$25,000,000
24	<i>Renovate Library and Learning Resource Center, Virginia Highlands</i>	\$0 to \$10,000,000
25	<i>Construct Workforce Development Center, Piedmont Virginia</i>	\$0 to \$10,000,000
26	<i>Renovate Buildings: Carroll, Bland, Galax, Grayson, Fincastle, and Smyth Halls, Wytheville</i>	\$25,000,001 to \$50,000,000
27	<i>Replace Exterior Windows and Doors, Rappahannock</i>	\$0 to \$10,000,000

28	<i>Renovate Bird and Nicholas Halls, John Tyler - Chester Campus</i>	<i>\$25,000,001 to \$50,000,000</i>
29	<i>Construct Learning Resources Center, Tidewater - Chesapeake Campus</i>	<i>\$25,000,001 to \$50,000,000</i>
30	<i>Renovate Plaza, Structural Repairs Phase II, Annandale Campus, North- ern Virginia</i>	<i>\$0 to \$10,000,000</i>
31	<i>Construct Network Operations Center, Tidewater</i>	<i>\$0 to \$10,000,000</i>
32	<i>Expand and Renovate Phase III Aca- demic Building, Northern Virginia - Loudoun Campus</i>	<i>\$10,000,001 to \$25,000,000</i>
33	<i>Renovate Bisdorf Phase II Academic Building, Northern Virginia - Alex- andria</i>	<i>\$10,000,001 to \$25,000,000</i>
34	<i>Construct Workforce Solutions and Academic Training Center, Fauquier Campus, Lord Fairfax</i>	<i>\$10,000,001 to \$25,000,000</i>
35	<i>Construct Canopies, Virginia High- lands</i>	<i>\$0 to \$10,000,000</i>
36	<i>Renovate Stone Hall Building, Patrick Henry</i>	<i>\$0 to \$10,000,000</i>
37	<i>Renovate Academic Classrooms and Administrative Building, Rap- pahannock</i>	<i>\$10,000,001 to \$25,000,000</i>

38	<i>Construct Phase III Academic Building, Woodbridge Campus, Northern Virginia</i>	<i>\$25,000,001 to \$50,000,000</i>
39	<i>Relocate Observatory and Great Dismal Swamp Education Center, Tidewater - Chesapeake Campus</i>	<i>\$0 to \$10,000,000</i>
40	<i>Renovate Academic Classrooms and Laboratories, Tidewater</i>	<i>\$0 to \$10,000,000</i>
41	<i>Construct Addition to Learning Resource Center, Patrick Henry</i>	<i>\$0 to \$10,000,000</i>
42	<i>Renovate and Repair Exterior/Interior Structures, Thomas Nelson</i>	<i>\$0 to \$10,000,000</i>
43	<i>Construct Maintenance Building, Germanna</i>	<i>\$0 to \$10,000,000</i>
44	<i>Renovate and Expand Phase III Academic Building, Manassas Campus, Northern Virginia</i>	<i>\$25,000,001 to \$50,000,000</i>

*268--Virginia Institute of Marine Sciences*

1	<i>Purchase Research Vessel</i>	<i>\$0 to \$10,000,000</i>
2	<i>Construct a Consolidated Scientific Research Facility</i>	<i>\$10,000,001 to \$25,000,000</i>
3	<i>Construct Facilities Management Main</i>	<i>\$0 to</i>

*tenance Facility* \$10,000,000

4 *Replace the Oyster Hatchery* \$10,000,001  
to  
\$25,000,000

5 *Expand the Fisheries Science Building* \$0 to  
\$10,000,000

*310--Virginia Economic  
Development Partnership*

1 *Bioscience Wet Laboratory Facility* \$10,000,001  
to  
\$25,000,000

*425--Jamestown-Yorktown  
Foundation*

1 *Construct Yorktown Museum* \$25,000,001  
to  
\$50,000,000

2 *Develop Outdoor Interpretive Areas* \$0 to  
\$10,000,000

3 *Yorktown Outside Areas, Signage and Amenities* \$0 to  
\$10,000,000

4 *Construct Jamestown Road Wall and Sound Buffer* \$0 to  
\$10,000,000

*702--Department for the  
Blind and Vision Impaired*

1 *Replace Roof on Library Resource* \$0 to

*Center* *\$10,000,000*

*720--Department of Behavioral Health and Developmental Services*

*1 Replace Facility Roofs* *\$10,000,001*  
*to*  
*\$25,000,000*

*2 Construct New Sexually Violent Predator Facility* *\$50,000,001*  
*to*  
*\$75,000,000*

*3 Repair/Replace Campus Infrastructures* *\$0 to*  
*\$10,000,000*

*4 Repair/Replace Boilers, Heat Distribution and HVAC Systems* *\$25,000,001*  
*to*  
*\$50,000,000*

*5 Replace Forensic Unit at Central State Hospital* *\$75,000,001*  
*to*  
*\$100,000,000*

*6 Replace Support Service Facility at Eastern State Hospital* *\$25,000,001*  
*to*  
*\$50,000,000*

*7 Abate Environmental Hazards* *\$0 to*  
*\$10,000,000*

*777--Department of Juvenile Justice*

*1 Upgrade Reception and Diagnostic* *\$10,000,001*

	<i>Center (Infirmary and School)</i>	<i>to</i> <i>\$25,000,000</i>
2	<i>Renovate Cedar Lodge and Replace Modular Building</i>	<i>\$0 to</i> <i>\$10,000,000</i>
3	<i>Construct Building at Oak Ridge Juvenile Correctional Center</i>	<i>\$10,000,001</i> <i>to</i> <i>\$25,000,000</i>
4	<i>Construct New Central Maintenance Building - Bon Air</i>	<i>\$0 to</i> <i>\$10,000,000</i>
5	<i>Construct New Central Maintenance and Materials Storage Building - Beaumont</i>	<i>\$0 to</i> <i>\$10,000,000</i>
6	<i>Convert Old Dining Hall to Dry Storage Warehouse Facility</i>	<i>\$0 to</i> <i>\$10,000,000</i>
7	<i>Construct Consolidated Central Warehouse Facility</i>	<i>\$0 to</i> <i>\$10,000,000</i>
8	<i>Renovate Beaumont Manor House</i>	<i>\$0 to</i> <i>\$10,000,000</i>
9	<i>Renovate Historic Bon Air House</i>	<i>\$0 to</i> <i>\$10,000,000</i>
10	<i>Correct Erosion of Pamunkey River Bank</i>	<i>\$0 to</i> <i>\$10,000,000</i>

*778--Department of Forensic Science*

1	<i>Expand Central Forensic Laboratory &amp;</i>	<i>\$75,000,001</i>
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	<i>Office of the Chief Medical Examiner Facility</i>	<i>to</i> <i>\$100,000,000</i>
2	<i>Expand Western Forensic Laboratory Facility &amp; Office of the Chief Medical Examiner Facility</i>	<i>\$25,000,001</i> <i>to</i> <i>\$50,000,000</i>
3	<i>Expand Eastern Forensic Laboratory Facility</i>	<i>\$0 to</i> <i>\$10,000,000</i>

*799--Department of Corrections*

1	<i>Construct Augusta Wastewater Treatment Plant</i>	<i>\$0 to</i> <i>\$10,000,000</i>
2	<i>Replace Windows and Mechanical Systems</i>	<i>\$0 to</i> <i>\$10,000,000</i>
3	<i>Replace Door Control Systems</i>	<i>\$0 to</i> <i>\$10,000,000</i>
4	<i>Replace Windows and Install Mechanical Equipment, VCCW</i>	<i>\$0 to</i> <i>\$10,000,000</i>
5	<i>Construct James River Water Line</i>	<i>\$0 to</i> <i>\$10,000,000</i>
6	<i>Replace Plumbing and Mechanical Systems - Baskerville</i>	<i>\$0 to</i> <i>\$10,000,000</i>
7	<i>Replace Roofs - Keen Mountain</i>	<i>\$0 to</i> <i>\$10,000,000</i>
8	<i>Replace Roofs and HVAC - Lawrenceville</i>	<i>\$0 to</i> <i>\$10,000,000</i>

9	<i>Construct Office Building for Richmond Probation and Parole District Office</i>	<i>\$0 to \$10,000,000</i>
10	<i>Upgrade Fire Safety System</i>	<i>\$0 to \$10,000,000</i>
11	<i>Upgrade Buckingham Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
12	<i>Construct Re-Entry Program Buildings</i>	<i>\$0 to \$10,000,000</i>
13	<i>Replace Caroline Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
14	<i>Replace Security Panels - Sussex I &amp; II</i>	<i>\$0 to \$10,000,000</i>
15	<i>Replace Security Panels and Detention Systems - Keen Mountain</i>	<i>\$0 to \$10,000,000</i>
16	<i>Upgrade Perimeter Detection System (Multiple Institutions)</i>	<i>\$0 to \$10,000,000</i>
17	<i>Upgrade Preliminary Wastewater Treatment</i>	<i>\$0 to \$10,000,000</i>
18	<i>Upgrade Building Electrical Service Entrance - Augusta</i>	<i>\$0 to \$10,000,000</i>
19	<i>Correct Environmental Deficiencies</i>	<i>\$0 to \$10,000,000</i>

*845--Dr. Martin Luther King,  
Jr. Memorial Commission*

1	<i>Emancipation and Freedom Monument</i>	\$0 to \$10,000,000
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*885--Institute for Advanced Learning Research*

1	<i>Construct Southern Virginia Bio-Renewable Center</i>	\$10,000,001 to \$25,000,000
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2	<i>Construct Greenhouse</i>	\$0 to \$10,000,000
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*912--Department of Veterans Services*

1	<i>Construct Veterans Care Center in Hampton Roads</i>	\$25,000,001 to \$50,000,000
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2	<i>Construct Northern Virginia Care Center</i>	\$25,000,001 to \$50,000,000
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3	<i>Construct Addition on the Sitter Bar-foot Veterans Care Center</i>	\$0 to \$10,000,000
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4	<i>Additions and Renovations, Veterans Care Center Salem</i>	\$0 to \$10,000,000
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5	<i>Construct DVS Offices and Parking at Virginia War Memorial</i>	\$0 to \$10,000,000
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*935--Roanoke Higher Education Authority*

1	<i>Waterproof Building</i>	<i>\$0 to \$10,000,000</i>
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*948--Southwest Virginia  
Higher Education Center*

1	<i>Construct Service Corridor and Storage Area</i>	<i>\$0 to \$10,000,000</i>
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2	<i>Construct New Wing</i>	<i>\$10,000,001 to \$25,000,000</i>
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*993--Central Capital Outlay*

1	<i>Improve Wallops Flight Facilities</i>	<i>\$0 to \$10,000,000</i>
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2. That Chapter 46 of the Acts of Assembly of 2009 is repealed.

**Chapter 322 Higher educational institutions; modifications to prior revenue bond bills, emergency.**

An Act to amend and reenact § 2 of the first enactment of Chapters 207 and 604 of the Acts of Assembly of 2008 and § 2 of the first enactment of Chapters 490 and 556 of the Acts of Assembly of 2012, relating to modifications to prior revenue bond bills for institutions of higher education.

[\[S 754\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 207 of the Acts of Assembly of 2008 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Code	Institution Amount	Project Title	Project -
	George Mason University	President's Park	17540
		Phase II Renovation	-
	\$15,633,000		
	George Mason University	Smithsonian CRC	17572
		Housing	-
	17,804,000		
	George Mason University	Housing VIII	17570-
	102,460,000		
	Old Dominion University	Construct Residence	17342

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	Hall, Phase II	-
34,779,000		
Radford University	<del>Construct</del> Renovate	17565
	Residence Halls	-
36,000,000		
The College of William	Renovate Graduate	17555
and Mary In Virginia	Student Dormitories	-
2,500,000		
The College of William	Renovate Campus	17554
and Mary In Virginia	Center and Trinkle Hall	-
35,000,000		
Virginia Polytechnic	Renovate Owens and	17558
Institute and State	West End Market Food	-
5,000,000		
University	Courts	
Virginia Polytechnic	Renovate Ambler	17557
Institute and State	Johnson Hall	-
55,000,000		
University		
Virginia Polytechnic	New Residence Hall	16682-
8,047,000		
Institute and State		
University		

Uncodified Acts of Assembly - 2013

Virginia State University	Demolish Student Village and Construct	17531	
	Gateway 500, Phase II		-
38,342,000			
Total			-
\$350,565,000			

2. That § 2 of the first enactment of Chapter 604 of the Acts of Assembly of 2008 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	-
Amount			
George Mason University	President's Park	17540	
	Phase II Renovation		1-
5,633,000			
George Mason University	Smithsonian CRC -	17572	

Uncodified Acts of Assembly - 2013

	Housing		1-
7,804,000			
George Mason University	Housing VIII	17570	10-
2,460,000			
Old Dominion University	Construct Residence	17342	
	Hall, Phase II		3-
4,779,000			
Radford University	<del>Construct</del> Renovate	17565	
	Residence Halls		3-
6,000,000			
The College of William	Renovate Graduate	17555	
	and Mary In Virginia	Student Dormitories	-
2,500,000			
The College of William	Renovate Campus	17554	
	and Mary In Virginia	Center and Trinkle Hall	3-
5,000,000			
Virginia Polytechnic	Renovate Owens and	17558	
Institute and State	West End Market Food		
	University	Courts	-
5,000,000			
Virginia Polytechnic	Renovate Ambler	17557	
Institute and State	Johnson Hall		
	University		5-
5,000,000			
Virginia Polytechnic	New Residence Hall	16682	
Institute and State			

Uncodified Acts of Assembly - 2013

University		-
8,047,000		
Virginia State University Demolish Student	17531	
Village and Construct		
	Gateway 500, Phase II	3-
8,342,000		
Total		\$35-
0,565,000		

3. That § 2 of the first enactment of Chapters 490 and 556 of the Acts of Assembly of 2012 are amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding ~~\$125,594,000~~ \$135,244,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	-
Amount			
George Mason University	Construct Student Housing IX-		

Uncodified Acts of Assembly - 2013

A	17929	\$41,071,000		
	James Madison University		Student Housing	
			Phase I	17949 \$5-
0,000,000	Old Dominion University		Renovate Student	
			Housing, Phase 2	17945 \$2-
3,113,000	Radford University		Renovate Washing-	
			ton Hall	17948 \$ -
5,410,000	The College of William		Renovate <del>Dormitory</del>	
	and Mary in Virginia			
<i>Dormitories</i>	17933	\$ 5,000,000		
<i>\$14,650,000</i>	The College of William		Construct New	
	and Mary in Virginia		Dormitory	17808 \$ -
1,000,000				
Total				
<del>\$125,594,000</del>				
<i>\$135,244,000</i>				

4. That an emergency exists and this act is in force from its passage.

## Chapter 358 Solar-powered or wind-powered electricity generation facility; SCC to conduct pilot program, etc.

An Act to direct the establishment of a pilot program for third party power purchase agreements.

[\[H 2334\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission (Commission) shall conduct a pilot program under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § [56-594](#) of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement), subject to the following terms, conditions, and restrictions:*

*a. The pilot program shall be conducted within the certificated service territory of an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, which utility is hereafter referred to as the "Pilot Utility";*

*b. The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 50 megawatts. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of one percent of the Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § [56-594](#) of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions of § [56-594](#), the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § [56-594](#) or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § [56-594](#), provided that an election not to net meter under § [56-594](#) shall not exempt the third party power*

*purchase agreement and the parties thereto from the requirements of this act that incorporate provisions of § [56-594](#);*

*c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than one megawatt shall be eligible for a third party power purchase agreement under the pilot program; however, if the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of one megawatt shall not affect the limits on the capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts for non-residential customers set forth in subsection B of § [56-594](#) of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;*

*d. A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;*

*e. The customer under a third party power purchase agreement under the pilot program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § [56-594](#) of the Code of Virginia, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;*

*f. A third party power purchase agreement under the pilot program shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and*

*g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.*

*§ 2. The Commission shall review the pilot program established pursuant to § 1 of this act in 2015 and every two years thereafter during the pilot program. In its review, the Commission shall determine whether the limitations in subdivisions b and c of § 1 should be expanded, reduced, or continued.*

*§ 3. Any third party power purchase agreement that is not entered into pursuant to the pilot program established pursuant to § 1 of this act is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § [56-577](#) of the Code of Virginia where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves.*

*§ 4. If the Commission approves a tariff proposed for electric power provided 100 percent from renewable energy that serves 100 percent of the load requirements for each retail customer account it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be available to any party to a third party power purchase agreement for the account being served by such power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval of the green tariff.*

*§ 5. Nothing in this act shall be construed as (i) rendering any person, by virtue of its selling electric power to an eligible customer-generator under a third party power purchase agreement entered into pursuant to the pilot program established under this act, a public utility or a competitive service provider, (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves, or (iii) affecting third party power purchase agreements in effect prior to the effective date of this act.*

2. That nothing in this act shall abridge any rights of either party to an agreement between a Pilot Utility, as defined in the first enactment of this act, and a group purchasing organization acting on behalf of Virginia local governments regarding the purchase of electric service.

3. That the State Corporation Commission shall, by December 1, 2013, establish guidelines concerning (i) information to be provided in notices required under subdivision f of § 1 of the first enactment of this act and (ii) procedures for aggregating and posting to the Commission's web site information derived from the aforesaid notices, including total capacity utilized by pilot projects for which notice has been received and capacity remaining available for future pilot projects. In addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the pilot program established under this act.

## **Chapter 368 William and Mary, College of; management agreement between State.**

An Act to amend and reenact Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, relating to the management agreement between the Commonwealth and The College of William and Mary; responsibilities of the Building Official.

[\[S 912\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1. That Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended and reenacted as follows:

EXHIBIT G

MANAGEMENT AGREEMENT

BETWEEN

THE COMMONWEALTH OF VIRGINIA

AND

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

PURSUANT TO

THE RESTRUCTURED HIGHER EDUCATION

FINANCIAL AND ADMINISTRATIVE OPERATIONS

ACT OF 2005

POLICY GOVERNING CAPITAL PROJECTS

THE RECTOR AND VISITORS OF

THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA

POLICY GOVERNING CAPITAL PROJECTS

I. PREAMBLE.

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, ~~the~~ *The* College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

## II. DEFINITIONS.

As used in this policy, the following terms shall have the following meanings, unless the context requires otherwise:

“Act” means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

“Board of Visitors” or “Board” means the Rector and Visitors of ~~the~~ *The* College of William and Mary in Virginia.

“Capital Lease” means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

“Capital Professional Services” means professional engineering, architecture, land surveying and landscape architecture services related to capital projects.

“Capital project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction, improvements or renovations, and Capital Leases.

“College” means ~~the~~ *The* College of William and Mary in Virginia, (State Agency 204), and the Virginia Institute of Marine Science, (State Agency 268).

“Covered Institution” means, on and after the Effective Date of its initial Management Agreement, a public institution of higher education of the Commonwealth of Virginia that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of the Act.

“Enabling Legislation” means those chapters, other than Chapter 4.10, of Title 23 of the Code of Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ [2.2-2817.2](#), [2.2-2905](#), and [51.1-126.3](#).

“Major Capital Project(s)” means the acquisition of any interest in land, including improvements on the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

“State Tax Supported Debt” means bonds, notes or other obligations issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if the debit service payments are made or ultimately are to be made from general government funds, as defined in the December 20, 2004 Report to the Governor and General Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

### III. SCOPE OF POLICY.

This Policy applies to the planning and budget development for capital projects, capital project authorization, and the implementation of capital projects, whether funded by a general fund appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other sources.

This Policy provides guidance for 1) the process for developing one or more capital project programs for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services and construction services, 4) design reviews and code approvals for capital projects, 5) environmental impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land dispositions, 9) project management systems, and 10) reporting requirements.

### IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

The Board of Visitors of the College shall at all times be fully and ultimately accountable for the proper fulfillment of the duties and responsibilities set forth in, and for the

appropriate implementation of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant to its legally permissible procedures, specifically delegate either herein or by separate Board resolution the duties and responsibilities set forth in this Policy to a person or persons within the College, who, while continuing to be fully accountable for such duties and responsibilities, may further delegate the implementation of those duties and responsibilities pursuant to the College's usual delegation policies and procedures.

#### V. CAPITAL PROGRAM.

The President shall adopt a system for developing one or more capital project programs that defines or define the capital needs of the College for a given period of time consistent with the College's published Master Plan. This process may or may not mirror the Commonwealth's requirements for capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements for capital plans. The Board may approve amendments to the program for Major Capital Projects annually or more often if circumstances warrant.

It shall be College policy that each capital project program shall meet the College's mission and institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College policy that each capital project shall be of a size and scope to provide for the defined program needs, designed in accordance with all applicable building codes and handicapped accessibility standards as well as the College's design guidelines and standards, and costed to reflect current costs and escalated to the mid-point of anticipated construction.

#### VI. AUTHORIZATION OF CAPITAL PROJECTS.

The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and those pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the State's process for capital budget requests.

It shall be the policy of the College that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the

President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement.

Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through his designee, to be justified.

Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

#### VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the College that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:

Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;

Making procurement rules clear in advance of any competition;

Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.

#### VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code. The President shall designate a Building Official responsible for building code compliance at the College, including the Virginia Institute of Marine Science and ~~Richard Bland College~~, by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official function. If option (i) is selected, the individual hired as the College Building Official shall be an employee of the College who has no other assigned duties or responsibilities at the institution and who is not employed by any firm or business providing facility services to the College, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building

Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee as required. When serving as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects or engineers who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired under the College's personnel system as a member of the review unit shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § [23-38.109](#) C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

## XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

### A. Environmental and Land Use Considerations.

It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The College shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the College to comply with local zoning laws and ordinances.

### B. Infrastructure and Site Condition.

The President, acting through his designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental engineer has been engaged by the College to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.

### C. Title and Survey.

A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.

D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.

XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.

XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.

XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § [23-38.109](#) C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.

## **Chapter 382 Solar-powered or wind-powered electricity generation facility; SCC to conduct pilot program, etc.**

An Act to direct the establishment of a pilot program for third party power purchase agreements.

[\[S 1023\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission (Commission) shall conduct a pilot program under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § [56-594](#) of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement), subject to the following terms, conditions, and restrictions:*

- a. The pilot program shall be conducted within the certificated service territory of an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, which utility is hereafter referred to as the "Pilot Utility";*
- b. The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 50 megawatts. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of one percent of the Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § [56-594](#) of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions of § [56-594](#), the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § [56-594](#) or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § [56-594](#), provided that an election not to net meter under § [56-594](#) shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act that incorporate provisions of § [56-594](#);*
- c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than one megawatt shall be eligible for a third party power purchase agreement under the pilot program; however, if the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of one megawatt shall not affect the limits on the capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts for non-residential customers set forth in subsection B of § [56-594](#) of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;*
- d. A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;*
- e. The customer under a third party power purchase agreement under the pilot program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § [56-594](#) of the Code of Virginia, including*

*the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;*

*f. A third party power purchase agreement under the pilot program shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and*

*g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.*

*§ 2. The Commission shall review the pilot program established pursuant to § 1 of this act in 2015 and every two years thereafter during the pilot program. In its review, the Commission shall determine whether the limitations in subdivisions b and c of § 1 should be expanded, reduced, or continued.*

*§ 3. Any third party power purchase agreement that is not entered into pursuant to the pilot program established pursuant to § 1 of this act is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § [56-577](#) of the Code of Virginia where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves.*

*§ 4. If the Commission approves a tariff proposed for electric power provided 100 percent from renewable energy that serves 100 percent of the load requirements for each retail customer account it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be available to any party to a third party power purchase agreement for the account being served by such power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval of the green tariff.*

*§ 5. Nothing in this act shall be construed as (i) rendering any person, by virtue of its selling electric power to an eligible customer-generator under a third party power purchase agreement entered into pursuant to the pilot program established under this act, a public utility or a competitive service provider, (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves, or (iii) affecting third party power purchase agreements in effect prior to the effective date of this act.*

2. That nothing in this act shall abridge any rights of either party to an agreement between a Pilot Utility, as defined in the first enactment of this act, and a group purchasing organization acting on behalf of Virginia local governments regarding the purchase of electric service.

3. That the State Corporation Commission shall, by December 1, 2013, establish guidelines concerning (i) information to be provided in notices required under subdivision f of § 1 of the first enactment of this act and (ii) procedures for aggregating and posting to the Commission's web site information derived from the aforesaid notices, including total capacity utilized by pilot projects for which notice has been received and capacity remaining available for future pilot projects. In addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the pilot program established under this act.

## **Chapter 106 Easements; authorizes conveyance of right-of-way between Dept. of Forestry & Ratcliffe Foundation.**

An Act authorizing the exchange of easements between the Department of Forestry and the Ratcliffe Foundation.

[\[S 1068\]](#)

Approved March 6, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-1107](#) of the Code of Virginia, the Department of Forestry is hereby authorized to convey, upon such terms as the Department deems proper, with the approval of the Governor, a perpetual right-of-way easement across the Channels State Forest to the Ratcliffe Foundation. Such easement shall be 20 feet in width and run with the existing road in the location described to the greatest extent possible. The final easement may vary as necessary to reach the boundary of the Russell County Parcel, and as deemed necessary by both parties as an improvement in the road location. The purpose of the conveyance from the Department of Forestry to the Ratcliffe Foundation is to provide access to other property of the Ratcliffe Foundation, located in Russell County, identified as tax map parcel number 80-R-35-40.*

*§ 2. In consideration for such conveyance, the Department is hereby authorized to accept, on behalf of the Commonwealth, a conveyance from the Ratcliffe Foundation of a perpetual nonexclusive right-of-way easement across a portion of Ratcliffe Foundation property, identified as tax map parcel 031-A-1 in Washington County. Such easement shall be 20 feet in width and run with the existing road in the location described. The purpose of this conveyance is to provide the Department with improved access to the Channels State Forest, identified as tax map parcels 009-A-1 and 021-A-1 in Washington County, in a manner advantageous to the Department's management and protection needs.*

*The deeds conveying the easements shall be in a form approved by the Attorney General.*

## **Chapter 147 Virginia War Memorial Shrine of Memory; memorialization of fallen Virginians by inclusion of names.**

An Act to codify the criteria to memorialize fallen Virginians at the Virginia War Memorial.

[\[S 987\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision to the contrary, and in accordance with Chapter 404 of the Acts of Assembly of 2009, the names and homes of record of patriotic Virginians who rendered faithful military service and paid the ultimate sacrifice in the cause of freedom and liberty for the Commonwealth and the nation shall be engraved on the walls of the Virginia War Memorial Shrine of Memory, subject to the following criteria:*

*1. The deceased service member shall be a Virginian based upon official state of residency as listed on U.S. Department of Defense documents. However, the Virginia War Memorial Foundation Board of Trustees may also, under extraordinary circumstances and within the full discretion of the Board, determine that the service member is a Virginian based on place of birth, longtime residency, or other substantial ties to the Commonwealth independent of the residency status listed on U.S. Department of Defense documents; and*

*2. The deceased service member shall have died while serving on active duty in the uniformed armed forces in a U.S. Department of Defense designated combat zone under honorable conditions or shall have been designated "Missing in Action" and presumed dead. For purposes of this act, "uniformed armed forces" shall include active duty members of the Army, Navy, Air Force, Marine Corps, Coast Guard, Reserve elements of any such branches, and National Guard when mobilized for qualifying service.*

## **Chapter 167 Virginia's Future, Council on; extends sunset provision.**

An Act to amend and reenact the third enactment of Chapter 900 of the Acts of Assembly of 2003, as amended by Chapter 240 of the Acts of Assembly of 2008, relating to the Council on Virginia's Future; extension of sunset provision.

[\[S 1257\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 900 of the Acts of Assembly of 2003, as amended by Chapter 240 of the Acts of Assembly of 2008, is amended and reenacted as follows:
3. That the provision of this act shall expire on July 1, ~~2013~~ 2017.

## **Chapter 194 Widgeon, Randy Marshall; transfers his service pistol to his widow, Pamela Turlington Widgeon.**

An Act to transfer a service pistol to the widow of Captain Randy Marshall Widgeon.

[\[H 1515\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Pamela Turlington Widgeon, the widow of Captain Randy Marshall Widgeon, be, and hereby is, vested with title to, and authorized to possess and retain as her own, for payment of \$1.05, Captain Randy Marshall Widgeon's service pistol, which he used*

*as a member of the Virginia Marine Police, Eastern Shore District. This transfer is made as a visible and expressed token of appreciation of the General Assembly for the professionalism, devotion, and dedication of Captain Randy Marshall Widgeon and for his years of service prior to his death.*

## **Chapter 153 Claims; Bennett Barbour's estate.**

An Act for the relief of Bennett Barbour's estate.

[\[S 1132\]](#)

Approved March 12, 2013

Whereas, on April 14, 1978, Bennett Barbour (Mr. Barbour) was convicted of rape and was sentenced on April 28, 1978, to 10 years for rape; and

Whereas, in 1978, Mr. Barbour was also convicted of unrelated burglary and larceny offenses and on April 17, 1978, was sentenced to serve five years for burglary and three years for grand larceny; and

Whereas, Mr. Barbour served time from February 15, 1978, to June 23, 1982, and then re-entered prison from September 3, 1985, until March 26, 1987; and

Whereas, Mr. Barbour served a total of five years and eleven months, and using the quarter-time calculation for parolees, two years can be attributed to the burglary and grand larceny convictions and the remaining three years and eleven months attributed to his rape conviction; and

Whereas, in 2010 the Virginia Department of Forensic Science conducted DNA analysis on evidence from the rape which failed to identify Mr. Barbour's DNA and instead implicated a convicted rapist; and

Whereas, on May 24, 2012, Mr. Barbour was granted a writ of actual innocence by the Virginia Supreme Court, formally clearing him of the rape; and

Whereas, on January 10, 2013, Mr. Barbour died; and

Whereas, Mr. Barbour had no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding the provisions of Article 18.2 (§ [8.01-195.10](#) et seq.) of Chapter 3 of Title 8.01 of the Code of Virginia and because Mr. Barbour was alive at the time a claim on his behalf was introduced into the 2013 Session of the General*

*Assembly, there is hereby appropriated from the general fund of the state treasury the sum of \$162,527 to be paid to the estate of Mr. Bennett Barbour (Mr. Barbour) upon execution of a release by the personal representative of Mr. Barbour's estate from any present or future claims Mr. Barbour or his estate may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision thereof and any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia.*

*The compensation, subject to the execution of the release described herein, shall be paid as a lump sum of \$162,527 to the estate of Mr. Barbour by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release.*

## **Chapter 177 License plates, special; issuance for supporters of Washington Nationals baseball team.**

### CHAPTER 177

An Act to authorize the issuance of special license plates for supporters of the Washington Nationals baseball team; fees.

[\[H 1387\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Washington Nationals baseball team; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates to supporters of the Washington Nationals baseball team.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Washington Nationals Fund*

*established within the Department of Accounts. These funds shall be paid annually to the Washington Nationals Dream Foundation and used to support the Foundation's operations, programs, and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 251 Burial services; Cemetery Board to develop process to ensure consumers get accurate cost estimates.**

An Act directing the Cemetery Board to develop a process to ensure consumers receive accurate cost estimates for burial services.

[\[H 1563\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, on or before June 30, 2014, the Cemetery Board shall consider current consumer protection provisions and develop a process whereby a consumer will be provided a current general price list and itemized statement of charges for burial services provided by a cemetery company prior to the execution of a contract for such services.*

## **Chapter 277 Subdivision ordinance; Charlottesville may allow developer to construct sidewalk on residential lot.**

An Act to allow the City of Charlottesville to amend its subdivision ordinance regarding the provision of sidewalks.

[\[H 1724\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The governing body of the City of Charlottesville may, as a part of its subdivision*

*ordinance as authorized by § [15.2-2242](#) of the Code of Virginia, include provisions allowing the subdivider or developer of a residential lot, or of a lot containing at least one residential unit, the option of either (i) dedicating land for and constructing a sidewalk as specified in subdivision 9 of § [15.2-2242](#) or (ii) contributing to a sidewalk fund, maintained and administered by the city, funds equivalent to the cost of the dedication of land for and construction of a sidewalk on the property. Nothing in this act shall alter in any way any authority of localities or the Department of Transportation to require sidewalks on any newly constructed street or highway.*

## **Chapter 168 Eastern Virginia Medical School; reduces minimum number of required meetings of Board of Visitors.**

An Act to amend and reenact § 2, as amended, of Chapter 471 of the Acts of Assembly of 1964, relating to the Eastern Virginia Medical School; meetings of board of visitors.

[\[S 1330\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 2, as amended, of Chapter 471 of the Acts of Assembly of 1964 is amended and reenacted as follows:

§ 2. The Medical School shall be governed by a Board of Visitors (the Board) composed of 17 members as follows: two nonlegislative citizen members to be appointed at large by the Governor; two nonlegislative citizen members to be appointed at large by the Senate Committee on Rules; three nonlegislative citizen members to be appointed at large by the Speaker of the House of Delegates; six members to be appointed by the Eastern Virginia Medical School Foundation; and four members of whom shall be appointed by their respective city councils as follows: two members for the City of Norfolk, one member for the City of Virginia Beach, and one member appointed by the following city councils in a rotating manner beginning with the City of Chesapeake, the City of Hampton, the City of Portsmouth, the City of Suffolk, and the City of Newport News.

Effective June 30, 2009, as terms expire on the Board among those members previously appointed by the region's city councils, the Commonwealth's three appointing bodies shall make appointments in a rotating manner, in the following order: in 2009, two Governor's appointments and two Senate appointments; and in 2010, three House of

Delegates appointments. In 2011, four appointments shall be made by the region's city councils as previously described. Thereafter, all Board appointments will be made by the initial appointing body. Any vacancy that occurs prior to the completion of the term shall be appointed by the appointing authority, for the remainder of the term only. Appointments by the Eastern Virginia Medical School Foundation (the Foundation) shall represent the broad involvement of the Medical School in the Commonwealth at large. All appointments shall be for terms of three years, commencing on the first day of July of the appointment year. However, appointments to fill vacancies shall be made by the appropriate appointing authority, as the case may be, to commence on appropriate dates for the unexpired terms.

No person shall be eligible to serve for more than two successive full three-year terms; however, after the expiration of a term of two years or less, or after the expiration of the remainder of a term to which the member was appointed to fill a vacancy, or after one year following the expiration of a second full three-year term, two additional three-year terms may be served by a member, if appointed. In addition, an officer of the Board may serve up to three additional one-year terms.

Members shall receive no salaries but shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties. Each member shall continue to hold office until his successor has been appointed and qualified.

Each appointing authority shall have the right to remove any member it appointed for malfeasance or misfeasance, incompetence, or gross neglect of duty.

Each member shall take an appropriate oath of office before the clerk of any circuit court of the Commonwealth, and the oath shall be filed with such clerk.

Members of the Board shall elect, on an annual basis, one of their number as rector and another as vice-rector and shall also elect a secretary and treasurer and such assistant secretaries and treasurers as the Board may authorize for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer.

The Board shall appoint a President, who shall be the chief executive officer, with such duties as may be prescribed by the Board. The Board shall also appoint a dean, a provost, such vice presidents, and other administrative and academic officers as the Board may authorize, and such professors, teachers, staff members, and agents as it deems proper. The Board may prescribe the duties of such staff and faculty, and provide for the employment of other personnel as may be necessary. The Board shall generally direct the affairs of the Medical School.

The Board shall make such rules, regulations and bylaws for its own government and procedures as it shall determine. The Board may generally, in respect to the government and management of the Medical School adopt such rules and regulations as it may deem expedient, which are not contrary to law. The Board shall meet at least ~~six~~ *four* times each year and may hold such special meetings as it deems necessary. The rector or any three members may call special meetings of the Board. The Board may appoint an executive committee composed of at least three and no more than five members for the transaction of business in the recess of the Board.

The Board shall have the right to confer degrees, including honorary degrees, consistent with the approval authority of the State Council of Higher Education pursuant to Title 23 of the Code of Virginia.

## **Chapter 451 Behavioral Health and Developmental Services, Department of; list of licensed providers on website.**

An Act to require the Department of Behavioral Health and Developmental Services to include certain information on its website.

[\[H 2328\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall list licensed providers included on the website of the Department's Office of Licensing by the assumed or fictitious name under which the provider is doing business in the Commonwealth. Within the file of that record following the name under which the provider does business in the Commonwealth, the record shall also include any other Virginia corporate name of the provider, if different from the assumed or fictitious name under which the provider is doing business.*

## **Chapter 202 Non-gravel effluent drain systems for onsite sewage systems; regulations.**

An Act to require the Board of Health to promulgate regulations for chamber and bundled expanded polystyrene effluent distribution systems for onsite sewage systems.

[\[H 1726\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Health shall promulgate regulations for chamber and bundled expanded polystyrene effluent distribution systems for onsite sewage systems permitted by the Commissioner pursuant to Article 1 (§ [32.1-164](#) et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia. Such regulations shall include requirements for chamber and bundled expanded polystyrene effluent distribution systems for onsite sewage systems, which shall include (i) specifications for the physical construction of chamber and bundled expanded polystyrene effluent distribution systems including minimum exterior width, height, effluent storage capacity, and structural capacity; (ii) requirements for a permeable interface between chamber and bundled expanded polystyrene effluent distribution systems and trench sidewall soil surfaces for the absorption of wastewater; (iii) criteria for the allowable slope, maximum length, minimum sidewall depth, and minimum lateral separation of chamber and bundled expanded polystyrene effluent distribution system absorption trenches; (iv) criteria for substituting chamber and bundled expanded polystyrene effluent distribution systems for gravity percolation trenches and gravel and crushed stone low pressure systems; (v) criteria for determining the minimum area requirements for chamber and bundled expanded polystyrene effluent distribution system absorption trenches; and (vi) such other requirements pertaining to the promulgation of chamber and bundled expanded polystyrene effluent distribution system regulations for onsite sewage systems as may be deemed necessary by the Board.*

2. That an emergency exists and this act is in force from its passage.

3. That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

4. That the Board of Health shall promulgate regulations for other effluent distribution system technologies for onsite sewage systems as may be deemed necessary by the Board.

## **Chapter 220 Old Flat State Forest; authorizes DOF to convey and accept lands in Grayson County.**

An Act to authorize the Department of Forestry to convey and accept certain parcels of land in Grayson County.

[\[H 2035\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-1107](#) of the Code of Virginia, the Department of Forestry is hereby authorized to convey to Rodney Richardson, his successors and assigns, upon terms as the Department deems proper, with the approval of the Governor, a parcel of real property located in Old Flat State Forest, tax map parcel number 64-A-A in Grayson County.*

*§ 2. In consideration for such conveyance, the Department is authorized to accept, on behalf of the Commonwealth, a conveyance from Rodney Richardson of real property, tax map parcel number 64-A-14 adjacent to Old Flat State Forest.*

*§ 3. The exchange of real property shall be approximately acre for acre, or equal in market value. The boundaries of such conveyance shall be determined by mutual agreement of the Department of Forestry and Rodney Richardson.*

*The deeds of conveyance shall be in the form approved by the Attorney General.*

## **Chapter 455 Community colleges; certain colleges to develop policies to increase dual enrollment.**

An Act to require certain community colleges to develop policies to increase dual enrollment in career and technical education courses that are not at full capacity.

[\[S 846\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That Danville Community College, Patrick Henry Community College, Southside Virginia Community College, Virginia Western Community College, and Wytheville Community College shall, under the terms of their existing dual enrollment agreements with public high schools that are located in the regions served by the community colleges, develop policies to encourage greater dual enrollment in career and technical education courses that are not at full capacity. Such policies shall include notification to public high schools of vacancies in career and technical courses.*

## **Chapter 488 Municipal deed; restrictions on certain property in Virginia Beach.**

An Act to amend and reenact § 2 of Chapter 931 of the Acts of Assembly of 1993, as amended by Chapter 152 of the Acts of Assembly of 2002, relating to municipal deed restrictions on certain property in Virginia Beach.

[\[H 1703\]](#)

Approved March 18, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 931 of the Acts of Assembly of 1993, as amended by Chapter 152 of the Acts of Assembly of 2002, is amended and reenacted as follows:

§ 2. Tracts 1 and 2 shall be used only for municipal recreational purposes and shall be subject to reclamation by the Commonwealth, in whole or in part, upon demand by the Governor, in the event of a national emergency declared by the President or by Congress. The property shall be returned to the City upon expiration of the emergency. For purposes of this section, municipal recreational purposes include entering into a public-private partnership for improvements to any golf course located on *or adjacent to* such tracts *and public-private partnerships with nonprofit entities that provide services for the benefit of veterans and disabled persons.*

## **Chapter 238 Real property; authorizes VDOT to convey certain property controlled by Department in Albemarle Co.**

An Act to authorize an exchange of real property by the Department of Transportation; Keene Area Headquarters, Albemarle County.

[\[H 2186\]](#)

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the Virginia Department of Transportation, with the approval of the Governor as required by §§ [2.2-1149](#) and [2.2-1156](#) of the Code of Virginia, is hereby authorized to convey a wedge-shaped parcel of land, consisting of the southeasternmost corner of the Department's Keene Area Headquarters in Albemarle County, and containing 1.3246 acres, more or less, being a portion of the property acquired by the Department by deed dated December 30, 1952, and recorded in Deed Book 304, Page 303 in the Clerk's Office of the Circuit Court of Albemarle County, in exchange for land adjoining the Keene Area Headquarters, and such other consideration, as determined by the Department to be sufficient to render the property received by the Department suitable for the installation of a septic drain field for the Keene Area Headquarters.*

*§ 2. The exchange, and all documentation pursuant thereto, shall be in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents pursuant to appropriate law and as may be necessary to accomplish the exchange.*

## **Chapter 265 Southwestern VA Mental Health Institute; DBHDS authorized to convey real property in Smyth County.**

An Act authorizing the Governor to convey certain real property held in the name of the Department of Behavioral Health and Developmental Services as part of the Southwestern Virginia Mental Health Institute located in Marion in Smyth County to the Mount Rogers Community Services Board.

[\[H 1668\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Behavioral Health and Developmental Services, with the approval of the Governor and the Attorney General, in the manner set forth in § [2.2-1150](#) B of the Code of Virginia, is authorized to convey, without consideration, that portion of the real property located on the grounds of the Southwestern Virginia Mental Health Institute located at 340 Bagley Circle in Marion in Smyth County, described in a deed recorded in the clerk's office of the Circuit Court of the County of Smyth, Virginia, at DB 16, Page 310, held in the name of the Department of Behavioral Health and Developmental Services and currently leased to the Mount Rogers Community Services Board, to the Mount Rogers Community Services Board for the purpose of providing services for individuals in need of mental health, developmental, and substance abuse services.*

*§ 2. Such conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

*§ 3. All costs and expenses incurred in the transfer of the property, including but not limited to the cost of a survey to establish the limits of the property to be transferred, shall be paid by the Mount Rogers Community Services Board.*

## **Chapter 528 Libraries; Town of Leesburg may by ordinance establish an endowment fund for purpose of supporting.**

An Act to allow establishment of a library endowment in the Town of Leesburg.

[\[S 890\]](#)

Approved March 18, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Town of Leesburg may by ordinance establish an endowment fund for the purpose of supporting a library owned or operated by the town. The endowment may*

*receive all gifts, grants, or contributions designated for inclusion in the endowment. No part of the endowment shall revert to the general fund of the town.*

*The endowment shall be established and administered by the governing body of the town or by a nonprofit entity created or approved by the governing body for such purpose. Any such nonprofit entity shall be governed by a board appointed by the governing body and granted such powers and authority as may be necessary to administer the endowment.*

## **Chapter 556 Libraries; Town of Leesburg may by ordinance establish an endowment fund for supporting certain.**

An Act to allow establishment of a library endowment in the Town of Leesburg.

[\[H 1558\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Town of Leesburg may by ordinance establish an endowment fund for the purpose of supporting a library owned or operated by the town. The endowment may receive all gifts, grants, or contributions designated for inclusion in the endowment. No part of the endowment shall revert to the general fund of the town.*

*The endowment shall be established and administered by the governing body of the town or by a nonprofit entity created or approved by the governing body for such purpose. Any such nonprofit entity shall be governed by a board appointed by the governing body and granted such powers and authority as may be necessary to administer the endowment.*

## **Chapter 296 U.S. Route 58 Corridor Development Program; issuance of bonds.**

An Act to amend and reenact § 2 of the first enactment of Chapter 8 of the Acts of Assembly of the Second Special Session of 1989, as amended by the second enactment of Chapter 538 of the Acts of Assembly of 1999, relating to issuance of bonds for the U.S. Route 58 Corridor Development Program.

[\[H 1953\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 8 of the Acts of Assembly of the Second Special Session of 1989, as amended by the second enactment of Chapter 538 of the Acts of Assembly of 1999, is amended and reenacted as follows:

§ 2. The Commonwealth Transportation Board is hereby authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of §§ [33.1-267](#) through [33.1-295](#) of the Code of Virginia, at one time or from time to time, bonds of the Commonwealth to be designated "Commonwealth of Virginia Transportation Revenue Bonds, Series .....", in an aggregate principal amount not exceeding ~~\$704,300,000~~ *\$1,300,000,000*, to finance the cost of the project plus an amount for the issuance costs, reserve funds, and other financing expenses. *However, the additional amount of bonds that may be issued solely because of the amendments to this section by the 2013 Session of the General Assembly may be issued only if the debt service of such bonds can be met solely with the revenues provided to the Route 58 Corridor Development Fund pursuant to the provisions of § [58.1-815](#) of the Code of Virginia.* The proceeds of such bonds shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all costs incurred or to be incurred for the construction of an adequate, modern, safe, and efficient highway system, generally along Virginia's southern boundary and which comprises the U.S. Route 58 Corridor Development Program as established in § [33.1-221.1:2](#), consisting of the environmental and engineering studies, rights-of-way acquisition, construction and related improvements (the Project).

Of the \$104.3 million increase in bond issuance authorized by the 1999 Session of the General Assembly, \$82 million shall be issued for portions of the Project as follows:

Portion of the Project	Bond amount
Ben Hur to Pennington Gap in Lee County	\$ 9,800,000
Pennington Gap to Dryden in Lee County	\$35,600,000
Anticipated shortfall on the Danville Bypass, Clarksville Bypass, Stuart Bypass, and completion of a gap west	

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of Jonesville in Lee County	\$35,100,000
Taylor's Valley in Washington County	\$ 1,500,000
Total	\$82,000,000

The remaining balance of the bond issuance in the amount of \$22.3 million, together with any bond issuance not necessary to complete the above projects, shall be issued for right-of-way acquisition from the Town of Stuart, in Patrick County along the Route 58 corridor to its intersection with Interstate 77 in Carroll County.

*Beginning July 1, 2013, completion of the following portions of the Project shall have priority over any other portions of the Project:*

*Crooked Oak Section*

*ROW Acquisition*

*Utility Relocation*

*Permitting and Mitigation*

*Design*

*Construction and Inspection*

*Vesta Section*

*ROW Acquisition*

*Utility Relocation*

*Permitting and Mitigation*

*Design*

*Construction and Inspection*

*Lover's Leap Section*

*ROW Acquisition*

*Utility Relocation*

*Permitting and Mitigation*

*Design*

*Construction and Inspection*

*Of the foregoing three sections of the Project, construction of the Lover's Leap Section shall have priority over construction of the other two sections. However, construction of these other two sections may proceed simultaneously with the construction of the*

*Lover's Leap Section if such simultaneous construction does not delay construction of the Lover's Leap Section.*

Such revenue bonds shall be issued by the Commonwealth Transportation Board and sold through the Treasury Board, which is hereby designated the sales and paying agent of the Commonwealth Transportation Board with respect to such bonds. The Treasury Board's duties shall include the approval of the terms and structure of the bonds.

2. That the provisions of this act shall not become effective unless a comprehensive, statewide transportation funding bill is passed by the 2013 Session of the General Assembly, and becomes law.

### **Chapter 313 Virginia's Future, Council on; extends sunset provision.**

An Act to amend and reenact the third enactment of Chapter 900 of the Acts of Assembly of 2003, as amended by Chapter 240 of the Acts of Assembly of 2008, relating to the Council on Virginia's Future; extension of sunset provision.

[\[H 2245\]](#)

Approved March 13, 2013

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 900 of the Acts of Assembly of 2003, as amended by Chapter 240 of the Acts of Assembly of 2008, is amended and reenacted as follows:

3. That the provision of this act shall expire on July 1, ~~2013~~ 2017.

### **Chapter 342 Bedford, City of, reversion; taxation of real property that becomes part of Bedford County.**

An Act to provide for property taxes for Bedford County, the City of Bedford, and the Town of Bedford in connection with a transition to town status.

[\[H 1756\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the County of Bedford shall levy and impose real property taxes on real property located in the Town of Bedford that shall become part of Bedford County as of July 1, 2013, for a period covering a short tax year beginning July 1, 2013, through December 31, 2013. The County of Bedford shall not levy and impose real property taxes on real property located in the Town of Bedford for any period prior to July 1, 2013. The Commissioner of the Revenue of Bedford County shall make an assessment, as of January 1, 2013, of the real property located within the Town of Bedford, regardless of the fact that residents of the Town of Bedford are residents of the City of Bedford as of that date. The levy or imposition of such County real property taxes located within the Town of Bedford based on such assessments shall be valid subject to the following:*

*A. The Commissioner of the Revenue of Bedford County shall assess, as of January 1, 2013, the real property located within the portion of the Town of Bedford that was in the City of Bedford prior to July 1, 2013, based on the real property assessments made by the Commissioner of the Revenue of the City of Bedford as of July 1, 2012, subject to such changes as may be lawfully made. The Commissioner of the Revenue of Bedford County shall assess, as of January 1, 2013, the real property located within the portion of the Town of Bedford that was part of Bedford County prior to July 1, 2013, based on the most current assessments of such real property made by the Commissioner of the Revenue of Bedford County. Such assessments made by the Commissioner of the Revenue of Bedford County shall be used for the levy or imposition of County real property taxes within the Town of Bedford until such time as the Commissioner of the Revenue of Bedford County undertakes a reassessment of all real property within Bedford County, subject to such changes in assessments as may be lawfully made.*

*B. Notwithstanding any other provision of law, real property owners within the City of Bedford, or real property owners within the Town of Bedford on or after July 1, 2013, may submit, without payment of a late filing fee, an application for taxation of real property on the basis of use assessment, pursuant to Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, for the short tax year of Bedford County beginning July 1, 2013. Such application shall be submitted to the Commissioner of the Revenue of Bedford County no later than August 1, 2013. The use value assessments made by the Commissioner of the Revenue of Bedford County for real property located within the*

*Town of Bedford shall be based on the same indicia of value used for real property located within Bedford County prior to July 1, 2013.*

*C. For the short tax year beginning July 1, 2013, through December 31, 2013, the real property taxes levied by Bedford County within the Town of Bedford shall be levied at the real property tax rate in effect in Bedford County as of January 1, 2013, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2013, through December 31, 2013. The real property taxes imposed by Bedford County for such short tax year shall meet the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed.*

*§ 2. Notwithstanding any other provision of law, the Town of Bedford shall levy and impose real property taxes on real property located in the Town of Bedford for a period covering a short tax year beginning July 1, 2013, through December 31, 2013. The real property taxes levied by the Town of Bedford for such short tax year shall be based on the real property assessments made by the Commissioner of the Revenue of Bedford County as of January 1, 2013, subject to the following:*

*A. For the short tax year beginning July 1, 2013, through December 31, 2013, the real property taxes levied by the Town of Bedford shall be levied at the real property tax rate in effect in the Town of Bedford as of July 1, 2013, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2013, through December 31, 2013. Subsequent tax years for the levy and imposition of real property taxes in the Town of Bedford shall begin on January 1 unless the Town by ordinance shall provide, as authorized by general law, that taxes on real property shall be levied and imposed on a fiscal year basis.*

*B. Notwithstanding any other provision of law, such real property taxes shall be levied on the use value assessments made by the Commissioner of the Revenue of Bedford County for any qualifying property if the City of Bedford or the Town of Bedford has adopted on or before July 15, 2013, an ordinance providing for use value assessment and taxation.*

*§ 3. Notwithstanding any other provision of law, the City of Bedford shall levy and impose property taxes on tangible personal property located in the City of Bedford for the tax year beginning January 1, 2013, based on the assessment of such property made by the Commissioner of the Revenue of the City of Bedford as of January 1, 2013. Any supplements or changes to such assessments as may be required after July 1, 2013, shall be made by the Commissioner of the Revenue of Bedford County. The taxes on tangible personal property shall be due on such date as may be established by the City of*

*Bedford, and if the due date is later than July 1, 2013, then the taxes shall be owed and payable to the Town of Bedford, which shall have the right to collect all such taxes.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 360 License plates, special; issuance for supporters of Washington Nationals baseball team.**

An Act to authorize the issuance of special license plates for supporters of the Washington Nationals baseball team; fees.

[\[S 837\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Washington Nationals baseball team; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Washington Nationals baseball team.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Washington Nationals Fund established within the Department of Accounts. These funds shall be paid annually to the Washington Nationals Dream Foundation and used to support the Foundation's operations, programs, and activities in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## Chapter 413 Senior judge system; to study feasibility & effect of implementing for circuit & district courts.

An Act allowing a study by the National Center for State Courts of a senior judge system for the circuit and district courts of the Commonwealth. Report.

[\[H 1435\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Office of the Executive Secretary of the Supreme Court of Virginia may contract with an independent entity such as the National Center for State Courts to study the feasibility and effect of implementing a senior judge system for the circuit and district courts of the Commonwealth. Under such a system, a specified number of retired circuit and district judges would become senior judges who sit for a specified amount of time each year in return for a portion of the current compensation of active judges, eliminating the need for substitute judges and special justices and for the reliance on recalled retired judges.*

*Technical assistance for the study shall be provided by the Office of the Executive Secretary of the Supreme Court of Virginia. All agencies of the Commonwealth shall provide assistance for this study, upon request.*

*The Office of the Executive Secretary of the Supreme Court of Virginia shall submit an executive summary of its progress towards meeting the objectives of this section on the feasibility of implementing a senior judge system to the General Assembly by November 15, 2014. If a study is conducted, the report shall include (i) recommendations for the number of senior judges required and the minimum amount of time each senior judge would be required to sit in order to eliminate the need for substitute judges and special justices and to eliminate the reliance on recalled retired judges; (ii) the fiscal impact of a senior judge system in order to weigh the costs and benefits of such a system; (iii) recommendations for how a senior judge system should be structured to allow for more equitable and efficient allocation of judicial resources within and among the judicial circuits and districts; (iv) the improvements to the administration of justice resulting from such a system, including but not limited to more efficient and consistent adjudication in all courts through the use of a constant group of judges, in contrast to the more random, unsystematic use of substitute judges, special justices, and recalled retired judges; (v)*

*recommendations for the method used to select, designate, and compensate senior judges, including the appropriate duration of such service; and (vi) recommendations for the most effective procedure to transition to a senior judge system.*

*The executive summary and report shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

## **Chapter 597 Post-adoption services; DSS shall utilize all federal bonus payments to support.**

An Act to require the Department of Social Services to utilize federal adoption bonus payments to support post-adoption services.

[\[H 2271\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall utilize all federal adoption bonus payments received by the Commonwealth in a fiscal year to support post-adoption services.*

## **Chapter 632 Medical waste; repeals certain provisions regarding disposal of.**

An Act to repeal §§ 3 and 4 of Chapters 751, 773, and 774 of the Acts of Assembly of 1992, as amended by Chapter 721 of the Acts of Assembly of 1993, relating to the incineration of medical waste.

[\[S 1055\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That §§ 3 and 4 of Chapters 751, 773, and 774 of the Acts of Assembly of 1992, as amended by Chapter 721 of the Acts of Assembly of 1993, are repealed.*

## **Chapter 384 Bedford, City of, reversion; taxation of real property in Town of Bedford and City of Bedford.**

An Act to provide for property taxes for Bedford County, the City of Bedford, and the Town of Bedford in connection with a transition to town status.

[\[S 1041\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the County of Bedford shall levy and impose real property taxes on real property located in the Town of Bedford that shall become part of Bedford County as of July 1, 2013, for a period covering a short tax year beginning July 1, 2013, through December 31, 2013. The County of Bedford shall not levy and impose real property taxes on real property located in the Town of Bedford for any period prior to July 1, 2013. The Commissioner of the Revenue of Bedford County shall make an assessment, as of January 1, 2013, of the real property located within the Town of Bedford, regardless of the fact that residents of the Town of Bedford are residents of the City of Bedford as of that date. The levy or imposition of such County real property taxes located within the Town of Bedford based on such assessments shall be valid subject to the following:*

*A. The Commissioner of the Revenue of Bedford County shall assess, as of January 1, 2013, the real property located within the portion of the Town of Bedford that was in the City of Bedford prior to July 1, 2013, based on the real property assessments made by the Commissioner of the Revenue of the City of Bedford as of July 1, 2012, subject to such changes as may be lawfully made. The Commissioner of the Revenue of Bedford County shall assess, as of January 1, 2013, the real property located within the portion of the Town of Bedford that was part of Bedford County prior to July 1, 2013, based on the most current assessments of such real property made by the Commissioner of the Revenue of Bedford County. Such assessments made by the Commissioner of the Revenue*

*of Bedford County shall be used for the levy or imposition of County real property taxes within the Town of Bedford until such time as the Commissioner of the Revenue of Bedford County undertakes a reassessment of all real property within Bedford County, subject to such changes in assessments as may be lawfully made.*

*B. Notwithstanding any other provision of law, real property owners within the City of Bedford, or real property owners within the Town of Bedford on or after July 1, 2013, may submit, without payment of a late filing fee, an application for taxation of real property on the basis of use assessment, pursuant to Article 4 (§ [58.1-3229](#) et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, for the short tax year of Bedford County beginning July 1, 2013. Such application shall be submitted to the Commissioner of the Revenue of Bedford County no later than August 1, 2013. The use value assessments made by the Commissioner of the Revenue of Bedford County for real property located within the Town of Bedford shall be based on the same indicia of value used for real property located within Bedford County prior to July 1, 2013.*

*C. For the short tax year beginning July 1, 2013, through December 31, 2013, the real property taxes levied by Bedford County within the Town of Bedford shall be levied at the real property tax rate in effect in Bedford County as of January 1, 2013, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2013, through December 31, 2013. The real property taxes imposed by Bedford County for such short tax year shall meet the requirement of Article X, Section 1 of the Constitution of Virginia that all property, except as provided in the Constitution, shall be taxed.*

*§ 2. Notwithstanding any other provision of law, the Town of Bedford shall levy and impose real property taxes on real property located in the Town of Bedford for a period covering a short tax year beginning July 1, 2013, through December 31, 2013. The real property taxes levied by the Town of Bedford for such short tax year shall be based on the real property assessments made by the Commissioner of the Revenue of Bedford County as of January 1, 2013, subject to the following:*

*A. For the short tax year beginning July 1, 2013, through December 31, 2013, the real property taxes levied by the Town of Bedford shall be levied at the real property tax rate in effect in the Town of Bedford as of July 1, 2013, but the amount of tax due shall be reduced by one-half to reflect the short tax year beginning July 1, 2013, through December 31, 2013. Subsequent tax years for the levy and imposition of real property taxes in the Town of Bedford shall begin on January 1 unless the Town by ordinance shall provide, as authorized by general law, that taxes on real property shall be levied and imposed on a fiscal year basis.*

*B. Notwithstanding any other provision of law, such real property taxes shall be levied on the use value assessments made by the Commissioner of the Revenue of Bedford County for any qualifying property if the City of Bedford or the Town of Bedford has adopted on or before July 15, 2013, an ordinance providing for use value assessment and taxation.*

*§ 3. Notwithstanding any other provision of law, the City of Bedford shall levy and impose property taxes on tangible personal property located in the City of Bedford for the tax year beginning January 1, 2013, based on the assessment of such property made by the Commissioner of the Revenue of the City of Bedford as of January 1, 2013. Any supplements or changes to such assessments as may be required after July 1, 2013, shall be made by the Commissioner of the Revenue of Bedford County. The taxes on tangible personal property shall be due on such date as may be established by the City of Bedford, and if the due date is later than July 1, 2013, then the taxes shall be owed and payable to the Town of Bedford, which shall have the right to collect all such taxes.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 404 Capital outlay; establishes revised six-year plan for projects.**

An Act to repeal Chapter 46 of the Acts of Assembly of 2009 and replace it with a revised capital outlay plan, relating to establishing a revised six-year capital outlay plan for projects to be funded entirely or partially from general fund-supported resources.

[\[S 1265\]](#)

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the following capital outlay projects and descriptive information shall constitute the Commonwealth's capital outlay plan, pursuant to [§ 2.2-1518](#) of the Code of Virginia, for the capital projects supported entirely or partially from the general fund for the six-year period beginning July 1, 2013.*

<i>Agency Code/Agency</i>	<i>Priority</i>	<i>Project Name</i>	<i>Category</i>
<i>146--The Science Museum of Virginia</i>			
	<i>1</i>	<i>Construct Event Space and Upgrade Museum Exhibits</i>	<i>\$10,000,001 to \$25,000,000</i>
	<i>2</i>	<i>Construct Discovery Park</i>	<i>\$0 to \$10,000,000</i>
<i>156--Department of State Police</i>			
	<i>1</i>	<i>Construct State Police Castlewood BCI Office</i>	<i>\$0 to \$10,000,000</i>
<i>194--Department of General Services</i>			
	<i>1</i>	<i>Renovate 9th Street Office Building and Construct Parking Deck</i>	<i>\$75,000,001 to \$100,000,000</i>
	<i>2</i>	<i>Renovate Supreme Court Interior</i>	<i>Above \$100,000,000</i>
	<i>3</i>	<i>Capitol Complex Infrastructure and Security Improvements</i>	<i>Above \$100,000,000</i>
	<i>4</i>	<i>Renovate Old City Hall</i>	<i>\$25,000,001 to \$50,000,000</i>
	<i>5</i>	<i>Renovate Morson Row</i>	<i>\$0 to</i>

\$10,000,000

- 6 *Demolish Zincke and Aluminum Buildings* \$0 to \$10,000,000
- 7 *Capital Projects Space Improvement for Dept. of Conservation and Recreation* \$0 to \$10,000,000
- 8 *Repair Exterior of Monroe Building and Replace Jefferson Building Windows* \$0 to \$10,000,000

*199--Department of Conservation & Recreation*

- 1 *Construct Phase I Development and Campground, Widewater State Park* \$10,000,001 to \$25,000,000
- 2 *Complete Cabin Complexes, Multiple State Parks* \$10,000,001 to \$25,000,000
- 3 *Complete Phase I Development, Powhatan State Park* \$0 to \$10,000,000
- 4 *Construct On-Site Residences, Various State Parks* \$0 to \$10,000,000
- 5 *Improve Natural Areas Access* \$0 to \$10,000,000
- 6 *Construct Visitor Centers at Douthat, Kiptopeke, & High Bridge State Parks* \$0 to \$10,000,000

7	<i>Construct Improvements at Natural Areas</i>	<i>\$0 to \$10,000,000</i>
8	<i>Construct Visitor Centers at Twin Lakes, Sky Meadows, and Fairy Stone State Parks</i>	<i>\$0 to \$10,000,000</i>
9	<i>Construct Visitor Center/Environmental Education Center, Five State Parks</i>	<i>\$10,000,001 to \$25,000,000</i>
10	<i>Develop Infrastructure, New River Trail State Park</i>	<i>\$10,000,001 to \$25,000,000</i>
11	<i>Dredge Boat Ramp and Repair Shoreline Erosion, Belle Isle State Park</i>	<i>\$0 to \$10,000,000</i>
12	<i>Acquire Property for Mayo River State Park</i>	<i>\$0 to \$10,000,000</i>
13	<i>Repair and Upgrade State Parks Owned Dams</i>	<i>\$0 to \$10,000,000</i>

*203--Woodrow Wilson Rehabilitation Center*

1	<i>Renovate Anderson Vocational Building, Phase I</i>	<i>\$0 to \$10,000,000</i>
2	<i>Renovate Dining Hall and Activities Building, Phase II</i>	<i>\$0 to \$10,000,000</i>
3	<i>Roof Replacement, Birdsall-Hoover Medical Administration Building</i>	<i>\$0 to \$10,000,000</i>

4	<i>Asbestos Abatement, Phase IV</i>	\$0 to \$10,000,000
5	<i>Implement ADA Compliance Measures Campuswide</i>	\$0 to \$10,000,000

*204--The College of William and Mary*

1	<i>Construct Integrated Science Center, Phase III</i>	\$75,000,001 to \$100,000,000
2	<i>Renovate Tucker Hall</i>	\$10,000,001 to \$25,000,000
3	<i>Renovate Tyler Hall</i>	\$10,000,001 to \$25,000,000
4	<i>Construct Cooling Plant and Replace Utilities, Phase IV</i>	\$0 to \$10,000,000
5	<i>Renovate the Brafferton and Brafferton Kitchen</i>	\$0 to \$10,000,000
6	<i>Fine Arts Facility, Phase I</i>	\$0 to \$10,000,000
7	<i>Improve Lake Matoaka Dam Spillway</i>	\$0 to \$10,000,000
8	<i>Improve Campus Stormwater Infrastructure</i>	\$0 to \$10,000,000

9	<i>Improve Accessibility Infrastructure</i>	\$0 to \$10,000,000
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*207--University of Virginia*

1	<i>Renovate New Cabell Hall</i>	\$50,000,001 to \$75,000,000
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2	<i>Renovate Ruffner Hall</i>	\$10,000,001 to \$25,000,000
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3	<i>Renovate the Rotunda</i>	\$25,000,001 to \$50,000,000
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4	<i>Construct Ivy Foundation Trans- lational Research Building</i>	\$50,000,001 to \$75,000,000
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5	<i>Replace North Grounds Boiler and Chiller Plant</i>	\$10,000,001 to \$25,000,000
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6	<i>Renovate Rugby Administrative Build- ing</i>	\$10,000,001 to \$25,000,000
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*208--Virginia Polytechnic  
Institute and State University*

1	<i>Address Fire Alarm Systems and Access</i>	\$0 to \$10,000,000
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2	<i>Renovate Davidson Hall</i>	\$25,000,001 to \$50,000,000
3	<i>Construct Engineering Signature Building</i>	\$75,000,001 to \$100,000,000
4	<i>Construct Chiller Plant, Phase I</i>	\$10,000,001 to \$25,000,000
5	<i>Construct Classroom Building</i>	\$25,000,001 to \$50,000,000
6	<i>Renovate/Renew Academic Buildings</i>	\$10,000,001 to \$25,000,000
7	<i>Construct Undergraduate Science Building</i>	\$25,000,001 to \$50,000,000
8	<i>Construct Translational Medicine Laboratory</i>	\$50,000,001 to \$75,000,000
9	<i>Construct Chiller Plant, Phase II</i>	\$10,000,001 to \$25,000,000
10	<i>Renovate Military Sciences Building</i>	\$10,000,001 to \$25,000,000



to  
\$25,000,000

- 8 *Improve Historic Preservation Sites, Phase I* \$0 to \$10,000,000
- 9 *Improve Public Safety and Security on Post, Phase I* \$0 to \$10,000,000

212--Virginia State University

- 1 *Construct a Multipurpose Center* \$75,000,001 to \$100,000,000
- 2 *Renovate Lockett Hall* \$10,000,001 to \$25,000,000
- 3 *Construct Water Storage Tank* \$0 to \$10,000,000
- 4 *Erosion and Sediment Control Storm-water Master Plan/Retention Pond* \$0 to \$10,000,000
- 5 *Renovate and Expand Daniel Gym* \$25,000,001 to \$50,000,000

213--Norfolk State University

- 1 *Construct a New Nursing and General Classroom Building* \$25,000,001 to \$50,000,000

2	<i>Renovate the Wilder Center</i>	\$0 to \$10,000,000
3	<i>Replace Brown Hall</i>	\$50,000,001 to \$75,000,000
4	<i>Renovate and Expand the Hamm Fine Arts Building</i>	\$25,000,001 to \$50,000,000
5	<i>Improve Signage, Roads and Campus Boundary, Phase I</i>	\$0 to \$10,000,000
6	<i>Construct Science Building</i>	\$10,000,001 to \$25,000,000

214--Longwood University

1	<i>Construct New Academic Building</i>	\$10,000,001 to \$25,000,000
2	<i>Renovate French Hall for Relocated Technology Center</i>	\$10,000,001 to \$25,000,000
3	<i>Install New Biomass Boiler</i>	\$0 to \$10,000,000
4	<i>Replace Willett Hall HVAC</i>	\$0 to \$10,000,000
5	<i>Construct Student Success Center</i>	\$0 to

		\$10,000,000
6	Construct Physical Plant Building	\$25,000,001 to \$50,000,000
7	Renovate Heating Plant Facility	\$10,000,001 to \$25,000,000
8	Renovate Wygal Hall	\$0 to \$10,000,000
9	Construct New Admissions Office	\$0 to \$10,000,000

215--University of Mary  
Washington

1	Renovate Mercer and Woodward Halls	\$0 to \$10,000,000
2	Construct Jepson Science Center Addition	\$10,000,001 to \$25,000,000
3	Repair/Replace Underground Utilities	\$0 to \$10,000,000
4	Improve Storm Water Management	\$0 to \$10,000,000
5	Install University Card Access System	\$0 to \$10,000,000
6	Construct Information and Technology	\$25,000,001

*Convergence Center* to  
\$50,000,000

*216--James Madison  
University*

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|---|---|---|
| 1 | <i>Renovate West Wing Rockingham Hospital</i>                     | <i>\$50,000,001<br/>to<br/>\$75,000,000</i> |
| 2 | <i>Renovate and Expand Duke Hall</i>                              | <i>\$25,000,001<br/>to<br/>\$50,000,000</i> |
| 3 | <i>Construct Health and Engineering Academic Facility</i>         | <i>\$50,000,001<br/>to<br/>\$75,000,000</i> |
| 4 | <i>Renovate Moody Hall</i>  | <i>\$10,000,001<br/>to<br/>\$25,000,000</i> |
| 5 | <i>Renovate Johnston Hall</i>                                     | <i>\$0 to<br/>\$10,000,000</i>              |
| 6 | <i>Construct Technology Infrastructure-<br/>Phases I &amp; II</i> | <i>\$0 to<br/>\$10,000,000</i>              |
| 7 | <i>Replace Boiler and Infrastructure -<br/>Phase II</i>           | <i>\$0 to<br/>\$10,000,000</i>              |
| 8 | <i>Repair Newman Lake Dam</i>                                     | <i>\$0 to<br/>\$10,000,000</i>              |

*217--Radford University*

Uncodified Acts of Assembly - 2013

1	<i>Construct New Computational Sciences Building</i>	<i>\$25,000,001 to \$50,000,000</i>
2	<i>Construct New Academic Building, Phases I &amp; II</i>	<i>\$50,000,001 to \$75,000,000</i>
3	<i>Renovate Curie Hall</i>	<i>\$25,000,001 to \$50,000,000</i>
4	<i>Renovate Whitt Hall</i>	<i>\$0 to \$10,000,000</i>

*218--Virginia School for the Deaf and the Blind*

1	<i>Renovate Main Hall</i>	<i>\$10,000,001 to \$25,000,000</i>
2	<i>Repair Chapel</i>	<i>\$0 to \$10,000,000</i>
3	<i>Renovate Bradford Hall</i>	<i>\$0 to \$10,000,000</i>
4	<i>Increase Campus Security, ADA and Other Regulatory Compliance</i>	<i>\$0 to \$10,000,000</i>
5	<i>Install Sprinklers in Byrd Hall</i>	<i>\$0 to \$10,000,000</i>

*221--Old Dominion University*

1	<i>Construct New School of Education</i>	\$25,000,001 to \$50,000,000
2	<i>Construct a Systems Research and Academic Building</i>	\$10,000,001 to \$25,000,000
3	<i>Replace Mechanical Systems in Oceanography and Physics Building</i>	\$0 to \$10,000,000
4	<i>Construct Joint Policing Facility</i>	\$10,000,001 to \$25,000,000
5	<i>Renovate Spong and Rollins Halls</i>	\$25,000,001 to \$50,000,000
6	<i>Construct a New Facilities Support Building</i>	\$25,000,001 to \$50,000,000
7	<i>Renovate the Education Building</i>	\$10,000,001 to \$25,000,000

*229--Virginia Cooperative  
Extension and Agriculture  
Experiment Station*

1	<i>Construct Human &amp; Agricultural Biosciences Building I</i>	\$50,000,001 to \$75,000,000
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2	<i>Improve Kentland Facilities, Phase I</i>	\$10,000,001 to \$25,000,000
3	<i>Construct Animal Production Facility</i>	\$0 to \$10,000,000
4	<i>Construct Human and Agricultural Bioscience Facility, Phase II</i>	\$75,000,001 to \$100,000,000

*236--Virginia Commonwealth University*

1	<i>Construct Classroom Building</i>	\$50,000,001 to \$75,000,000
2	<i>Renovate Sanger Hall, Phase II</i>	\$25,000,001 to \$50,000,000
3	<i>Construct Information Commons and Renovate Libraries</i>	\$50,000,001 to \$75,000,000
4	<i>Renovate Student Services Building, MCV Campus</i>	\$0 to \$10,000,000
5	<i>Renovate East Wing of the Oliver Hall Building</i>	\$0 to \$10,000,000
6	<i>Renovate Raleigh Building</i>	\$0 to \$10,000,000

*238--Virginia Museum of*

*Fine Arts*

1	<i>Renovate Robinson House</i>	<i>\$0 to \$10,000,000</i>
2	<i>Replace Roof, 1985 Addition</i>	<i>\$0 to \$10,000,000</i>

*239--Frontier Culture  
Museum of Virginia*

1	<i>Construct Early American Industry Exhibit</i>	<i>\$0 to \$10,000,000</i>
2	<i>Expand Infrastructure</i>	<i>\$0 to \$10,000,000</i>

*241--Richard Bland College*

1	<i>Renovate Ernst Hall</i>	<i>\$0 to \$10,000,000</i>
2	<i>Umbrella Maintenance Project</i>	<i>\$0 to \$10,000,000</i>
3	<i>Construct Police Depart- ment/Technology Services Building</i>	<i>\$0 to \$10,000,000</i>

*242--Christopher Newport  
University*

1	<i>Construct Student Success Center</i>	<i>\$25,000,001 to \$50,000,000</i>
2	<i>Construct Integrated Science Center, Phases I &amp; II</i>	<i>\$75,000,001</i>

		to
		\$100,000,000
3	Construct Luter School of Business	\$50,000,001
		to
		\$75,000,000
4	Construct Library, Phase II	\$25,000,001
		to
		\$50,000,000
5	Improve Student Security Infra- structure	\$0 to
		\$10,000,000

246--UVA's College at Wise

1	Construct New Library	\$25,000,001
		to
		\$50,000,000
2	Dam Safety Modifications	\$0 to
		\$10,000,000
3	Renovate/Convert Wyllie Library	\$10,000,001
		to
		\$25,000,000
4	Construct Proscenium Theatre Build- ing	\$25,000,001
		to
		\$50,000,000

247--George Mason  
University

1	Renovate Fine Arts Building	\$0 to
		\$10,000,000

2	<i>Construct Satellite Cooling and Heating Plant</i>	\$10,000,001 to \$25,000,000
3	<i>Expand Central Utility Plant</i>	\$0 to \$10,000,000
4	<i>Construct Campus Library Addition, Phase I</i>	\$50,000,001 to \$75,000,000
5	<i>Construct Potomac Science Center</i>	\$25,000,001 to \$50,000,000
6	<i>Construct Academic VII/Research III, Phase I</i>	\$50,000,001 to \$75,000,000
7	<i>Construct Life Sciences Building, Prince William Campus</i>	\$25,000,001 to \$50,000,000
8	<i>Hylton Center</i>	\$0 to \$10,000,000
9	<i>Renovate Robinson Hall and Harris Theater</i>	\$50,000,001 to \$75,000,000
10	<i>Construct Facilities Complex, Fairfax Campus</i>	\$25,000,001 to \$50,000,000
11	<i>Improve Telecommunications Infra-</i>	\$0 to

*structure* \$10,000,000

*260--Virginia Community  
College System*

- |   |   |                                    |
|---|---|------------------------------------|
| 1 | <i>Construct Replacement for Tyler Academic Building, Northern Virginia - Alexandria Campus</i> | \$25,000,001<br>to<br>\$50,000,000 |
| 2 | <i>Renovate and Expand Brault Building, Northern Virginia - Annandale Campus</i>                | \$10,000,001<br>to<br>\$25,000,000 |
| 3 | <i>Construct Learning Resources Building, Southside Virginia</i>                                | \$10,000,001<br>to<br>\$25,000,000 |
| 4 | <i>Construct Workforce Training Center, Northern Virginia - Woodbridge Campus</i>               | \$10,000,001<br>to<br>\$25,000,000 |
| 5 | <i>Construct New Classroom and Administration Building, Blue Ridge</i>                          | \$10,000,001<br>to<br>\$25,000,000 |
| 6 | <i>Construct Phase III Academic Building, Midlothian Campus, John Tyler CC</i>                  | \$25,000,001<br>to<br>\$50,000,000 |
| 7 | <i>Renovate Bayside Building, Virginia Beach Campus, Tidewater CC</i>                           | \$10,000,001<br>to<br>\$25,000,000 |
| 8 | <i>Renovate Building B, J. Sargeant Reynolds - Parham Road Campus</i>                           | \$10,000,001<br>to<br>\$25,000,000 |

9	<i>Renovate Reynolds Academic Building, Loudoun Campus, Northern Virginia CC</i>	<i>\$10,000,001 to \$25,000,000</i>
10	<i>Renovate Main Building, Lord Fairfax</i>	<i>\$0 to \$10,000,000</i>
11	<i>Renovate Anderson Hall, Virginia Western</i>	<i>\$10,000,001 to \$25,000,000</i>
12	<i>Expand Workforce Development Center, Danville</i>	<i>\$0 to \$10,000,000</i>
13	<i>Renovate Phase I Academic and Administration Building, Eastern Shore</i>	<i>\$0 to \$10,000,000</i>
14	<i>Construct Bioscience Building, Blue Ridge CC</i>	<i>\$10,000,001 to \$25,000,000</i>
15	<i>Construct Phase VII Academic Building, Annandale Campus, Northern Virginia CC</i>	<i>\$25,000,001 to \$50,000,000</i>
16	<i>Renovate Engineering and Industrial Technology Building, Danville CC</i>	<i>\$10,000,001 to \$25,000,000</i>
17	<i>Construct Academic Building CN6, Chesapeake Campus, Tidewater CC</i>	<i>\$25,000,001 to \$50,000,000</i>
18	<i>Construct Student Service &amp; Learning</i>	<i>\$10,000,001</i>

	<i>Resources Center, Christanna Cam-</i>	<i>to</i>	
	<i>pus, Southside Virginia</i>		<i>\$25,000,000</i>
19	<i>Construct New Building for Trucking</i>	<i>\$10,000,001</i>	
	<i>Program, Tidewater - Portsmouth Cam</i>	<i>to</i>	
	<i>pus</i>		<i>\$25,000,000</i>
20	<i>Improve Heating, Ventilation, and Air</i>	<i>\$0 to</i>	
	<i>Conditioning, Rappahannock</i>		<i>\$10,000,000</i>
21	<i>Construct Science Building, Chester</i>	<i>\$10,000,001</i>	
	<i>Campus, John Tyler CC</i>	<i>to</i>	
			<i>\$25,000,000</i>
22	<i>Construct Academic Building,</i>	<i>\$10,000,001</i>	
	<i>Middletown Campus, Lord Fairfax CC</i>	<i>to</i>	
			<i>\$25,000,000</i>
23	<i>Construct Academic Health and Well-</i>	<i>\$10,000,001</i>	
	<i>ness Center, Hampton Campus, Tho-</i>	<i>to</i>	
	<i>mas Nelson CC</i>		<i>\$25,000,000</i>
24	<i>Renovate Library and Learning</i>	<i>\$0 to</i>	
	<i>Resource Center, Virginia Highlands</i>		<i>\$10,000,000</i>
25	<i>Construct Workforce Development</i>	<i>\$0 to</i>	
	<i>Center, Piedmont Virginia</i>		<i>\$10,000,000</i>
26	<i>Renovate Buildings: Carroll, Bland,</i>	<i>\$25,000,001</i>	
	<i>Galax, Grayson, Fincastle, and Smyth</i>	<i>to</i>	
	<i>Halls, Wytheville</i>		<i>\$50,000,000</i>
27	<i>Replace Exterior Windows and Doors,</i>	<i>\$0 to</i>	
	<i>Rappahannock</i>		<i>\$10,000,000</i>
28	<i>Renovate Bird and Nicholas Halls,</i>	<i>\$25,000,001</i>	

	<i>John Tyler - Chester Campus</i>	<i>to</i> <i>\$50,000,000</i>
29	<i>Construct Learning Resources Center, Tidewater - Chesapeake Campus</i>	<i>\$25,000,001</i> <i>to</i> <i>\$50,000,000</i>
30	<i>Renovate Plaza, Structural Repairs Phase II, Annandale Campus, Northern Virginia</i>	<i>\$0 to</i> <i>\$10,000,000</i>
31	<i>Construct Network Operations Center, Tidewater</i>	<i>\$0 to</i> <i>\$10,000,000</i>
32	<i>Expand and Renovate Phase III Academic Building, Northern Virginia - Loudoun Campus</i>	<i>\$10,000,001</i> <i>to</i> <i>\$25,000,000</i>
33	<i>Renovate Bisdorf Phase II Academic Building, Northern Virginia - Alexandria</i>	<i>\$10,000,001</i> <i>to</i> <i>\$25,000,000</i>
34	<i>Construct Workforce Solutions and Academic Training Center, Fauquier Campus, Lord Fairfax</i>	<i>\$10,000,001</i> <i>to</i> <i>\$25,000,000</i>
35	<i>Construct Canopies, Virginia Highlands</i>	<i>\$0 to</i> <i>\$10,000,000</i>
36	<i>Renovate Stone Hall Building, Patrick Henry</i>	<i>\$0 to</i> <i>\$10,000,000</i>
37	<i>Renovate Academic Classrooms and Administrative Building, Rappahannock</i>	<i>\$10,000,001</i> <i>to</i> <i>\$25,000,000</i>

38	Construct Phase III Academic Building, Woodbridge Campus, Northern Virginia	\$25,000,001 to \$50,000,000
39	Relocate Observatory and Great Dismal Swamp Education Center, Tidewater - Chesapeake Campus	\$0 to \$10,000,000
40	Renovate Academic Classrooms and Laboratories, Tidewater	\$0 to \$10,000,000
41	Construct Addition to Learning Resource Center, Patrick Henry	\$0 to \$10,000,000
42	Renovate and Repair Exterior/Interior Structures, Thomas Nelson	\$0 to \$10,000,000
43	Construct Maintenance Building, Germanna	\$0 to \$10,000,000
44	Renovate and Expand Phase III Academic Building, Manassas Campus, Northern Virginia	\$25,000,001 to \$50,000,000

268--Virginia Institute of Marine Sciences

1	Purchase Research Vessel	\$0 to \$10,000,000
2	Construct a Consolidated Scientific Research Facility	\$10,000,001 to \$25,000,000
3	Construct Facilities Management Maintenance Facility	\$0 to \$10,000,000

4	<i>Replace the Oyster Hatchery</i>	\$10,000,001 to \$25,000,000
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5	<i>Expand the Fisheries Science Building</i>	\$0 to \$10,000,000
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*310--Virginia Economic Development Partnership*

1	<i>Bioscience Wet Laboratory Facility</i>	\$10,000,001 to \$25,000,000
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*425--Jamestown-Yorktown Foundation*

1	<i>Construct Yorktown Museum</i>	\$25,000,001 to \$50,000,000
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2	<i>Develop Outdoor Interpretive Areas</i>	\$0 to \$10,000,000
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3	<i>Yorktown Outside Areas, Signage and Amenities</i>	\$0 to \$10,000,000
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4	<i>Construct Jamestown Road Wall and Sound Buffer</i>	\$0 to \$10,000,000
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*702--Department for the Blind and Vision Impaired*

1	<i>Replace Roof on Library Resource Center</i>	\$0 to \$10,000,000
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*720--Department of Behavioral Health and Developmental Services*

1	<i>Replace Facility Roofs</i>	<i>\$10,000,001 to \$25,000,000</i>
2	<i>Construct New Sexually Violent Predator Facility</i>	<i>\$50,000,001 to \$75,000,000</i>
3	<i>Repair/Replace Campus Infra-structures</i>	<i>\$0 to \$10,000,000</i>
4	<i>Repair/Replace Boilers, Heat Distribution and HVAC Systems</i>	<i>\$25,000,001 to \$50,000,000</i>
5	<i>Replace Forensic Unit at Central State Hospital</i>	<i>\$75,000,001 to \$100,000,000</i>
6	<i>Replace Support Service Facility at Eastern State Hospital</i>	<i>\$25,000,001 to \$50,000,000</i>
7	<i>Abate Environmental Hazards</i>	<i>\$0 to \$10,000,000</i>

*777--Department of Juvenile Justice*

1	<i>Upgrade Reception and Diagnostic Center (Infirmary and School)</i>	<i>\$10,000,001 to</i>
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		\$25,000,000
2	<i>Renovate Cedar Lodge and Replace Modular Building</i>	\$0 to \$10,000,000
3	<i>Construct Building at Oak Ridge Juvenile Correctional Center</i>	\$10,000,001 to \$25,000,000
4	<i>Construct New Central Maintenance Building - Bon Air</i>	\$0 to \$10,000,000
5	<i>Construct New Central Maintenance and Materials Storage Building - Beaumont</i>	\$0 to \$10,000,000
6	<i>Convert Old Dining Hall to Dry Storage Warehouse Facility</i>	\$0 to \$10,000,000
7	<i>Construct Consolidated Central Warehouse Facility</i>	\$0 to \$10,000,000
8	<i>Renovate Beaumont Manor House</i>	\$0 to \$10,000,000
9	<i>Renovate Historic Bon Air House</i>	\$0 to \$10,000,000
10	<i>Correct Erosion of Pamunkey River Bank</i>	\$0 to \$10,000,000

*778--Department of Forensic Science*

1	<i>Expand Central Forensic Laboratory &amp; Office of Chief Medical Examiner Facility</i>	\$75,000,001 to
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	<i>ity</i>	<i>\$100,000,000</i>
2	<i>Expand Western Forensic Laboratory Facility &amp; Office of the Chief Medical Examiner Facility</i>	<i>\$25,000,001 to \$50,000,000</i>
3	<i>Expand Eastern Forensic Laboratory Facility</i>	<i>\$0 to \$10,000,000</i>

*799--Department of Corrections*

1	<i>Construct Augusta Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
2	<i>Replace Windows and Mechanical Systems</i>	<i>\$0 to \$10,000,000</i>
3	<i>Replace Door Control Systems</i>	<i>\$0 to \$10,000,000</i>
4	<i>Replace Windows and Install Mechanical Equipment, VCCW</i>	<i>\$0 to \$10,000,000</i>
5	<i>Construct James River Water Line</i>	<i>\$0 to \$10,000,000</i>
6	<i>Replace Plumbing and Mechanical Systems - Baskerville</i>	<i>\$0 to \$10,000,000</i>
7	<i>Replace Roofs - Keen Mountain</i>	<i>\$0 to \$10,000,000</i>
8	<i>Replace Roofs and HVAC - Lawrenceville</i>	<i>\$0 to \$10,000,000</i>

9	<i>Construct Office Building for Richmond Probation and Parole District Office</i>	<i>\$0 to \$10,000,000</i>
10	<i>Upgrade Fire Safety System</i>	<i>\$0 to \$10,000,000</i>
11	<i>Upgrade Buckingham Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
12	<i>Construct Re-Entry Program Buildings</i>	<i>\$0 to \$10,000,000</i>
13	<i>Replace Caroline Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
14	<i>Replace Security Panels - Sussex I &amp; II</i>	<i>\$0 to \$10,000,000</i>
15	<i>Replace Security Panels and Detention Systems - Keen Mountain</i>	<i>\$0 to \$10,000,000</i>
16	<i>Upgrade Perimeter Detection System (Multiple Institutions)</i>	<i>\$0 to \$10,000,000</i>
17	<i>Upgrade Preliminary Wastewater Treatment</i>	<i>\$0 to \$10,000,000</i>
18	<i>Upgrade Building Electrical Service Entrance - Augusta</i>	<i>\$0 to \$10,000,000</i>
19	<i>Correct Environmental Deficiencies</i>	<i>\$0 to \$10,000,000</i>

*845--Dr. Martin Luther King,  
Jr. Memorial Commission*

1	<i>Emancipation and Freedom Monument</i>	\$0 to \$10,000,000
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*885--Institute for Advanced Learning Research*

1	<i>Construct Southern Virginia Bio-Renewable Center</i>	\$10,000,001 to \$25,000,000
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2	<i>Construct Greenhouse</i>	\$0 to \$10,000,000
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*912--Department of Veterans Services*

1	<i>Construct Veterans Care Center in Hampton Roads</i>	\$25,000,001 to \$50,000,000
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2	<i>Construct Northern Virginia Care Center</i>	\$25,000,001 to \$50,000,000
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3	<i>Construct Addition on the Sitter Bar-foot Veterans Care Center</i>	\$0 to \$10,000,000
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4	<i>Additions and Renovations, Veterans Care Center Salem</i>	\$0 to \$10,000,000
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5	<i>Construct DVS Offices and Parking at Virginia War Memorial</i>	\$0 to \$10,000,000
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*935--Roanoke Higher Education Authority*

1	<i>Waterproof Building</i>	\$0 to \$10,000,000
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*948--Southwest Virginia  
Higher Education Center*

1	<i>Construct Service Corridor and Storage Area</i>	\$0 to \$10,000,000
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2	<i>Construct New Wing</i>	\$10,000,001 to \$25,000,000
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*993--Central Capital Outlay*

1	<i>Improve Wallops Flight Facilities</i>	\$0 to \$10,000,000
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2. That Chapter 46 of the Acts of Assembly of 2009 is repealed.

**Chapter 571 Protection and Advocacy, Virginia Office for; privatization.**

An Act to amend and reenact §§ [2.2-316](#), [2.2-2411](#), [2.2-2664](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3711](#), [2.2-5300](#), [22.1-253.13:3](#), [37.2-304](#), [37.2-709](#), as it is currently effective and as it shall become effective, [51.5-1](#), [51.5-39.1](#), [51.5-39.13](#), [51.5-46](#), and [63.2-1808](#) of the Code of Virginia, and to amend and reenact the third enactment clause of Chapter 847 of the Acts of Assembly of 2012, relating to the Virginia Office for Protection and Advocacy; privatization.

[\[H 1844\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-316](#), [2.2-2411](#), [2.2-2664](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3711](#), [2.2-5300](#), [22.1-253.13:3](#), [37.2-304](#), [37.2-709](#), as it is currently effective and as it shall become effective, [51.5-1](#), [51.5-39.1](#), [51.5-39.13](#), [51.5-46](#), and [63.2-1808](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-316](#). Additional powers and duties of State Inspector General.

In addition to the duties set forth in this chapter, the State Inspector General shall have the following powers and duties to:

1. Provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The State Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The State Inspector General shall conduct unannounced inspections at each state facility at least once annually.
2. Access any and all information, including confidential consumer information, related to the delivery of services to consumers in state facilities or served by providers, including licensed mental health treatment units in state correctional facilities. However, the State Inspector General shall not be given access to any proceedings, minutes, records, or reports of providers that are privileged under § [8.01-581.17](#), except that the State Inspector General shall be given access to any privileged information in state facilities and licensed mental health treatment units in state correctional facilities. All consumer information shall be maintained by the State Inspector General as confidential in the same manner as is required by the agency or provider from which the information was obtained.
3. Keep the General Assembly and the Joint Commission on Health Care fully and currently informed by means of reports required by § [2.2-313](#) concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective actions.

4. Review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department and the critical incident data collected by the Department in accordance with regulations adopted under § [37.2-400](#) to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

5. Monitor and participate in the adoption of regulations by the Board.

6. Receive reports, information, and complaints from the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system* concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and to conduct independent reviews and investigations.

§ [2.2-2411](#). Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner for Aging and Rehabilitative Services on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 20 (§ [64.2-2000](#) et seq.) of Title 64.2.

B. The Board shall consist of no more than 15 members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of the Virginia Association of Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the ARC of Virginia, one representative of the National Alliance on Mental Illness of Virginia, one representative of the Virginia League of Social Service Executives, one representative of the Virginia Association of Community Services Boards, the Commissioner of Social Services or his designee, the Commissioner of Behavioral Health and Developmental Services or his designee, ~~the Director of the Virginia Office for Protection and Advocacy or his designee,~~ and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board, *who may include a representative of the Commonwealth's designated protection and advocacy system.*

C. The Commissioners of Social Services and Behavioral Health and Developmental Services, or their designees, ~~the Director of the Virginia Office for Protection and Advocacy or his designee~~, and the representative of the Commonwealth Council on Aging; shall serve terms coincident with their terms of office or, in the case of designees, the term of the Commissioner ~~or Director~~. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § [2.2-2823](#).

§ [2.2-2664](#). Virginia Interagency Coordinating Council; purpose; membership; duties.

A. The Virginia Interagency Coordinating Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Council shall be to promote and coordinate early intervention services in the Commonwealth.

B. The membership and operation of the Council shall be as required by Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.). The Commissioner of the Department of Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of Behavioral Health and Developmental Services, the Commissioner of Social Services, the Commissioner of the Department for the Blind and Vision Impaired, ~~the Director of the Virginia Office for Protection and Advocacy~~, and the Commissioner of the Bureau of Insurance within the State Corporation Commission shall each appoint one person from his agency to serve as the agency's representative on the Council. *The Director of the Commonwealth's designated protection and advocacy system may appoint one person from his agency to serve as the agency's representative on the Council.*

Agency representatives shall regularly inform their agency head of the Council's activities and the status of the implementation of an early intervention services system in the Commonwealth.

C. The Council's duties shall include advising and assisting the state lead agency in the following:

1. Performing its responsibilities for the early intervention services system;

2. Identifying sources of fiscal and other support for early intervention services, recommending financial responsibility arrangements among agencies, and promoting inter-agency agreements;
3. Developing strategies to encourage full participation, coordination, and cooperation of all appropriate agencies;
4. Resolving interagency disputes;
5. Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;
6. Preparing federal grant applications; and
7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.

§ [2.2-2905](#). Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents; and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning; and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;

15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the State Lottery Department;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
22. Officers and employees of the Virginia Port Authority;
23. Employees of the Virginia College Savings Plan;
24. Directors of state facilities operated by the Department of Behavioral Health and Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § [37.2-707](#). Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
- ~~25. The Director of the Virginia Office for Protection and Advocacy;~~
- ~~26.~~ Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;
- ~~27.~~26. Employees of the Virginia Indigent Defense Commission; and

~~28-27~~. Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § [23-232](#). § [2.2-3705.3](#). Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv)

defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

~~8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, intellectual disability, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.~~

9. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § [2.2-1202.1](#), and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

~~10-9.~~ The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

~~11-10.~~ Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

~~12-11.~~ Records furnished to or prepared by the Board of Education pursuant to subsection D of § [22.1-253.13:3](#) in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

~~13-12.~~ Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be

released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

~~14.13.~~ Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ [2.2-3711](#). Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.
2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.
3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.
11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § [2.2-3705.1](#).
12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.
14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.
15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.5](#).
16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).
17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.
18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.
19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or

discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23-38.80](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#).

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § [2.2-4019](#) or [2.2-4020](#) during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected local jurisdiction, as those terms are defined in § [56-557](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of

such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § [2.2-3705.6](#).

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § [2.2-3705.6](#).

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § [2.2-3706](#).

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.6](#).

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#), by the Board of the Virginia College Savings Plan acting pursuant to § [23-38.80](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant

to § [23-38.79:1](#) of records excluded from this chapter pursuant to subdivision 25 of § [2.2-3705.7](#).

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.6](#).

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision ~~13~~ 12 of § [2.2-3705.3](#).

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.2](#).

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § [2.2-3705.7](#).

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § [2.2-3705.6](#).

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § [2.2-3705.6](#).

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ [2.2-5300](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Council" means the Virginia Interagency Coordinating Council created pursuant to § [2.2-2664](#).

"Early intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25 percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § [32.1-162.7](#).

"Participating agencies" means the Departments of Health, of Education, of Medical Assistance Services, of Behavioral Health and Developmental Services, and of Social Services; the Departments for the Deaf and Hard-of-Hearing and for the Blind and Vision Impaired; ~~the Virginia Office for Protection and Advocacy~~; and the Bureau of Insurance within the State Corporation Commission.

§ [22.1-253.13:3](#). Standard 3. Accreditation, other standards and evaluation.

A. The Board of Education shall promulgate regulations establishing standards for accreditation pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), which shall include, but not be limited to, student outcome measures, requirements and guidelines for instructional programs and for the integration of educational technology into such instructional programs, administrative and instructional staffing levels and positions, including staff positions for supporting educational technology, student services, auxiliary education programs such as library and media services, course and credit

requirements for graduation from high school, community relations, and the philosophy, goals, and objectives of public education in Virginia.

The Board of Education shall promulgate regulations establishing standards for accreditation of public virtual schools under the authority of the local school board that enroll students full time.

The Board shall review annually the accreditation status of all schools in the Commonwealth.

Each local school board shall maintain schools that are fully accredited pursuant to the standards for accreditation as prescribed by the Board of Education. Each local school board shall review the accreditation status of all schools in the local school division annually in public session. Within the time specified by the Board of Education, each school board shall submit corrective action plans for any schools within its school division that have been designated as not meeting the standards as approved by the Board. When the Board of Education has obtained evidence through the school academic review process that the failure of schools within a division to achieve full accreditation status is related to division level failure to implement the Standards of Quality, the Board may require a division level academic review. After the conduct of such review and within the time specified by the Board of Education, each school board shall submit for approval by the Board a corrective action plan, consistent with criteria established by the Board and setting forth specific actions and a schedule designed to ensure that schools within its school division achieve full accreditation status. Such corrective action plans shall be part of the relevant school division's comprehensive plan pursuant to § [22.1-253.13:6](#).

With such funds as are appropriated or otherwise received for this purpose, the Board shall adopt and implement an academic review process, to be conducted by the Department of Education, to assist schools that are accredited with warning. The Department shall forward a report of each academic review to the relevant local school board, and such school board shall report the results of such academic review and the required annual progress reports in public session. The local school board shall implement any actions identified through the academic review and utilize them for improvement planning.

B. The Superintendent of Public Instruction shall develop and the Board of Education shall approve criteria for determining and recognizing educational performance in the Commonwealth's public school divisions and schools. Such criteria, when approved, shall become an integral part of the accreditation process and shall include student outcome measurements. The Superintendent of Public Instruction shall annually identify to

the Board those school divisions and schools that exceed or do not meet the approved criteria. Such identification shall include an analysis of the strengths and weaknesses of public education programs in the various school divisions in Virginia and recommendations to the General Assembly for further enhancing student learning uniformly across the Commonwealth. In recognizing educational performance in the school divisions, the Board shall include consideration of special school division accomplishments, such as numbers of dual enrollments and students in Advanced Placement and International Baccalaureate courses, and participation in academic year Governor's Schools. The Superintendent of Public Instruction shall assist local school boards in the implementation of action plans for increasing educational performance in those school divisions and schools that are identified as not meeting the approved criteria. The Superintendent of Public Instruction shall monitor the implementation of and report to the Board of Education on the effectiveness of the corrective actions taken to improve the educational performance in such school divisions and schools.

C. With such funds as are available for this purpose, the Board of Education shall prescribe assessment methods to determine the level of achievement of the Standards of Learning objectives by all students. Such assessments shall evaluate knowledge, application of knowledge, critical thinking, and skills related to the Standards of Learning being assessed. The Board shall (i) in consultation with the chairpersons of the eight regional superintendents' study groups, establish a timetable for administering the Standards of Learning assessments to ensure genuine end-of-course and end-of-grade testing and (ii) with the assistance of independent testing experts, conduct a regular analysis and validation process for these assessments.

In prescribing such Standards of Learning assessments, the Board shall provide local school boards the option of administering tests for United States History to 1877, United States History: 1877 to the Present, and Civics and Economics. The last administration of the cumulative grade eight history test will be during the 2007-2008 academic school year. Beginning with the 2008-2009 academic year, all school divisions shall administer the United States History to 1877, United States History: 1877 to the Present, and Civics and Economics tests. The Board shall also provide the option of industry certification and state licensure examinations as a student-selected verified credit.

The Board of Education shall make publicly available such assessments in a timely manner and as soon as practicable following the administration of such tests, so long as the release of such assessments does not compromise test security or deplete the bank of assessment questions necessary to construct subsequent tests, or limit the ability to test

students on demand and provide immediate results in the web-based assessment system.

The Board shall include in the student outcome measures that are required by the Standards for Accreditation end-of-course or end-of-grade tests for various grade levels and classes, as determined by the Board, in accordance with the Standards of Learning. These Standards of Learning assessments shall include, but need not be limited to, end-of-course or end-of-grade tests for English, mathematics, science, and history and social science.

In addition, to assess the educational progress of students, the Board of Education shall (i) develop appropriate assessments, which may include criterion-referenced tests and alternative assessment instruments that may be used by classroom teachers; (ii) select appropriate industry certification and state licensure examinations and (iii) prescribe and provide measures, which may include nationally normed tests to be used to identify students who score in the bottom quartile at selected grade levels. An annual justification that includes evidence that the student meets the participation criteria defined by the Virginia Department of Education shall be provided for each student considered for the Virginia Grade Level Alternative. Each Individual Education Program team shall review such justification and make the final determination as to whether or not the Virginia Grade Level Alternative is appropriate for the student. The superintendent and the school board chairman shall certify to the Board of Education, as a part of certifying compliance with the Standards of Quality, that there is a justification in the Individual Education Program for every student who takes the Virginia Grade Level Alternative. Compliance with this requirement shall be monitored as a part of the special education monitoring process conducted by the Department of Education. The Board shall report to the Governor and General Assembly in its annual reports pursuant to § [22.1-18](#) any school division that is not in compliance with this requirement.

The Standards of Learning requirements, including all related assessments, shall be waived for any student awarded a scholarship under the Brown v. Board of Education Scholarship Program, pursuant to § [30-231.2](#), who is enrolled in a preparation program for the General Education Development (GED) certificate or in an adult basic education program to obtain the high school diploma.

The Board of Education may adopt special provisions related to the administration and use of any SOL test or tests in a content area as applied to accreditation ratings for any period during which the SOL content or assessments in that area are being revised and phased in. Prior to statewide administration of such tests, the Board of Education shall provide notice to local school boards regarding such special provisions.

D. The Board of Education may pursue all available civil remedies pursuant to § [22.1-19.1](#) or administrative action pursuant to § [22.1-292.1](#) for breaches in test security and unauthorized alteration of test materials or test results.

The Board may initiate or cause to be initiated a review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests, including the exclusion of students from testing who are required to be assessed, by local school board employees responsible for the distribution or administration of the tests.

Records and other information furnished to or prepared by the Board during the conduct of a review or investigation may be withheld pursuant to subdivision ~~1211~~ of § [2.2-3705.3](#). However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board. Any local school board or division superintendent receiving such records or other information shall, upon taking personnel action against a relevant employee, place copies of such records or information relating to the specific employee in such person's personnel file.

Notwithstanding any other provision of state law, no test or examination authorized by this section, including the Standards of Learning assessments, shall be released or required to be released as minimum competency tests, if, in the judgment of the Board, such release would breach the security of such test or examination or deplete the bank of questions necessary to construct future secure tests.

E. With such funds as may be appropriated, the Board of Education may provide, through an agreement with vendors having the technical capacity and expertise to provide computerized tests and assessments, and test construction, analysis, and security, for (i) web-based computerized tests and assessments for the evaluation of student progress during and after remediation and (ii) the development of a remediation item bank directly related to the Standards of Learning.

F. To assess the educational progress of students as individuals and as groups, each local school board shall require the use of Standards of Learning assessments and other relevant data, such as industry certification and state licensure examinations, to evaluate student progress and to determine educational performance. Each local school shall require the administration of appropriate assessments to all students for grade levels and courses identified by the Board of Education, which may include criterion-

referenced tests, teacher-made tests and alternative assessment instruments and shall include the Standards of Learning Assessments and the National Assessment of Educational Progress state-by-state assessment. Each school board shall analyze and report annually, in compliance with any criteria that may be established by the Board of Education, the results from the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, if administered, industry certification examinations, and the Standards of Learning Assessments to the public.

The Board of Education shall not require administration of the Stanford Achievement Test Series, Ninth Edition (Stanford Nine) assessment, except as may be selected to facilitate compliance with the requirements for home instruction pursuant to § [22.1-254.1](#). The Board shall include requirements for the reporting of the Standards of Learning assessment scores and averages for each year as part of the Board's requirements relating to the School Performance Report Card. Such scores shall be disaggregated for each school by student subgroups on the Virginia assessment program as appropriate and shall be reported to the public within three months of their receipt. These reports (i) shall be posted on the portion of the Department of Education's website relating to the School Performance Report Card, in a format and in a manner that allows year-to-year comparisons, and (ii) may include the National Assessment of Educational Progress state-by-state assessment.

G. Each local school division superintendent shall regularly review the division's submission of data and reports required by state and federal law and regulations to ensure that all information is accurate and submitted in a timely fashion. The Superintendent of Public Instruction shall provide a list of the required reports and data to division superintendents annually. The status of compliance with this requirement shall be included in the Board of Education's annual report to the Governor and the General Assembly as required by § [22.1-18](#).

H. Any school board, on behalf of one or more of its schools, may request the Board of Education for releases from state regulations and for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for certain other schools by the Standards of Accreditation pursuant to 8 VAC [20-131-280 C](#) of the Virginia Administrative Code.

§ [37.2-304](#). Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its state facilities.
2. To employ the personnel required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age individuals who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. (Effective until July 1, 2014) To provide to the Director of the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*, pursuant to § [51.5-39.12](#), a written report setting forth the known facts of critical incidents or deaths of individuals receiving services in facilities within 15 working days of the critical incident or death.

7. (Effective July 1, 2014) To provide to the Director of the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*, established pursuant to § [51.5-39.13](#), a written report setting forth the known facts of critical incidents or deaths of individuals receiving services in facilities within 15 working days of the critical incident or death.

8. To work with the appropriate state and federal entities to ensure that any individual who has received services in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the individual was born in the Commonwealth, or a social security card from the

Social Security Administration. State facility directors, as part of their responsibilities pursuant to § [37.2-837](#), shall implement this provision when discharging individuals.

9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § [2.2-2001.1](#).

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one individual receiving services to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ [37.2-709](#). (Effective until July 1, 2014) State facility reporting requirements.

Each director of a state facility shall notify the Director of the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*, pursuant to § [51.5-39.12](#), in writing within 48 hours of critical incidents or deaths of individuals receiving services in the state facility.

§ [37.2-709](#). (Effective July 1, 2014) State facility reporting requirements.

Each director of a state facility shall notify the Director of the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*, established pursuant to § [51.5-39.13](#), in writing within 48 hours of critical incidents or deaths of individuals receiving services in the state facility.

§ [51.5-1](#). Declaration of policy.

It is the policy of the Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor, ~~the Virginia Office for Protection and Advocacy~~; the Virginia Board for People with Disabilities;; the Departments of Education, Health, Housing and Community Development, Behavioral Health and Developmental Services, and Social Services; ~~and~~; the Departments for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing; and such other agencies as the Governor deems appropriate; to provide, in a comprehensive and coordinated manner ~~which~~ *that*

makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

The provisions of this title shall be known and may be cited as "The Virginians with Disabilities Act."

§ [51.5-39.1](#). (Repealed effective January 1, 2014) Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abuse" means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with a disability and includes such acts as: verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with federal and state laws and regulations; and any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.

"Board" means the Board for Protection and Advocacy.

"Disabilities" means mental, cognitive, sensory, physical, or other disabilities covered by the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act of 1973, as amended, and such other related federal and state programs as may be established by federal and state law.

"Investigation" means, when authorized under this chapter and when used in relation to (i) private elementary or secondary schools or (ii) public educational institutions which are subject to the requirements of § [22.1-215](#), access to facilities, clients, and records necessary to make a determination about whether alleged or suspected instances of abuse or neglect are taking place or have taken place. Investigations may be conducted independently or in cooperation with other agencies authorized to conduct similar investigations.

"Neglect" means failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental, cognitive, sensory, physical or other disabilities.

"Office" means the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*.

§ [51.5-39.13](#). Conversion of the Virginia Office for Protection and Advocacy to a non-profit entity.

A. Not later than December 31, 2013, the Director, in consultation with the Board, shall establish a nonprofit entity to provide advocacy, legal, and ombudsman services to persons with disabilities. Such nonprofit entity shall be established in such a manner that the entity is in compliance with all federal law regarding a protection and advocacy system. Such nonprofit entity shall be designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical, or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act (§ [51.5-1](#) et seq.), and such other related programs as may be established in state or federal law.

B. Not later than January 1, 2014, the Governor shall designate the nonprofit entity established pursuant to subsection A to serve as the state's protection and advocacy system, and such nonprofit entity shall thereafter be known as the ~~Virginia Office for Protection and Advocacy~~ *disAbility Law Center of Virginia*.

C. Employees of the Virginia Office for Protection and Advocacy who transition to employment with the organization designated pursuant to subsection B shall not be subject to the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.).

§ [51.5-46](#). Remedies.

A. Any circuit court having jurisdiction and venue pursuant to Title 8.01, on the petition of any person with a disability, shall have the right to enjoin the abridgement of rights set forth in this chapter and to order such affirmative equitable relief as is appropriate and to award compensatory damages and to award to a prevailing party reasonable attorneys' fees, except that a defendant shall not be entitled to an award of attorneys' fees unless the court finds that the claim was frivolous, unreasonable or groundless, or brought in bad faith. Compensatory damages shall not include damages for pain and suffering. Punitive or exemplary damages shall not be awarded.

B. An action may be commenced pursuant to this section any time within one year of the occurrence of any violation of rights under this chapter. However, such action shall be forever barred unless such claimant or his agent, attorney or representative has commenced such action or has filed by registered mail a written statement of the nature of the claim with the potential defendant or defendants within 180 days of the occurrence of the alleged violation. Any liability for back pay shall not accrue from a date more than 180 days prior to the filing of the notice or the initial pleading in such civil action and

shall be limited to a total of 180 days, reduced by the amount of other earnings over the same period. The petitioner shall have a duty to mitigate damages.

C. The relief available for violations of this chapter shall be limited to the relief set forth in this section.

~~D. In any action in which the petitioner is represented by the Virginia Office for Protection and Advocacy, no attorneys' fees shall be awarded, nor shall the Virginia Office for Protection and Advocacy have the authority to institute any class action under this chapter.~~

§ [63.2-1808](#). Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;
2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;
3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;
4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the facility except as otherwise provided in law and except in case of his transfer to another care-giving facility;
5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the facility, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the facility and the right to refuse treatment;
7. Is not required to perform services for the facility except as voluntarily contracted pursuant to a voluntary agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;
8. Is free to select health care services from reasonably available resources;
9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;
10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;
11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;
12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;
13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;
14. Is encouraged to function at his highest mental, emotional, physical and social potential;
15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:
  - a. As necessary for the facility to respond to unmanageable behavior in an emergency situation, which threatens the immediate safety of the resident or others;
  - b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;
16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician, physician assistant, or nurse practitioner;
17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:
  - a. In the care of his personal needs except as assistance may be needed;
  - b. In any medical examination or health-related consultations the resident may have at the facility;

c. In communications, in writing or by telephone;  
d. During visitations with other persons;  
e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;

f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record; and

19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, including how to obtain such information. Upon request, the assisted living facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the ~~Virginia Office for Protection and Advocacy~~ *Commonwealth's designated protection and advocacy system*.

D. The facility shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right that any resident has under law.

F. Each facility shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article.

2. That the third enactment clause of Chapter 847 of the Acts of Assembly of 2012 is amended as follows:

**3. That the provisions of this act amending §§ [2.2-510](#), [37.2-304](#), and [37.2-709](#) of the Code of Virginia shall be effective on July *January* 1, 2014.**

3. That the provisions of this act amending §§ [2.2-2905](#), [2.2-3705.3](#), [37.2-304](#), and [37.2-709](#) of the Code of Virginia shall become effective January 1, 2014.

4. That not later than January 1, 2014, the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia shall be deemed the successor in interest to all functions of the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012; all rights, duties, and obligations created by a contract, memorandum of understanding, or other agreement of the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012 and any actions taken on behalf of the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012 shall be transferred to and taken as standing in the name of the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia.

5. That not later than January 1, 2014, the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia shall be deemed the successor in interest to the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012, to the extent that such Chapter transferred powers and duties from the Virginia Office for Protection and Advocacy to the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia. All right, title, and interest in and to any tangible property vested in the Virginia Office for Protection and Advocacy shall be

transferred to and taken as standing in the name of the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia.

6. That the Governor may transfer an appropriation equal to the amount of any cash balance remaining in any account used by the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012 to the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia to support the changes in organization required by and resulting from Chapter 847 of the Acts of Assembly of 2012.

7. That the Governor may transfer any financial records and personnel records of the Virginia Office for Protection and Advocacy abolished pursuant to Chapter 847 of the Acts of Assembly of 2012 to the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia to support the changes in organization required by and resulting from Chapter 847 of the Acts of Assembly of 2012.

8. That the Virginia Office for Protection and Advocacy and the nonprofit organization established pursuant to § [51.5-39.13](#) of the Code of Virginia shall enter into an agreement for the transfer of positions and property pursuant to this act prior to January 1, 2014.

## **Chapter 644 School divisions; regulations concerning Board of Education's process for submitting proposals, etc.**

An Act to amend and reenact §§ [22.1-25](#) and [22.1-302](#) of the Code of Virginia and to repeal the second enactment of Chapter 965 of the Acts of Assembly of 2004, relating to the Board of Education; regulations concerning the process for submitting proposals to consolidate school divisions, temporarily employed teachers, and division level academic reviews.

[\[S 1201\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [22.1-25](#) and [22.1-302](#) of the Code of Virginia are amended and reenacted as follows:

§ [22.1-25](#). How school divisions made.

A. The Board of Education shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the standards of quality required by of Article VIII, Section 2 of the Constitution of Virginia, subject to the following conditions:

1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division.

2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city affected or, if a town comprises the school division, of the town council.

3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution expressing the sense of the General Assembly with respect thereto adopted at the session next following January 1 of the year in which the composition of such school division is to be changed.

B. Notice of any change in the composition of a school division proposed by the Board of Education shall be given by the Superintendent of Public Instruction, on or before January 1 of the year in which the composition of such school division is to be changed, to the clerks of the school board and of the governing body involved and to each member of the General Assembly.

C. Subject to the conditions set forth in subsection A, the Board of Education shall consider the following criteria in determining appropriate school divisions:

1. The school-age population of the school division proposed to be divided or consolidated.

2. The potential of the proposed school division to facilitate the offering of a comprehensive program for kindergarten through grade 12 at the level of the established standards of quality.

3. The potential of the proposed school division to promote efficiency in the use of school facilities and school personnel and economy in operation.

4. Anticipated increase or decrease in the number of children of school age in the proposed school division.

5. Geographical area and topographical features as they relate to existing or available transportation facilities designed to render reasonable access by pupils to existing or contemplated school facilities.

6. The ability of each existing school division to meet the standards of quality with its own resources and facilities or in cooperation with another school division or divisions if arrangements for such cooperation have been made.

D. Consistent with ~~its~~ *the authority of the Board* pursuant to Article VIII, Section 5 of the Constitution of Virginia to designate school divisions in the Commonwealth of such geographic size and school-age population as will best promote the realization of the standards of quality, ~~the Board shall promulgate regulations consistent with the provisions of this section that provide for a process whereby school divisions~~ *local school boards* may submit proposals for the consolidation of school divisions *to the Board of Education.* ~~Such regulations shall provide for, among other things, a public~~ *Prior to the submission of a consolidation proposal, the submitting school board shall give notice to the public and hearing process to be conducted by the applicant school divisions shall conduct one or more public hearings.*

School divisions submitting proposals for consolidation shall include such information and data as may be ~~required by the Board~~ *necessary to support their proposal*, including (i) the criteria set forth in subsection C; (ii) evidence of the cost savings to be realized by such consolidation; (iii) a plan for the transfer of title to school board property to the resulting combined school board governing the consolidated division; (iv) procedures and a schedule for the proposed consolidation, including completion of current division superintendent and school board member terms; (v) a plan for proportional school board representation of the localities comprising the new school division, including details regarding the appointment or election processes currently ensuring such representation and other information as may be necessary to evidence compliance with federal and state laws governing voting rights; and (vi) evidence of local support for the proposed consolidation.

For five years following completion of such consolidation, the computation of the state and local share for an educational program meeting the standards of quality for school divisions resulting from consolidations approved pursuant to this subsection shall be the lower composite index of local ability-to-pay of the applicant school divisions, as provided in the appropriation act.

§ [22.1-302](#). Written contracts required; execution of contracts; qualifications of temporarily employed teachers; rules and requirements.

A. A written contract, in a form prescribed by the Board of Education, shall be made by the school board with each teacher employed by it, except those who are temporarily employed, before such teacher enters upon his duties. Such contract shall be signed in

duplicate, with a copy thereof furnished to both parties. A temporarily employed teacher, as used in this section, ~~shall mean~~ *means* (i) one who is employed to substitute for a contracted teacher for a temporary period of time during the contracted teacher's absence; or (ii) one who is employed to fill a teacher vacancy for a period of time, but for no longer than 90 teaching days in such vacancy, unless otherwise approved by the Superintendent of Public Instruction on a case-by-case basis, during one school year.

~~B. The Board of Education shall promulgate regulations regarding temporarily~~ *Temporarily* employed teachers, as defined in this section, ~~which shall provide that such teachers be at least eighteen~~ 18 years of age and ~~that they shall~~ hold a high school diploma or a general educational development (GED) certificate.

However, local school boards shall establish employment qualifications for temporarily employed teachers ~~which that~~ may exceed the Board's regulations *these requirements* for the employment of such teachers. School boards shall also seek to ensure that temporarily employed teachers who are engaged as long-term substitutes ~~shall~~ exceed baseline employment qualifications.

C. A separate contract in a form prescribed by the Board of Education shall be executed by the school board with such employee who is receiving a monetary supplement for any athletic coaching or extracurricular activity sponsorship assignment. This contract shall be separate and apart from the contract for teaching.

Termination of a separate contract for any athletic coaching or extracurricular activity sponsorship assignment by either party thereto shall not constitute cause for termination of the separate teaching contract of the coach or teacher.

All such contracts shall require the party intending to terminate the coaching or extracurricular activity sponsorship contract to give reasonable notice to the other party before termination thereof shall become effective.

For the purposes of this section, "extracurricular activity sponsorship" means an assignment for which a monetary supplement is received, requiring responsibility for any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

2. That the second enactment of Chapter 965 of the Acts of Assembly of 2004 is repealed.

## Chapter 418 Jail facilities, temporary; Chesapeake allowed certain waivers for current temporary structures.

An Act to allow for certain waivers for the City of Chesapeake for temporary structures for housing inmates.

[\[H 1635\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Corrections may provide a waiver from the construction requirements of the "Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities" to the City of Chesapeake involving the City's use of one or more of the current temporary structures for housing community custody inmates. Such waiver shall be for a time period not to exceed five years. If construction of a permanent facility, enlargement of an existing facility, or approval of an alternative housing agreement is not completed at the time of the expiration of the waiver, the Board of Corrections may grant a one-year extension no more than twice. If such extensions are granted, the city shall lose 25 percent of eligible reimbursement for each year of extension. In no event shall any temporary structure be utilized for more than seven years. Such temporary structure shall comply with all the applicable provisions of the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code for the designated use and occupancy. Such waiver shall not relieve the City of the requirement for submission and Board approval of a community-based corrections plan and a planning study. As a condition of the waiver, the City shall provide the Board of Corrections with an annual update on the progress of a permanent facility, enlargement of an existing facility, or plan for implementation of alternative housing on July 1 of each year. The City of Chesapeake shall not be eligible for the construction funding reimbursement for the temporary housing structures authorized pursuant to §§ [53.1-5](#), [53.1-80](#), [53.1-81](#), and [53.1-82](#). Priority for the use of any temporary structure for use by the City of Chesapeake shall be given to housing local-responsible offenders assigned to a work-release program, local-responsible offenders within 60 days of release and assigned to a re-entry program, and local-responsible offenders who are required to serve their sentences on weekends.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 427 Bedford, City of, reversion; special election for certain council members.**

An Act to provide for a special election following the effective date of annexation for any town that was established by a transition from a city to town status.

[\[H 1813\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, there shall be a special election for members of council for any town that was created by the transition of a city to town status, effective July 1, 2013, and that incorporated territory into the town, effective July 1, 2013, as part of a voluntary settlement pursuant to § [15.2-3400](#) of the Code of Virginia. Such election shall be held on the Tuesday after the first Monday in November 2014. The election shall be held for the unexpired portion of the term of each council member whose term extends beyond December 31, 2014. However, no such special election shall be held as a result of such an annexation unless the town increases its population by more than five percent due to the annexation. By July 31, 2013, any such town shall complete a census of the inhabitants of the territory incorporated into the town as of July 1, 2013. Whether the town has increased its population by more than five percent shall be determined by dividing the total number of inhabitants residing within the annexed territory at the time of such census by the total inhabitants residing within the former city as shown by the 2010 United States decennial census.*

*§ 2. The special election required by § [15.2-3226](#) of the Code of Virginia and subdivision 8 of § [15.2-3400](#) of the Code of Virginia shall not be applicable to any town that is subject to the requirements of this act.*

## **Chapter 421 General Services, Department of; conveyance of certain real property located in City of Richmond.**

An Act to authorize the Governor to convey certain real property in the City of Richmond.

[\[H 1685\]](#)

Approved March 16, 2013

Whereas, P&J Properties, Inc. (P&J), is a corporation duly organized and existing under the laws of the Commonwealth of Virginia with its primary place of business in the City of Richmond, Virginia; and

Whereas, by deed dated August 31, 1987, recorded September 8, 1987, in the Clerk's Office, Circuit Court, City of Richmond, Virginia, in Deed Book 140, page 228, P&J acquired a certain tract or parcel of land in the City of Richmond, Virginia, containing 4.5 acres, known as 3200 Williamsburg Avenue, located at the northeast corner of Williamsburg Avenue and 31st Street (PJ's Property) from P&J Associates, a Virginia general partnership; and

Whereas, P&J Associates acquired PJ's Property by deed dated July 31, 1979, recorded July 31, 1979, in the aforesaid Clerk's Office in Deed Book 755, page 1375, from The Continental Group, Inc., a New York corporation (Continental). Continental, formerly known as Continental Can Company, Inc., was formed as the result of a Certificate of Consolidation of Robert Gair Co., Inc., and Continental Can Company. Robert Gair Co., Inc., was formed by the merger of Fibre Board Container Corporation (FIBRE), a Delaware corporation; and

Whereas, FIBRE acquired its interest in PJ's Property in 1949, by deed from L. N. Donati, Anthony J. Bagley, and Thomas J. Bourne, Jr., Partners d/b/a Fibre Board Container Co. (the Partners) by deed dated June 1, 1949, recorded in the aforesaid Clerk's Office on June 2, 1949, in Deed Book 515A, Page 545; and

Whereas, the aforementioned deed defines the property conveyed to FIBRE as Parcels I, II, III, IV, VIII, IX, X, and XI, as more particularly shown on that certain plat record in the City of Richmond, Circuit Court, Clerk's Office, in Plat Book 10, at Page 70. A thorough examination of land records in the aforementioned Clerk's Office, as well as research at the Commonwealth of Virginia State Library and Richmond City Hall, show that portions of Parcels (the Parcels) were never conveyed to the Partners; thereby creating a gap in title to PJ's Property; and

Whereas, portions of Parcels II, VIII, and X, known as Lot No. 186 on a plat recorded in the aforesaid Clerk's Office in Deed Book 64, at Page 54, were conveyed to the Partners by deed from Clara M. Donati, widow of David J. Donati, Jr., First & Merchants National Bank of Richmond, and David J. Donati III, Administrators, c.t.a. of the Estate of David J. Donati, Jr., deceased, dated September 1, 1941, recorded November 6, 1941, in Deed Book 429A, Page 305. Said conveyance transferred David J. Donati, Jr.'s, (deceased)

ownership of Lot No. 186; further, Item #10 in said deed states the property conveyed as, "All right, title, and interest under State of Virginia Land Office Treasury warrant No. 32589 for one acre of unappropriated land designated as Lot No. 186 on the Plan of the City of Richmond, and to any grant or deed whenever made for said land"; and Whereas, land records show no deed of record, nor any grant found for Lot No. 186. The only land record found is a line entry in the index book held at the Commonwealth of Virginia State Library showing the following: "Name - David J. Donati and L.N. Donati; Acres - 1; Amount \$0.75; Number - 32,589; Date - Sept. 30, 1940" with the owner of record named as the Commonwealth of Virginia, which acquired Lot No. 186 as waste and unappropriated land; and

Whereas, ownership of Lot No. 186 remains in the name of the Commonwealth of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services, with the approval of the Governor, is hereby authorized to convey by quitclaim deed, without warranty of any kind, to P&J Properties, Inc., a Virginia corporation, all of the Commonwealth's right, title, and interest, if any, in and to, and to release any claim upon, that certain one acre, more or less, as described in that current survey of the land designated as Lot No. 186 on the Plan of the City of Richmond, as shown on that certain Compiled Map Showing Lot 186, Plan of Richmond, Virginia, made by James E. McKnight, L.S., dated December 5, 2012, and described as follows: Commencing at a point where the East line of 31st Street intersects with the north line of Williamsburg Avenue; thence, Southeasterly along the North line of Williamsburg Avenue, 65 feet more or less to the old Eastern line of 32nd Street (now abandoned); thence along the East line of the now abandoned 32nd Street North 58°58'00" East, a distance of 159.00 feet to a point that marks the division line between lots 194 and 186, the Point of Beginning; thence continuing North 58°58'00" East, a distance of 140.00 feet; thence South 52°55'45" East, a distance of 49.50 feet; thence South 01°25'51" West, a distance of 58.29 feet; thence South 07°14'40" West, a distance of 53.81 feet; thence South 14°43'52" West, a distance of 27.90 feet; thence North 56°15'09" West, a distance of 173.33 feet to the Point of Beginning. The conveyance shall be made in a form approved by the Attorney General.*

*§ 2. The conveyance of property that is the subject of this act shall not be deemed a conveyance of surplus property and there shall be no requirement for the payment of any consideration in connection with such conveyance.*

## **Chapter 429 Emergency medical services; Board of Health to develop policies related to statewide providers.**

An Act to require the State Board of Health to develop certain policies related to statewide emergency medical services.

[\[H 1856\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall direct the State Emergency Medical Services Advisory Board to, by July 1, 2014, develop and facilitate the implementation of (i) a process whereby an emergency medical services provider who is certified by the Office of Emergency Medical Services pursuant to [§ 32.1-111.5](#) and who has received an adverse decision related to his authority to provide emergency medical care on behalf of an emergency medical services agency under the authority of an agency operational medical director shall be informed of the appeals process and (ii) a standard operating procedure template to be used in the development of local protocols for emergency medical services personnel for basic life support services provided by emergency medical services personnel. The Board, in cooperation with the State Emergency Medical Services Advisory Board, shall also review the training for emergency medical services personnel throughout the state to identify and address disparities in the delivery of training to and the availability of training for emergency medical services personnel. The Board shall report on its progress in meeting the requirements of this act to the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health no later than December 1, 2013.*

## **Chapter 453 Jail facilities, temporary; Chesapeake allowed certain waivers for current temporary structures.**

An Act to allow for certain waivers for the City of Chesapeake for temporary structures for housing inmates.

[\[S 729\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Corrections may provide a waiver from the construction requirements of the "Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities" to the City of Chesapeake involving the City's use of one or more of the current temporary structures for housing community custody inmates. Such waiver shall be for a time period not to exceed five years. If construction of a permanent facility, enlargement of an existing facility, or approval of an alternative housing agreement is not completed at the time of the expiration of the waiver, the Board of Corrections may grant a one-year extension no more than twice. If such extensions are granted, the city shall lose 25 percent of eligible reimbursement for each year of extension. In no event shall any temporary structure be utilized for more than seven years. Such temporary structure shall comply with all the applicable provisions of the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code for the designated use and occupancy. Such waiver shall not relieve the City of the requirement for submission and Board approval of a community-based corrections plan and a planning study. As a condition of the waiver, the City shall provide the Board of Corrections with an annual update on the progress of a permanent facility, enlargement of an existing facility, or plan for implementation of alternative housing on July 1 of each year. The City of Chesapeake shall not be eligible for the construction funding reimbursement for the temporary housing structures authorized pursuant to §§ [53.1-5](#), [53.1-80](#), [53.1-81](#), and [53.1-82](#). Priority for the use of any temporary structure for use by the City of Chesapeake shall be given to housing local-responsible offenders assigned to a work-release program, local-responsible offenders within 60 days of release and assigned to a re-entry program, and local-responsible offenders who are required to serve their sentences on weekends.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 471 Bedford, City of, reversion; special election for certain council members, census to be completed.**

An Act to provide for a special election following the effective date of annexation for any town that was established by a transition from a city to town status.

[\[S 1042\]](#)

Approved March 16, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, there shall be a special election for members of council for any town that was created by the transition of a city to town status, effective July 1, 2013, and that incorporated territory into the town, effective July 1, 2013, as part of a voluntary settlement pursuant to § [15.2-3400](#) of the Code of Virginia. Such election shall be held on the Tuesday after the first Monday in November 2014. The election shall be held for the unexpired portion of the term of each council member whose term extends beyond December 31, 2014. However, no such special election shall be held as a result of such an annexation unless the town increases its population by more than five percent due to the annexation. By July 31, 2013, any such town shall complete a census of the inhabitants of the territory incorporated into the town as of July 1, 2013. Whether the town has increased its population by more than five percent shall be determined by dividing the total number of inhabitants residing within the annexed territory at the time of such census by the total inhabitants residing within the former city as shown by the 2010 United States decennial census.*

*§ 2. The special election required by § [15.2-3226](#) of the Code of Virginia and subsection 8 of § [15.2-3400](#) of the Code of Virginia shall not be applicable to any town that is subject to the requirements of this act.*

## **Chapter 587 Standards of Quality; waivers from third grade Standards of Learning assessments in certain schools.**

An Act to provide two-year waivers from third grade Standards of Learning assessments in certain cases.

[\[H 2144\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any provision of law to the contrary, the Board of Education shall*

*grant a two-year waiver from the science or history and social science Standards of Learning assessment requirement, or both, for third grade students to a public elementary school that had an adjusted pass rate of less than 75 percent on the Standards of Learning reading assessments administered during the previous school year and that: (a) applies for a waiver in the form and by the deadline prescribed by the Board pursuant to regulation; (b) hires a full-time reading specialist to work with the third grade students and teachers in the school; (c) develops a system to monitor the academic progress of all third grade students in the subject area in which the assessment waiver is sought, which shall include the administration of a summative assessment or another divisionwide assessment to third grade students in that subject area; (d) commits to publishing the adjusted pass rate of third grade students on such summative assessment or other divisionwide assessment once the results are available; and (e) commits to providing at least 30 minutes of instruction per day to third grade students in the subject area in which the assessment waiver is sought.*

*The Board of Education shall consider applications and grant waivers based on the criteria above from the third grade Standards of Learning assessment in science or history and social science or both in advance of the 2013-2014 school year, based on the school's adjusted pass rate on the Standards of Learning reading assessments administered during the 2011-2012 school year.*

2. That the provisions of this act shall expire on July 1, 2015.

## **Chapter 509 Recorded plats & final site plans; plan shall be deemed final once it has been reviewed & approved.**

An Act to amend and reenact § [15.2-2261](#) of the Code of Virginia and to amend Chapter 508 of the Acts of Assembly of 2012 by adding a third enactment, relating to recorded plats and final site plans.

[\[H 2238\]](#)

Approved March 18, 2013

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-2261](#) of the Code of Virginia is amended and reenacted as follows:

§ [15.2-2261](#). Recorded plats or final site plans to be valid for not less than five years.

A. An approved final subdivision plat which has been recorded or an approved final site plan, hereinafter referred to as "recorded plat or final site plan," shall be valid for a period of not less than five years from the date of approval thereof or for such longer period as the local planning commission or other agent may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. A site plan shall be deemed final once it has been reviewed and approved by the locality if the only ~~requirement~~*requirements* remaining to be satisfied in order to obtain a building permit ~~is~~*are* the posting of any bonds and escrows ~~or~~*the submission of any other administrative documents, agreements, deposits, or fees required by the locality in order to obtain the permit. However, any fees that are customarily due and owing at the time of the agency review of the site plan shall be paid in a timely manner.*

B. 1. Upon application of the subdivider or developer filed prior to expiration of a recorded plat or final site plan, the local planning commission or other agent may grant one or more extensions of such approval for additional periods as the commission or other agent may, at the time the extension is granted, determine to be reasonable, taking into consideration the size and phasing of the proposed development, the laws, ordinances and regulations in effect at the time of the request for an extension.

2. If the commission or other agent denies an extension requested as provided herein and the subdivider or developer contends that such denial was not properly based on the ordinance applicable thereto, the foregoing considerations for granting an extension, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of land subject to the recorded plat or final site plan, provided that such appeal is filed with the circuit court within sixty days of the written denial by the commission or other agency.

C. For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

D. Application for minor modifications to recorded plats or final site plans made during the periods of validity of such plats or plans established in accordance with this section shall not constitute a waiver of the provisions hereof nor shall the approval of minor modifications extend the period of validity of such plats or plans.

E. The provisions of this section shall be applicable to all recorded plats and final site plans valid on or after January 1, 1992. Nothing contained in this section shall be construed to affect (i) any litigation concerning the validity of a site plan pending prior to January 1, 1992, or any such litigation nonsuited and thereafter refiled; (ii) the authority of a governing body to impose valid conditions upon approval of any special use permit, conditional use permit or special exception; (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the greatest extent possible, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ [10.1-2100](#) et seq.); or (iv) the application to individual lots on recorded plats or parcels of land subject to final site plans of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.

F. An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in §§ [15.2-2270](#) through [15.2-2278](#).

2. That Chapter 508 of the Acts of Assembly of 2012 is amended by adding a third enactment as follows:

3. That extensions of validity effective pursuant to § [15.2-2209.1](#) of the Code of Virginia and the second enactment of Chapter 193 of the Acts of Assembly of 2009 as of June 30, 2012, shall continue to be valid pursuant to this act until the extension date provided in this act.

## **Chapter 527 Affordable housing; substitutes south urban region for Charlottesville MSA.**

An Act to amend and reenact § 1 of Chapter 693 of the Acts of Assembly of 2008, relating to the grant of certain authority regarding affordable housing to the City of Charlottesville.

[\[S 886\]](#)

Approved March 18, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 693 of the Acts of Assembly of 2008 is amended and reenacted as follows:

§ 1. A. The governing body of the City of Charlottesville may provide in its comprehensive plan for the physical development within the city, adopted pursuant to § [15.2-2223](#), for densities of development ranging between a floor area ratio (FAR) of 1.0 FAR and 10.0 FAR, or greater, and as such, the governing body may adopt as part of its zoning ordinance requirements for the provision of (i) on-site or off-site "Affordable Dwelling Units," as defined herein, or (ii) a cash contribution to the city's affordable housing fund, in lieu of such units, in such amounts as set out herein, as a condition of the governing body's approval of a rezoning or special use application for residential or the residential portion of mixed-use projects with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre. Residential or the residential portion of mixed-use projects with a density less than 1.0 FAR, or an equivalent density based on units per acre, shall be exempt from the requirements of this section and the city's zoning ordinance adopted pursuant to this section. The city's zoning ordinance requirements shall provide as follows:

1. Upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant shall provide on-site Affordable Dwelling Units as part of the project, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that exceeds 1.0 FAR or an equivalent density based on units per acre. For purposes of this section, "applicant" shall mean the person or entity submitting a rezoning or special use application for approval of a residential or mixed-use project that contains residential dwelling units in the city and shall include the successors or assigns of the applicant.

2. As an alternative, upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant may elect to provide any one of the following:

a. Affordable Dwelling Units at an off-site location in the city, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that is over 1.0 FAR, or an equivalent density based on units per acre; or

b. A cash contribution to the city's affordable housing fund, which contribution shall be calculated as follows for each of the density tiers described below:

(1) Two dollars per square foot of gross floor area for residential projects greater than 1.0 FAR or an equivalent density based on units per acre.

(2) For mixed-use projects, cash contributions shall be calculated by applying the proportionate amount of residential gross floor area at two dollars per square foot.

The cash contribution shall be indexed to the Consumer Price Index for Housing in the ~~CharlottevilleMSA~~ *south urban region* as published by the Bureau of Labor Statistics and shall be adjusted annually based upon the changes made in January to such index.

3. For purposes of this section, "Affordable Dwelling Units" mean units committed for a 30-year term as affordable to households with incomes at 60 percent or less of the area median income.

B. With the exception of the authority under § [15.2-2305](#), this section establishes the legislative authority for the city to obtain Affordable Dwelling Units in exchange for the approval of a rezoning or special use application for a residential, or mixed-use project that contains residential dwelling units in the city, and may not be used in combination with any other provision of law in this chapter to obtain Affordable Dwelling Units from an applicant. Nothing in this section shall be construed to repeal the city's authority under any other provision of law.

## **Chapter 608 Public school security equipment; issuance of bonds for purpose of grant payments.**

An Act to authorize the Virginia Public School Authority to issue bonds with the proceeds of the bonds to be used for the payment of grants to public school divisions for the purchase of school security equipment.

[\[H 2343\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That this act shall be known and may be cited as the "Public School Security Equipment Grant Act of 2013."*

§ 2. *For purposes of this act:*

*"Authority" means the Virginia Public School Authority.*

*"Department" means the Department of Education.*

*"Eligible school division" means a (i) local school division or (ii) regional vocational center, special education center, alternative education center, or academic year Governor's School serving public school students in grades K through 12. The term shall also include the Virginia School for the Deaf and the Blind.*

*"Local school division" means a school division with schools subject to state accreditation and whose students are required to be reported in fall membership for grades K through 12.*

*§ 3. The Authority shall issue bonds for the purpose of grant payments to eligible school divisions of the Commonwealth to be used exclusively for purchasing security equipment for schools, including any related installation, which is designed to improve and help ensure the safety of students attending public schools in Virginia. Such grants shall not be used to pay for security equipment that is not included or described in a grant application approved by the Department pursuant to § 4. The amount of grants provided to each eligible school division pursuant to this act shall not exceed \$100,000 for each fiscal year of the Commonwealth. Funds for the payment of such grants shall be provided from the issuance of bonds by the Authority, provided that the Authority shall not issue more than an aggregate of \$6 million in bonds, after all costs, for such grants during each fiscal year of the Commonwealth. In addition, the Authority shall ensure that no more than an aggregate principal amount of \$30 million in bonds issued under this act shall be outstanding at any time. Eligible school divisions seeking a grant shall apply to the Department, which shall be responsible for administering the grant program. The Authority shall work with the Department to determine the schedule for the issuance of the bonds, which shall be based in part upon eligible school divisions having sufficient funds to purchase such security equipment. The payment of debt service on such bonds shall be as provided in the general appropriation act.*

*Such grants shall be in addition to all other grants made to local governments, school boards, or school divisions according to law. In addition, such grants shall not replace or be in lieu of loans to local school boards or interest rate subsidy payments to local school boards pursuant to Chapter 11.1 (§ [22.1-175.1](#) et seq.) of Title 22.1 of the Code of Virginia, and the issuance of such bonds and the payment of such grants shall not, except as herein provided, affect or otherwise amend the provisions of such chapter as they relate to the powers and duties of the Authority, local school boards, local governments, or any other entity.*

*§ 4. Based on the criteria developed by the Department in collaboration with the Department of Criminal Justice Services, eligible school divisions shall apply for a grant by August 1 of each year. As a condition of receiving a grant, a local match of 25 percent of*

*the grant amount shall be required. The Superintendent of Public Instruction is authorized to reduce the local match for local school divisions with a composite index of local ability-to-pay less than 0.2000, including any such school division participating in a regional vocational center, special education center, alternative education center, or academic year Governor's School. The Virginia School for the Deaf and the Blind shall be exempt from the match requirement.*

*Grants shall be awarded by the Department on a competitive basis. As part of the application for a grant, each eligible school division shall (i) identify with specificity the security equipment for which grants are being sought, as well as the estimated costs to purchase and install the security equipment, and (ii) certify that it is the intent of the eligible school division to purchase the security equipment within six months of approval of any grant by the Department.*

*If the Department determines that a grant shall be paid to an eligible school division under this act, it shall provide a written certification to the chairman of the Authority directing him to make a grant payment in a specific amount to the eligible school division. The Department, however, shall not make such written certification until it has established that the Authority has sufficient funds to make such grant payment. The Authority shall only make grant payments to an eligible school division for the grants provided under this act upon receipt of such written certification. The Authority shall make such grant payments, and in the amounts as directed by the Department, within 30 days of receipt of the certification.*

*§ 5. The Department shall develop guidelines concerning the requirements for applying for a grant and the administration of such grants. Such guidelines shall not be subject to the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia).*

*§ 6. In the event that two or more local school divisions became one local school division, whether by consolidation of only the local school divisions or by consolidation of the local governments, such resulting local school division shall be eligible for grants on the basis of the same number of local school divisions as existed prior to September 30, 2012.*

*§ 7. The Authority shall take all necessary and proper steps as it is authorized to take under law to carry out the provisions of this act.*

*§ 8. Beginning in 2014, the Department shall make an annual report to the General Assembly by September 1 of each year reporting (i) the total grants paid during the immediately prior fiscal year to each eligible school division and (ii) a general description of the security equipment purchased by eligible school divisions.*

2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed by the 2013 Session of the General Assembly, which becomes law.

## **Chapter 640 Student growth indicators; Board of Education shall develop by October 1, 2014, report.**

An Act to direct the Board of Education to develop student growth indicators.

[\[S 1167\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall develop student growth indicators by October 1, 2014. The growth indicators shall be used in the standards of accreditation of schools and in teacher evaluations. The Department of Education shall provide an interim report to the Governor and the General Assembly on the development of the student growth indicators by December 1, 2013, and a final report on the indicators and their uses by October 1, 2014.*

## **Chapter 663 License plates, special; issuance of those bearing legend: PEACE BEGINS AT HOME.**

An Act to authorize the issuance of special license plates bearing the legend: PEACE BEGINS AT HOME; fees.

[\[S 1368\]](#)

Approved March 20, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates bearing the legend: PEACE BEGINS AT HOME; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to*

*the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates bearing the legend: PEACE BEGINS AT HOME.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Peace Begins at Home Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Sexual and Domestic Violence Action Alliance and used to support its programs engaged in the primary prevention of sexual and domestic violence in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 667 Civics Education, Commission on; extends sunset provision.**

An Act to amend and reenact § [30-318](#) of the Code of Virginia and to repeal the second enactment of Chapter 859 of the Acts of Assembly of 2009, relating to the Commission on Civics Education.

[\[H 1601\]](#)

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1. That § [30-318](#) of the Code of Virginia is amended and reenacted as follows:

§ [30-318](#). Sunset.

This chapter shall expire on July 1, ~~2012~~ 2016.

2. That the second enactment of Chapter 859 of the Acts of Assembly of 2009 is repealed.

## **Chapter 672 Individual school performance; Board of Education shall approve student growth indicators, report.**

An Act to require the Board of Education to develop a grading system for individual school performance.

[\[H 1999\]](#)

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall approve student growth indicators by July 31, 2013. The Department of Education shall provide a report to the Governor and the General Assembly on the approval of the student growth indicators and their uses by December 1, 2013. The growth indicators shall be used in the standards of accreditation of schools and in teacher evaluations.*

*§ 2. The Board of Education shall report individual school performance using a grading system that includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades. The grading system shall be based on an A-to-F grading scale. The Board, by October 1, 2014, shall (i) assign a grade from A to F to each public school in the Commonwealth; (ii) make both the system and the grade assigned to each school in the Commonwealth available to the public; and (iii) report to the General Assembly a summary of the system and the assigned grades.*

*§ 3. As used in this act, for purposes of assigning grades, "student growth" means (i) whether individual students on average fall below, meet, or exceed an expected amount of growth based on a statewide average or reference base year on state assessments or additional assessments approved by the Board; (ii) maintaining a proficient or advanced proficient performance level on state assessments; or (iii) making significant improvement within the below basic or basic level of performance on reading or mathematics assessments as determined by the Board.*

## **Chapter 674 Nursing homes; implementation of voluntary electronic monitoring in residents' rooms.**

An Act to require the Board of Health to promulgate regulations governing implementation of electronic monitoring in nursing home residents' rooms.

[\[H 2130\]](#)

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes, which shall include existing policies and procedures set forth in the Board's guidelines governing electronic monitoring of nursing home residents' rooms and described in the publication "Electronic Monitoring of Residents' Rooms."*

## **Chapter 682 Nursing homes; implementation of voluntary electronic monitoring in residents' rooms.**

An Act to require the Board of Health to promulgate regulations governing implementation of electronic monitoring in nursing home residents' rooms.

[\[S 974\]](#)

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes, which shall include existing policies and procedures set forth in the Board's guidelines governing electronic monitoring of nursing home residents' rooms and described in the publication "Electronic Monitoring of Residents' Rooms."*

## **Chapter 692 Individual school performance; Board of Education shall approve student growth indicators, report.**

An Act to require the Board of Education to develop a grading system for individual school performance.

[\[S 1207\]](#)

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall approve student growth indicators by July 31, 2013. The Department of Education shall provide a report to the Governor and the General Assembly on the approval of the student growth indicators and their uses by December 1, 2013. The growth indicators shall be used in the standards of accreditation of schools and in teacher evaluations.*

*§ 2. The Board of Education shall report individual school performance using a grading system that includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades. The grading system shall be based on an A-to-F grading scale. The Board, by October 1, 2014, shall (i) assign a grade from A to F to each public school in the Commonwealth; (ii) make both the system and the grade assigned to each school in the Commonwealth available to the public; and (iii) report to the General Assembly a summary of the system and the assigned grades.*

*§ 3. As used in this act, for purposes of assigning grades, "student growth" means (i) whether individual students on average fall below, meet, or exceed an expected amount of growth based on a statewide average or reference base year on state assessments or additional assessments approved by the Board; (ii) maintaining a proficient or advanced proficient performance level on state assessments; or (iii) making significant improvement within the below basic or basic level of performance on reading or mathematics assessments as determined by the Board.*

## **Chapter 697 Public secondary school students; model waiver form for entity providing occupational experience.**

An Act to require the Board of Education to develop a model waiver form for use by any entity providing a career and technical occupational experience.

[\[H 1858\]](#)

Approved March 22, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall develop, prior to July 1, 2014, a model waiver form for use by any entity providing a career and technical occupational experience for public secondary school students.*

## **Chapter 718 Northampton County School Board; terms of members.**

An Act to modify the terms of the members of the Northampton County School Board.

[\[H 2176\]](#)

Approved March 25, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [22.1-47.3](#) of the Code of Virginia or any other provision of law to the contrary, the terms of the members currently appointed to the Northampton County School Board shall be shortened or lengthened to expire on December 31, 2013.*

*Notwithstanding § [22.1-47.3](#) of the Code of Virginia or any other provision of law to the contrary, the terms of the members of the Northampton County School Board to be elected in the November 2013 general election shall be staggered as follows: four members to be elected to fill the vacancies in Districts 1, 2, and 3 and one at-large position for a term of four years and three members to be elected to fill the vacancies in Districts 4 and 5 and the other at-large position for a term of two years. All such terms shall commence*

*on January 1, 2014. After the initial staggering of terms, members shall be elected for a term of four years.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 721 Investor-owned electric utilities; declining block rate for residential customers.**

An Act to require certain utilities to address the appropriateness of declining block rates.

[\[S 956\]](#)

Approved March 25, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That as part of its 2013 integrated resource plan filing with the State Corporation Commission pursuant to Chapter 24 (§ [56-597](#) et seq.) of Title 56 of the Code of Virginia, any investor-owned electric utility that uses a declining block rate for residential customers during winter months shall address the appropriateness of such rate provision. In so doing, the utility shall address the effect of the rate provision on energy conservation, peak load, efficient and cost effective use of the utility's generation fleet and associated infrastructure, equity among customers within the residential class, and the affordability of home heating for residential customers.*

## **Chapter 726 Teacher licensure; renewal requirements by Board of Education.**

An Act to require certain individuals seeking license renewal to demonstrate knowledge of Virginia history or state and local government.

[\[S 1345\]](#)

Approved March 25, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall amend its regulations to require any individual*

*licensed and endorsed to teach (i) middle school civics or economics, or (ii) high school government or history who is seeking renewal of such license to demonstrate knowledge of Virginia history or state and local government by completing a module or professional development course specifically related to Virginia history or state and local government that has a value of five professional development points. This requirement shall apply for purposes of the individual's next or initial renewal occurring after July 1, 2014.*

2. That the Board of Education shall promulgate regulations to implement the provisions of this act to be effective by July 1, 2014.

## **Chapter 727 Constitutional amendment; General Assembly may exempt real property of spouses of soldiers killed.**

HOUSE JOINT RESOLUTION NO. 551

Proposing an amendment to Section 6-A of Article X of the Constitution of Virginia, relating to property tax exemptions.

Agreed to by the House of Delegates, February 19, 2013

Agreed to by the Senate, February 15, 2013

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and surviving spouses of soldiers killed in action.*

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this ~~section~~ *subdivision*, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence.

*(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.*

## **Chapter 729 Intervener; purposes of regulations promulgated by Board of Education.**

An Act to define "intervener" in regulations promulgated by the Board of Education.

[\[H 1420\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. For the purposes of regulations promulgated by the Board of Education, "intervener"*

*means an individual with knowledge and skill in the mode of communication of a deaf-blind student and who can communicate to the deaf-blind student what is occurring in the student's educational setting.*

## **Chapter 736 Real property; VDOT to convey a parcel of property owned by Department in Fauquier County, etc.**

An Act to authorize the Department of Transportation to convey certain property in Marshall in Fauquier County and to accept certain property in exchange.

[\[H 1627\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding any other provision of law, the Virginia Department of Transportation, with the approval of the Governor pursuant to § [2.2-1156](#), is hereby authorized to convey a parcel of real property owned by the Department, bounded by Utterback Avenue and Frost Street in Marshall, Fauquier County, further identified as all the property acquired by the Department by deed dated July 10, 1947, and recorded in Deed Book 162, Page 459 in the land records of the Circuit Court of Fauquier County, containing 3.9313 acres, more or less, in exchange for real property located in an area and with improvements to such property as determined necessary by the Department to render the property suitable for use and ready for operation as a park-and-ride facility for Marshall, Virginia. The total consideration received by the Department shall, as determined by the Department, be of comparable or greater value to the property conveyed by the Department in the exchange.*

*§ 2. The exchange and all documentation pursuant thereto shall be in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents pursuant to appropriate law and as may be necessary to accomplish the exchange.*

*§ 3. Required improvements to the property to be obtained by the Department for a park-and-ride facility shall be completed prior to completion of the exchange authorized herein.*

## **Chapter 738 Tradesmen; Board for Contractors shall evaluate continuing education requirements, report.**

An Act to direct the Board for Contractors to evaluate continuing education requirements for tradesman; report.

[\[H 1645\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board for Contractors shall evaluate continuing education requirements for tradesman, including curriculum standards, corresponding updates to the Uniform Statewide Building Code (§ [36-97](#) et seq.), effectiveness in protecting the public, and cost to regulants, and initiate regulatory action to reduce any unnecessary burdens.*

*§ 2. That on or before November 1, 2013, the Board shall report its findings to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.*

## **Chapter 751 Health insurance reform; revises State's laws.**

An Act to amend and reenact §§ [38.2-508.1](#), [38.2-3406.1](#), [38.2-3407.12](#), [38.2-3412.1](#), [38.2-3412.1:01](#), [38.2-3417](#), [38.2-3418.8](#), [38.2-3430.3](#), [38.2-3431](#), [38.2-3432.1](#), [38.2-3432.2](#), [38.2-3436](#), [38.2-3438](#), [38.2-3439](#), [38.2-3440](#), [38.2-3442](#), [38.2-3444](#), [38.2-3501](#), [38.2-3503](#), [38.2-3520](#), [38.2-3521.1](#), [38.2-3522.1](#), [38.2-3523.4](#), [38.2-3540.2](#), [38.2-3551](#), [38.2-4109](#), [38.2-4214](#), [38.2-4306](#), and [38.2-4319](#) of the Code of Virginia; to amend the Code of Virginia by adding in Article 6 of Chapter 34 of Title 38.2 sections numbered [38.2-3447](#) through [38.2-3454](#); and to repeal § [38.2-3433](#) of the Code of Virginia, the third enactment of Chapter 788 of the Acts of Assembly of 2011, and the second enactment of Chapter 882 of the Acts of Assembly of 2011, relating to health insurance reform.

[\[H 1900\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [38.2-508.1](#), [38.2-3406.1](#), [38.2-3407.12](#), [38.2-3412.1](#), [38.2-3412.1:01](#), [38.2-3417](#), [38.2-3418.8](#), [38.2-3430.3](#), [38.2-3431](#), [38.2-3432.1](#), [38.2-3432.2](#), [38.2-3436](#), [38.2-3438](#), [38.2-3439](#), [38.2-3440](#), [38.2-3442](#), [38.2-3444](#), [38.2-3501](#), [38.2-3503](#), [38.2-3520](#), [38.2-3521.1](#), [38.2-3522.1](#), [38.2-3523.4](#), [38.2-3540.2](#), [38.2-3551](#), [38.2-4109](#), [38.2-4214](#), [38.2-4306](#), and [38.2-4319](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 34 of Title 38.2 sections numbered [38.2-3447](#) through [38.2-3454](#) as follows:

§ [38.2-508.1](#). Unfair discrimination; members of the armed forces.

A. No person shall refuse to issue or refuse to continue a life insurance policy on the life of any member of the United States Armed Forces, the Reserves of the United States Armed Forces or the National Guard due to (i) their status as a member of any such military organization or (ii) their duty assignment while a member of any such military organization.

B. In circumstances where an individual's or family member's coverage under a group life or group health insurance policy or contract was terminated due to such individual's status as a member of the United States Armed Forces, the Reserves of the United States Armed Forces or the National Guard, no person shall refuse to reinstate such coverage, regardless of continuation, renewal, reissue or replacement of the group insurance policy, upon the occurrence of the individual's return to eligibility status under the policy or contract. Such reinstated coverage shall not contain any new preexisting condition or other exclusions or limitations except that the remainder of a preexisting condition requirement that was not satisfied prior to termination of the individual's coverage resulting from such military status may be applied once the individual returns and coverage under the group policy is reinstated.

*C. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3406.1](#). Application of requirements that policies offered by small employers include state-mandated health benefits.

A. As used in this section:

"Eligible individual" means an individual who is employed by a small employer and has satisfied applicable waiting period requirements.

"Health insurance coverage" means benefits consisting of coverage for costs of medical care, whether directly, through insurance or reimbursement, or otherwise, and including items and services paid for as medical care under a group policy of accident and

sickness insurance, hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract, which coverage is subject to this title or is provided under a plan regulated under the Employee Retirement Income Security Act of 1974.

"Health insurer" means any insurance company that issues accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis, a corporation that provides accident and sickness subscription contracts, or any health maintenance organization that provides a health care plan that provides, arranges for, pays for, or reimburses any part of the cost of any health care services, that is licensed to engage in such business in the Commonwealth, and that is subject to the laws of the Commonwealth that regulate insurance within the meaning of § 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144(b)(2)).

"Small employer" means, with respect to a calendar year and a plan year, an employer located in the Commonwealth that employed *an average of at least two one* but not more than 50 eligible individuals on business days during the preceding calendar year and who employs at least ~~two one~~ *one individual* on the date a policy under this section becomes effective. *Effective January 1, 2016, "small employer" means, with respect to a calendar year and a plan year, an employer located in the Commonwealth that employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the date a policy under this section becomes effective.*

"State-mandated health benefit" means coverage required under this title or other laws of the Commonwealth to be provided in a policy of accident and sickness insurance or a contract for a health-related condition that (i) includes coverage for specific health care services or benefits; (ii) places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts; or (iii) includes a specific category of licensed health care practitioners from whom an insured is entitled to receive care. "State-mandated health benefit" includes, without limitation, any coverage, or the offering of coverage, of a benefit or provider pursuant to §§ [38.2-3407.5](#) through [38.2-3407.6:1](#), [38.2-3407.9:01](#), [38.2-3407.9:02](#), [38.2-3407.11](#) through [38.2-3407.11:3](#), [38.2-3407.16](#), [38.2-3408](#), [38.2-3411](#) through [38.2-3414.1](#), [38.2-3418](#) through [38.2-3418.14](#), or § [38.2-4221](#). For purposes of this article, "state-mandated health benefit" does not include a benefit that is mandated by federal law.

B. Notwithstanding any statute, rule, or regulation to the contrary, and for the purposes of this section, a group accident and sickness insurance policy providing hospital, medical

and surgical, or major medical coverage on an expense-incurred basis; a group accident and sickness subscription contract providing health insurance coverage for eligible individuals; and a health care plan that provides, arranges for, pays for, or reimburses any part of the cost of any health care services that is offered, sold, or issued by a health insurer to a small employer:

1. Shall not be required to include coverage, or the offer of coverage, for any state-mandated health benefit, except for:

- a. Coverage for mammograms pursuant to § [38.2-3418.1](#);
- b. Coverage for pap smears pursuant to § [38.2-3418.1:2](#);
- c. Coverage for PSA testing pursuant to § [38.2-3418.7](#); and
- d. Coverage for colorectal cancer screening pursuant to § [38.2-3418.7:1](#).

2. May include any, or none, of the state-mandated health benefits not otherwise noted in subdivision B 1 as the health insurer and the small employer shall agree.

Notwithstanding any provision of this section to the contrary, if any plan authorized by this section includes and offers health care services covered by the plan that may be legally rendered by a health care provider listed in § [38.2-3408](#), that plan shall allow for the reimbursement of such covered services when rendered by such provider. Unless otherwise provided in this section, this provision shall not require any benefit be provided as a covered service.

C. Any application and any enrollment form used in connection with coverage under this section shall prominently disclose that the policy, contract, or evidence of coverage is not required to provide state-mandated health benefits, shall prominently disclose any and all state-mandated health benefits that the policy, subscription contract, or evidence of coverage does not provide, and shall clearly describe all eligibility requirements.

D. A policy form, subscription contract, or evidence of coverage issued under this section to a small employer shall prominently disclose any and all state-mandated health benefits that the policy, subscription contract, or evidence of coverage does not provide. Such disclosure shall also be included in certificate forms or other evidences of coverage furnished to each participant. Health insurers proposing to issue forms providing coverage under this section shall clearly disclose the intended purposes for such policies, contracts, or evidences of coverage when submitting the forms to the Commission for approval in accordance with § [38.2-316](#).

E. The Commission shall adopt any regulations necessary to implement this section.

F. (~~Expires July 1, 2014~~) The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.

§ [38.2-3407.12](#). Patient optional point-of-service benefit.

A. As used in this section:

"Affiliate" shall have the meaning set forth in § [38.2-1322](#).

"Allowable charge" means the amount from which the carrier's payment to a provider for any covered item or service is determined before taking into account any cost-sharing arrangement.

"Carrier" means:

1. Any insurer licensed under this title proposing to offer or issue accident and sickness insurance policies which are subject to Chapter 34 (§ [38.2-3400](#) et seq.) or 39 (§ [38.2-3900](#) et seq.) of this title;
2. Any nonstock corporation licensed under this title proposing to issue or deliver subscription contracts for one or more health services plans, medical or surgical services plans or hospital services plans which are subject to Chapter 42 (§ [38.2-4200](#) et seq.) of this title;
3. Any health maintenance organization licensed under this title which provides or arranges for the provision of one or more health care plans which are subject to Chapter 43 (§ [38.2-4300](#) et seq.) of this title;
4. Any nonstock corporation licensed under this title proposing to issue or deliver subscription contracts for one or more dental or optometric services plans which are subject to Chapter 45 (§ [38.2-4500](#) et seq.) of this title; and
5. Any other person licensed under this title which provides or arranges for the provision of health care coverage or benefits or health care plans or provider panels which are subject to regulation as the business of insurance under this title.

"Co-insurance" means the portion of the carrier's allowable charge for the covered item or service which is not paid by the carrier and for which the enrollee is responsible.

"Co-payment" means the out-of-pocket charge other than co-insurance or a deductible for an item or service to be paid by the enrollee to the provider towards the allowable charge as a condition of the receipt of specific health care items and services.

"Cost sharing arrangement" means any co-insurance, co-payment, deductible or similar arrangement imposed by the carrier on the enrollee as a condition to or consequence of the receipt of covered items or services.

"Deductible" means the dollar amount of a covered item or service which the enrollee is obligated to pay before benefits are payable under the carrier's policy or contract with the group contract holder.

"Enrollee" or "member" means any individual who is enrolled in a group health benefit plan provided or arranged by a health maintenance organization or other carrier. If a

health maintenance organization arranges or contracts for the point-of-service benefit required under this section through another carrier, any enrollee selecting the point-of-service benefit shall be treated as an enrollee of that other carrier when receiving covered items or services under the point-of-service benefit.

"Group contract holder" means any contract holder of a group health benefit plan offered or arranged by a health maintenance organization or other carrier. For purposes of this section, the group contract holder shall be the person to which the group agreement or contract for the group health benefit plan is issued.

"Group health benefit plan" shall mean any health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, or other similar certificate, policy, contract or arrangement, and any endorsement or rider thereto, offered, arranged or issued by a carrier to a group contract holder to cover all or a portion of the cost of enrollees (or their eligible dependents) receiving covered health care items or services. Group health benefit plan does not mean (i) health care plans, contracts or policies issued in the individual market; (ii) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. or Title XX of the Social Security Act, 42 U.S.C. § 1397 et seq. (Medicaid), 5 U.S.C. § 8901 et seq. (federal employees), 10 U.S.C. § 1071 et seq. (CHAMPUS) or Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 (state employees); (iii) accident only, credit or disability insurance, or long-term care insurance, plans providing only limited health care services under § [38.2-4300](#) (unless offered by endorsement or rider to a group health benefit plan), CHAMPUS supplement, Medicare supplement, or workers' compensation coverages; or (iv) an employee welfare benefit plan (as defined in section 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002 (1)), which is self-insured or self-funded; or (v) ~~the essential and standard health benefit plans developed pursuant to § [38.2-3431](#) G.~~

"Group specific administrative cost" means the direct administrative cost incurred by a carrier related to the offer of the point-of-service benefit to a particular group contract holder.

"Health care plan" shall have the meaning set forth in § [38.2-4300](#).

"Person" means any individual, corporation, trust, association, partnership, limited liability company, organization or other entity.

"Point-of-service benefit" means a health maintenance organization's delivery system or covered benefits, or the delivery system or covered benefits of another carrier under contract or arrangement with the health maintenance organization, which permit an enrollee

(and eligible dependents) to receive covered items and services outside of the provider panel, including optometrists and clinical psychologists, of the health maintenance organization under the terms and conditions of the group contract holder's group health benefit plan with the health maintenance organization or with another carrier arranged by or under contract with the health maintenance organization and which otherwise complies with this section. Without limiting the foregoing, the benefits offered or arranged by a carrier's indemnity group accident and sickness policy under Chapter 34 (§ [38.2-3400](#) et seq.) of this title, health services plan under Chapter 42 (§ [38.2-4200](#) et seq.) of this title or preferred provider organization plan under Chapter 34 (§ [38.2-3400](#) et seq.) or 42 (§ [38.2-4200](#) et seq.) of this title which permit an enrollee (and eligible dependents) to receive the full range of covered items and services outside of a provider panel, including optometrists and clinical psychologists, and which are otherwise in compliance with applicable law and this section shall constitute a point-of-service benefit.

"Preferred provider organization plan" means a health benefit program offered pursuant to a preferred provider policy or contract under § [38.2-3407](#) or covered services offered under a preferred provider subscription contract under § [38.2-4209](#).

"Provider" means any physician, hospital or other person, including optometrists and clinical psychologists, that is licensed or otherwise authorized in the Commonwealth to deliver or furnish health care items or services.

"Provider panel" means the participating providers or referral providers who have a contract, agreement or arrangement with a health maintenance organization or other carrier, either directly or through an intermediary, and who have agreed to provide items or services to enrollees of the health maintenance organization or other carrier.

B. To the maximum extent permitted by applicable law, every health care plan offered or proposed to be offered in this Commonwealth by a health maintenance organization licensed under this title to a group contract holder shall provide or include, or the health maintenance organization shall arrange for or contract with another carrier to provide or include, a point-of-service benefit to be provided or offered in conjunction with the health maintenance organization's health care plan as an additional benefit for the enrollee, at the enrollee's option, individually to accept or reject. In connection with its group enrollment application, every health maintenance organization shall, at no additional cost to the group contract holder, make available or arrange with a carrier to make available to the prospective group contract holder and to all prospective enrollees, in advance of initial enrollment and in advance of each reenrollment, a notice in form and substance acceptable to the Commission which accurately and completely explains to the group contract holder and prospective enrollee the point-of-service benefit and permits each

enrollee to make his or her election. The form of notice provided in connection with any reenrollment may be the same as the approved form of notice used in connection with initial enrollment and may be made available to the group contract holder and prospective enrollee by the carrier in any reasonable manner.

C. To the extent permitted under applicable law, a health maintenance organization providing or arranging, or contracting with another carrier to provide, the point-of-service benefit under this section and a carrier providing the point-of-service benefit required under this section under arrangement or contract with a health maintenance organization:

1. May not impose, or permit to be imposed, a minimum enrollee participation level on the point-of-service benefit alone;
2. May not refuse to reimburse a provider of the type listed or referred to in § [38.2-3408](#) or §[38.2-4221](#) for items or services provided under the point-of-service benefit required under this section solely on the basis of the license or certification of the provider to provide such items or services if the carrier otherwise covers the items or services provided and the provision of the items or services is within the provider's lawful scope of practice or authority; and
3. Shall rate and underwrite all prospective enrollees of the group contract holder as a single group prior to any enrollee electing to accept or reject the point-of-service benefit.

D. The premium imposed by a carrier with respect to enrollees who select the point-of-service benefit may be different from that imposed by the health maintenance organization with respect to enrollees who do not select the point-of-service benefit. Unless a group contract holder determines otherwise, any enrollee who accepts the point-of-service benefit shall be responsible for the payment of any premium over the amount of the premium applicable to an enrollee who selects the coverage offered by the health maintenance organization without the point-of-service benefit and for any identifiable group specific administrative cost incurred directly by the carrier or any administrative cost incurred by the group contract holder in offering the point-of-service benefit to the enrollee. If a carrier offers the point-of-service benefit to a group contract holder where no enrollees of the group contract holder elect to accept the point-of-service benefit and incurs an identifiable group specific administrative cost directly as a consequence of the offering to that group contract holder, the carrier may reflect that group specific administrative cost in the premium charged to other enrollees selecting the point-of-service benefit under this section. Unless the group contract holder otherwise directs or authorizes the carrier in writing, the carrier shall make reasonable efforts to ensure that no portion of the cost of offering or arranging the point-of-service benefit shall be reflected in

the premium charged by the carrier to the group contract holder for a group health benefit plan without the point-of-service benefit. Any premium differential and any group specific administrative cost imposed by a carrier relating to the cost of offering or arranging the point-of-service benefit must be actuarially sound and supported by a sworn certification of an officer of each carrier offering or arranging the point-of-service benefit filed with the Commission certifying that the premiums are based on sound actuarial principles and otherwise comply with this section. The certifications shall be in a form, and shall be accompanied by such supporting information in a form acceptable to the Commission.

E. Any carrier may impose different co-insurance, co-payments, deductibles and other cost-sharing arrangements for the point-of-service benefit required under this section based on whether or not the item or service is provided through the provider panel of the health maintenance organization; provided that, except to the extent otherwise prohibited by applicable law, any such cost-sharing arrangement:

1. Shall not impose on the enrollee (or his or her eligible dependents, as appropriate) any co-insurance percentage obligation which is payable by the enrollee which exceeds the greater of: (i) thirty percent of the carrier's allowable charge for the items or services provided by the provider under the point-of-service benefit or (ii) the co-insurance amount which would have been required had the covered items or services been received through the provider panel;
2. Shall not impose on an enrollee (or his or her eligible dependents, as appropriate) a co-payment or deductible which exceeds the greatest co-payment or deductible, respectively, imposed by the carrier or its affiliate under one or more other group health benefit plans providing a point-of-service benefit which are currently offered and actively marketed by the carrier or its affiliate in the Commonwealth and are subject to regulation under this title; and
3. Shall not result in annual aggregate cost-sharing payments to the enrollee (or his or her eligible dependents, as appropriate) which exceed the greatest annual aggregate cost-sharing payments which would apply had the covered items or services been received under another group health benefit plan providing a point-of-service benefit which is currently offered and actively marketed by the carrier or its affiliate in the Commonwealth and which is subject to regulation under this title.

F. Except to the extent otherwise required under applicable law, any carrier providing the point-of-service benefit required under this section may not utilize an allowable charge or basis for determining the amount to be reimbursed or paid to any provider from which covered items or services are received under the point-of-service benefit which is not at least as favorable to the provider as that used:

1. By the carrier or its affiliate in calculating the reimbursement or payment to be made to similarly situated providers under another group health benefit plan providing a point-of-service benefit which is subject to regulation under this title and which is currently offered or arranged by the carrier or its affiliate and actively marketed in the Commonwealth, if the carrier or its affiliate offers or arranges another such group health benefit plan providing a point-of-service benefit in the Commonwealth; or

2. By the health maintenance organization in calculating the reimbursement or payment to be made to similarly situated providers on its provider panel.

G. Except as expressly permitted in this section or required under applicable law, no carrier shall impose on any person receiving or providing health care items or services under the point-of-service benefit any condition or penalty designed to discourage the enrollee's selection or use of the point-of-service benefit, which is not otherwise similarly imposed either: (i) on enrollees in another group health benefit plan, if any, currently offered or arranged and actively marketed by the carrier or its affiliate in the Commonwealth or (ii) on enrollees who receive the covered items or services from the health maintenance organization's provider panel. Nothing in this section shall preclude a carrier offering or arranging a point-of-service benefit from imposing on enrollees selecting the point-of-service benefit reasonable utilization review, preadmission certification or precertification requirements or other utilization or cost control measures which are similarly imposed on enrollees participating in one or more other group health benefit plans which are subject to regulation under this title and are currently offered and actively marketed by the carrier or its affiliates in the Commonwealth or which are otherwise required under applicable law.

H. Except as expressly otherwise permitted in this section or as otherwise required under applicable law, the scope of the health care items and services which are covered under the point-of-service benefit required under this section shall at least include the same health care items and services which would be covered if provided under the health maintenance organization's health care plan, including without limitation any items or services covered under a rider or endorsement to the applicable health care plan. Carriers shall be required to disclose prominently in all group health benefit plans and in all marketing materials utilized with respect to such group health benefit plans that the scope of the benefits provided under the point-of-service option are at least as great as those provided through the HMO's health care plan for that group. Filings of point-of-service benefits submitted to the Commission shall be accompanied by a certification signed by an officer of the filing carrier certifying that the scope of the point-of-

service benefits includes at a minimum the same health care items and services as are provided under the HMO's group health care plan for that group.

I. Nothing in this section shall prohibit a health maintenance organization from offering or arranging the point-of-service benefit (i) as a separate group health benefit plan or under a different name than the health maintenance organization's group health benefit plan which does not contain the point-of-service benefit or (ii) from managing a group health benefit plan under which the point-of-service benefit is offered in a manner which separates or otherwise differentiates it from the group health benefit plan which does not contain the point-of-service benefit.

J. Notwithstanding anything in this section to the contrary, to the extent permitted under applicable law, no health maintenance organization shall be required to offer or arrange a point-of-service benefit under this section with respect to any group health benefit plan offered to a group contract holder if the health maintenance organization determines in good faith that the group contract holder will be concurrently offering another group health benefit plan or a self-insured or self-funded health benefit plan which allows the enrollees to access care from their provider of choice whether or not the provider is a member of the health maintenance organization's panel.

K. This section shall apply only to group health benefit plans issued in the Commonwealth in the commercial group market by carriers regulated by this title and shall not apply to (i) health care plans, contracts or policies issued in the individual market; (ii) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. or Title XX of the Social Security Act, 42 U.S.C. § 1397 et seq. (Medicaid), 5 U.S.C. § 8901 et seq. (federal employees), 10 U.S.C. § 1071 et seq. (CHAMPUS) or Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 (state employees); (iii) accident only, credit or disability insurance, or long-term care insurance, plans providing only limited health care services under § [38.2-4300](#) (unless offered by endorsement or rider to a group health benefit plan), CHAMPUS supplement, Medicare supplement, or workers' compensation coverages; or (iv) an employee welfare benefit plan (as defined in section 3 (1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002 (1)), which is self-insured or self-funded; or (v) ~~the essential and standard health benefit plans developed pursuant to § [38.2-3431](#)~~ €.

L. This section shall apply to group health benefit plans issued or renewed by carriers in this Commonwealth on or after July 1, 1998.

M. Nothing in this section shall operate to limit any rights or obligations arising under §§ [38.2-3407](#), [38.2-3407.7](#), [38.2-3407.10](#), [38.2-3407.11](#), [38.2-4209](#), [38.2-4209.1](#), [38.2-4312](#), or § [38.2-4312.1](#).

N. If any provision of this section or its application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity shall not affect the other provisions or any other application of this section which shall be given effect without the invalid provision or application, and for this purpose the provisions of this section are declared severable.

§ [38.2-3412.1](#). Coverage for mental health and substance abuse services.

A. As used in this section:

"Adult" means any person who is 19 years of age or older.

"Alcohol or drug rehabilitation facility" means a facility in which a state-approved program for the treatment of alcoholism or drug addiction is provided. The facility shall be either (i) licensed by the State Board of Health pursuant to Chapter 5 (§ [32.1-123](#) et seq.) of Title 32.1 or by the Department of Behavioral Health and Developmental Services pursuant to Article 2 (§ [37.2-403](#) et seq.) of Chapter 4 of Title 37.2 or (ii) a state agency or institution.

"Child or adolescent" means any person under the age of 19 years.

"Inpatient treatment" means mental health or substance abuse services delivered on a ~~twenty-four-hour~~ 24-hour per day basis in a hospital, alcohol or drug rehabilitation facility, an intermediate care facility or an inpatient unit of a mental health treatment center.

"Intermediate care facility" means a licensed, residential public or private facility that is not a hospital and that is operated primarily for the purpose of providing a continuous, structured ~~twenty-four-hour~~ 24-hour per day, state-approved program of inpatient substance abuse services.

"Medication management visit" means a visit no more than 20 minutes in length with a licensed physician or other licensed health care provider with prescriptive authority for the sole purpose of monitoring and adjusting medications prescribed for mental health or substance abuse treatment.

"Mental health services" or "mental health benefits" means treatment for mental, emotional or nervous disorders.

"Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written plan approved and monitored by a physician, clinical psychologist, or a psychologist licensed to practice in this Commonwealth. The facility shall be (i) licensed by the Commonwealth, (ii) funded or eligible for funding under federal or state law, or (iii)

affiliated with a hospital under a contractual agreement with an established system for patient referral.

"Outpatient treatment" means mental health or substance abuse treatment services rendered to a person as an individual or part of a group while not confined as an inpatient. Such treatment shall not include services delivered through a partial hospitalization or intensive outpatient program as defined herein.

"Partial hospitalization" means a licensed or approved day or evening treatment program that includes the major diagnostic, medical, psychiatric and psychosocial rehabilitation treatment modalities designed for patients with mental, emotional, or nervous disorders, and alcohol or other drug dependence who require coordinated, intensive, comprehensive and multi-disciplinary treatment. Such a program shall provide treatment over a period of six or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients. Such term shall also include intensive outpatient programs for the treatment of alcohol or other drug dependence which provide treatment over a period of three or more continuous hours per day to individuals or groups of individuals who are not admitted as inpatients.

"Substance abuse services" or "substance use disorder benefits" means treatment for alcohol or other drug dependence.

"Treatment" means services including diagnostic evaluation, medical, psychiatric and psychological care, and psychotherapy for mental, emotional or nervous disorders or alcohol or other drug dependence rendered by a hospital, alcohol or drug rehabilitation facility, intermediate care facility, mental health treatment center, a physician, psychologist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed substance abuse treatment practitioner, licensed marriage and family therapist or clinical nurse specialist who renders mental health services. Treatment for physiological or psychological dependence on alcohol or other drugs shall also include the services of counseling and rehabilitation as well as services rendered by a state certified alcoholism, drug, or substance abuse counselor or substance abuse counseling assistant, limited to the scope of practice set forth in [§ 54.1-3507.1](#) or [54.1-3507.2](#), respectively, employed by a facility or program licensed to provide such treatment.

B. Except for group health insurance coverage issued to a large employer as defined in [§ 38.2-3431](#), each individual and group accident and sickness insurance policy or individual and group subscription contract providing coverage on an expense-incurred basis for a family member of the insured or the subscriber shall provide coverage for inpatient and partial hospitalization mental health and substance abuse services as follows:

1. Treatment for an adult as an inpatient at a hospital, inpatient unit of a mental health treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of 20 days per policy or contract year.
  2. Treatment for a child or adolescent as an inpatient at a hospital, inpatient unit of a mental health treatment center, alcohol or drug rehabilitation facility or intermediate care facility for a minimum period of 25 days per policy or contract year.
  3. Up to 10 days of the inpatient benefit set forth in subdivisions 1 and 2 of this subsection may be converted when medically necessary at the option of the person or the parent, as defined in § [16.1-336](#), of a child or adolescent receiving such treatment to a partial hospitalization benefit applying a formula which shall be no less favorable than an exchange of 1.5 days of partial hospitalization coverage for each inpatient day of coverage. An insurance policy or subscription contract described herein that provides inpatient benefits in excess of 20 days per policy or contract year for adults or 25 days per policy or contract year for a child or adolescent may provide for the conversion of such excess days on the terms set forth in this subdivision.
  4. The limits of the benefits set forth in this subsection shall not be more restrictive than for any other illness, except that the benefits may be limited as set out in this subsection.
  5. This subsection shall not apply to short-term travel, accident only, limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.
- C. Except for group health insurance coverage issued to a large employer as defined in § [38.2-3431](#), each individual and group accident and sickness insurance policy or individual and group subscription contract providing coverage on an expense-incurred basis for a family member of the insured or the subscriber shall also provide coverage for outpatient mental health and substance abuse services as follows:
1. A minimum of 20 visits for outpatient treatment of an adult, child or adolescent shall be provided in each policy or contract year.
  2. The limits of the benefits set forth in this subsection shall be no more restrictive than the limits of benefits applicable to physical illness; however, the coinsurance factor applicable to any outpatient visit beyond the first five of such visits covered in any policy or contract year shall be at least 50 percent.
  3. For the purpose of this section, medication management visits shall be covered in the same manner as a medication management visit for the treatment of physical illness and shall not be counted as an outpatient treatment visit in the calculation of the benefit set forth herein.

4. For the purpose of this subsection, if all covered expenses for a visit for outpatient mental health or substance abuse treatment apply toward any deductible required by a policy or contract, such visit shall not count toward the outpatient visit benefit maximum set forth in the policy or contract.

5. This subsection shall not apply to short-term travel, accident only, or limited or specified disease policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

D. The provisions of this section shall not be applicable to "biologically based mental illnesses," as defined in § [38.2-3412.1:01](#), unless coverage for any such mental illness is not otherwise available pursuant to the provisions § [38.2-3412.1:01](#).

E. The requirements of this section shall apply to all insurance policies and subscription contracts delivered, issued for delivery, reissued, or extended, or at any time when any term of the policy or contract is changed or any premium adjustment made.

F. Group health insurance coverage issued to a large employer as defined in § [38.2-3431](#) shall provide mental health and substance use disorder benefits in parity with the medical and surgical benefits contained in the coverage in accordance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-343).

*G. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438 et seq.](#)) of Chapter 34.*

§ [38.2-3412.1:01](#). Coverage for biologically based mental illness.

A. Notwithstanding the provisions of § [38.2-3419](#), each insurer proposing to issue group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for biologically based mental illnesses.

B. Except for group health insurance coverage issued to a large employer as defined in § [38.2-3431](#), benefits for biologically based mental illnesses may be different from benefits for other illnesses, conditions or disorders if such benefits meet the medical criteria necessary to achieve the same outcomes as are achieved by the benefits for any other illness, condition or disorder that is covered by such policy or contract. Group health insurance coverage issued to a large employer shall provide mental health and substance use disorder benefits in parity with the medical and surgical benefits contained in the cov-

erage in accordance with the Mental Health Parity and Addiction Equity Act of 2008 (P.L. 110-343).

C. Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

D. Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

E. For purposes of this section, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

F. The provisions of this section shall not apply to (i) short-term travel, accident only, limited or specified disease policies, (ii) short-term nonrenewable policies of not more than six months' duration, (iii) policies, contracts, or plans issued in the individual market or small group markets to employers with 25 or fewer employees, or (iv) policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

G. The requirements of this section shall apply to all insurance policies, subscription contracts, and health care plans delivered, issued for delivery, reissued or extended on or after January 1, 2000, and to all such policies, contracts or plans to which a term is changed or any premium adjustment is made on or after such date.

*H. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3417](#). Deductibles and coinsurance options required.

A. An insurer issuing accident and sickness insurance or a corporation issuing subscription contracts on an expense incurred basis shall make available in offering such coverage or contract to the potential insured or contract holder one or more of the following options under which the individual insured or group certificate holder pays for:

1. The first \$100 of the cost of the services covered or benefits payable by the policy or contract during a 12-month period;
2. Twenty percent of the first \$1,000 of the cost of the services covered or benefits payable by the policy or contract during a 12-month period;
3. The first \$100 and 20 percent of the next \$1,000 of the cost of the services covered or benefits payable by the policy or contract during a 12-month period; or
4. Any other option containing a greater deductible, coinsurance, or cost-sharing provision. However, the option shall not be inconsistent with standards established with respect to deductibles, coinsurance, or cost-sharing pursuant to § [38.2-3519](#).

B. As used in this section, "make available" means that the insurer or corporation shall disseminate information concerning the option or options and make a policy or contract containing the option or options available to potential insureds or contract holders at the same time and in the same manner as the insurer or corporation disseminates information concerning other policies or contracts and coverage options and makes other policies or contracts and coverage options available.

C. This section shall not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

*D. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438 et seq.](#)) of Chapter 34.*

§ [38.2-3418.8](#). Coverage for clinical trials for treatment studies on cancer.

A. Notwithstanding the provisions of § [38.2-3419](#), each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials, under any such policy, con-

tract or plan delivered, issued for delivery, or renewed in this Commonwealth on and after July 1, 1999.

B. The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

C. For purposes of this section:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Member" means a policyholder, subscriber, insured, or certificate holder or a covered dependent of a policyholder, subscriber, insured or certificate holder.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to the member for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

D. Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

E. The treatment described in subsection D shall be provided by a clinical trial approved by:

1. The National Cancer Institute;

2. An NCI cooperative group or an NCI center;
3. The FDA in the form of an investigational new drug application;
4. The federal Department of Veterans Affairs; or
5. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

F. The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

G. Coverage under this section shall apply only if:

1. There is no clearly superior, noninvestigational treatment alternative;
2. The available clinical or preclinical data provides a reasonable expectation that the treatment will be at least as effective as the ~~noninvestigational~~ *noninvestigational* alternative; and
3. The member and the physician or health care provider who provides services to the member under the insurance policy, subscription contract or health care plan conclude that the member's participation in the clinical trial would be appropriate, pursuant to procedures established by the insurer, corporation or health maintenance organization and as disclosed in the policy and evidence of coverage.

H. The provisions of this section shall not apply to short-term travel, accident-only, limited or specified disease policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or governmental plans or to short-term nonrenewable policies of not more than six months' duration.

*I. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3430.3](#). Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.

A. Guaranteed availability.

1. All eligible individuals shall be provided a choice of all individual health insurance coverage currently being offered by a health insurance issuer and the chosen coverage shall be issued.
2. The coverage provided as required in subdivision A 1 shall not impose any preexisting condition exclusion or affiliation period with respect to the coverage.

B. Health insurance issuers are prohibited from imposing any limitations or exclusions based upon named conditions that apply to eligible individuals.

C. Health insurance issuers shall include on all applications for health insurance coverage questions which will enable the health insurance issuer to determine if an applicant is applying for coverage as an eligible individual as defined in § [38.2-3430.2](#). This requirement shall not apply to applications used in connection with managed health care plans administering and providing care to Medicare beneficiaries in exchange for preestablished compensation from Medicare, as permitted under applicable state and federal guidelines.

*D. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438 et seq.](#)) of Chapter 34.*

§ [38.2-3431](#). Application of article; definitions.

A. This article applies to group health plans and to health insurance issuers offering group health insurance coverage, and individual policies offered to employees of small employers.

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis, each corporation providing individual or group accident and sickness subscription contracts, and each health maintenance organization or multiple employer welfare arrangement providing health care plans for health care services that offers individual or group coverage to the small employer market in this Commonwealth shall be subject to the provisions of this article. Any issuer of individual coverage to employees of a small employer shall be subject to the provisions of this article if any of the following conditions are met:

1. Any portion of the premiums or benefits is paid by or on behalf of the employer;
2. The eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the employer for any portion of the premium;
3. The employer has permitted payroll deduction for the covered individual and any portion of the premium is paid by the employer, provided that the health insurance issuer providing individual coverage under such circumstances shall be registered as a health insurance issuer in the small group market under this article, and shall have offered small employer group insurance to the employer in the manner required under this article; or
4. The health benefit plan is treated by the employer or any of the covered individuals as part of a plan or program for the purpose of §§ 106, 125, or 162 of the United States Internal Revenue Code.

B. For the purposes of this article:

"Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Commission that a health insurance issuer is in compliance with the provisions of this article based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the health insurance issuer in establishing premium rates for applicable insurance coverage.

"Affiliation period" means a period which, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective. The health maintenance organization is not required to provide health care services or benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period.

1. Such period shall begin on the enrollment date.
2. An affiliation period under a plan shall run concurrently with any waiting period under the plan.

"Beneficiary" has the meaning given such term under section 3(8) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (8)).

"Bona fide association" means, with respect to health insurance coverage offered in this Commonwealth, an association which:

1. Has been actively in existence for at least five years;
2. Has been formed and maintained in good faith for purposes other than obtaining insurance;
3. Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);
4. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);
5. Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
6. Meets such additional requirements as may be imposed under the laws of this Commonwealth.

"Certification" means a written certification of the period of creditable coverage of an individual under a group health plan and coverage provided by a health insurance issuer offering group health insurance coverage and the coverage if any under such COBRA continuation provision, and the waiting period if any and affiliation period if applicable imposed with respect to the individual for any coverage under such plan.

"Church plan" has the meaning given such term under section 3(33) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (33)).

"COBRA continuation provision" means any of the following:

1. Section 4980B of the Internal Revenue Code of 1986 (26 U.S.C. § 4980B), other than subsection (f) (1) of such section insofar as it relates to pediatric vaccines;
2. Part 6 of subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1161 et seq.), other than section 609 of such Act; or
3. Title XXII of P.L. 104-191.

~~"Community rate" means the average rate charged for the same or similar coverage to all small employer groups with the same area, age and gender characteristics. This rate shall be based on the health insurance issuer's combined claims experience for all groups within its small employer market.~~

"Creditable coverage" means with respect to an individual, coverage of the individual under any of the following:

1. A group health plan;
2. Health insurance coverage;
3. Part A or B of Title XVIII of the Social Security Act (42 U.S.C. § 1395c or § 1395);
4. Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), other than coverage consisting solely of benefits under section 1928;
5. Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.);
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. § 8901 et seq.);
9. A public health plan (as defined in federal regulations);
10. A health benefit plan under section 5 (e) of the Peace Corps Act (22 U.S.C. § 2504 (e)); or
11. Individual health insurance coverage.

Such term does not include coverage consisting solely of coverage of excepted benefits.

"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.

"Eligible employee" means an employee who works for a small group employer on a full-time basis, has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and is not a part-time, temporary or substitute employee. *At the employer's sole discretion, the eligibility criterion may be broadened to include part-time employees.*

"Eligible individual" means such an individual in relation to the employer as shall be determined:

1. In accordance with the terms of such plan;
2. As provided by the health insurance issuer under rules of the health insurance issuer which are uniformly applicable to employers in the group market; and
3. In accordance with all applicable law of this Commonwealth governing such issuer and such market.

"Employee" has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (6)).

"Employer" has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (5)), except that such term shall include only employers of two or more employees.

"Enrollment date" means, with respect to an eligible individual covered under a group health plan or health insurance coverage, the date of enrollment of the eligible individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment.

~~"Essential and standard health benefit plans" means health benefit plans developed pursuant to subsection C of this section.~~

"Excepted benefits" means benefits under one or more (or any combination thereof) of the following:

1. Benefits not subject to requirements of this article:
  - a. Coverage only for accident, or disability income insurance, or any combination thereof;
  - b. Coverage issued as a supplement to liability insurance;
  - c. Liability insurance, including general liability insurance and automobile liability insurance;
  - d. Workers' compensation or similar insurance;
  - e. Medical expense and loss of income benefits;
  - f. Credit-only insurance;
  - g. Coverage for on-site medical clinics; and
  - h. Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
2. Benefits not subject to requirements of this article if offered separately:
  - a. Limited scope dental or vision benefits;
  - b. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
  - c. Such other similar, limited benefits as are specified in regulations.

3. Benefits not subject to requirements of this article if offered as independent, non-coordinated benefits:

- a. Coverage only for a specified disease or illness; and
- b. Hospital indemnity or other fixed indemnity insurance.

4. Benefits not subject to requirements of this article if offered as separate insurance policy:

- a. Medicare supplemental health insurance (as defined under section 1882 (g) (1) of the Social Security Act (42 U.S.C. § 1395ss (g) (1));
- b. Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.); and
- c. Similar supplemental coverage provided to coverage under a group health plan.

"Federal governmental plan" means a governmental plan established or maintained for its employees by the government of the United States or by an agency or instrumentality of such government.

"Governmental plan" has the meaning given such term under section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (32)) and any federal governmental plan.

"Group health insurance coverage" means in connection with a group health plan, health insurance coverage offered in connection with such plan.

"Group health plan" means an employee welfare benefit plan (as defined in section 3 (1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means any accident and health insurance policy or certificate, health services plan contract, health maintenance organization subscriber contract, plan provided by a MEWA or plan provided by another benefit arrangement. "Health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is

statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

"Health insurance issuer" means an insurance company, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in this Commonwealth and which is subject to the laws of this Commonwealth which regulate insurance within the meaning of section 514 (b) (2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1144 (b) (2)). Such term does not include a group health plan.

"Health maintenance organization" means:

1. A federally qualified health maintenance organization;
2. An organization recognized under the laws of this Commonwealth as a health maintenance organization; or
3. A similar organization regulated under the laws of this Commonwealth for solvency in the same manner and to the same extent as such a health maintenance organization.

"Health status-related factor" means the following in relation to the individual or a dependent eligible for coverage under a group health plan or health insurance coverage offered by a health insurance issuer:

1. Health status;
  2. Medical condition (including both physical and mental illnesses);
  3. Claims experience;
  4. Receipt of health care;
  5. Medical history;
  6. Genetic information;
  7. Evidence of insurability (including conditions arising out of acts of domestic violence);
- or
8. Disability.

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include coverage defined as excepted benefits. Individual health insurance coverage does not include short-term limited duration coverage.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

"Large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least ~~two employees~~ *one employee* on the first day of the plan year.

*Effective January 1, 2016, "large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.*

"Large group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer ~~or through a health insurance issuer~~.

"Late enrollee" means, with respect to coverage under a group health plan or health insurance coverage provided by a health insurance issuer, a participant or beneficiary who enrolls under the plan other than during:

1. The first period in which the individual is eligible to enroll under the plan; or
2. A special enrollment period as required pursuant to subsections J through M of § [38.2-3432.3](#).

"Medical care" means amounts paid for:

1. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;
2. Transportation primarily for and essential to medical care referred to in subdivision 1; and
3. Insurance covering medical care referred to in subdivisions 1 and 2.

"Network plan" means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the health insurance issuer.

"Nonfederal governmental plan" means a governmental plan that is not a federal governmental plan.

"Participant" has the meaning given such term under section 3(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (7)).

"Placed for adoption," or "placement" or "being placed" for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

"Plan sponsor" has the meaning given such term under section 3(16) (B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002 (16) (B)).

"Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date. Genetic information shall not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.

"Premium" means all moneys paid by an employer and eligible employees as a condition of coverage from a health insurance issuer, including fees and other contributions associated with the health benefit plan.

"Rating period" means the 12-month period for which premium rates are determined by a health insurance issuer and are assumed to be in effect.

"Service area" means a broad geographic area of the Commonwealth in which a health insurance issuer sells or has sold insurance policies on or before January 1994, or upon its subsequent authorization to do business in Virginia.

"Small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least ~~two~~ *one* but not more than 50 employees on business days during the preceding calendar year and who employs at least ~~two employees~~ *one employee* on the first day of the plan year. *Effective January 1, 2016, "small employer" means in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.*

"Small group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer ~~or through a health insurance issuer.~~

"State" means each of the several states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

"Waiting period" means, with respect to a group health plan or health insurance coverage provided by a health insurance issuer and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan. If an employee or dependent enrolls during a special enrollment period pursuant to subsections J through M of § [38.2-3432.3](#) or as a late enrollee, any period before such enrollment is not a waiting period.

~~C. The Commission shall adopt regulations establishing the essential and standard plans for sale in the small employer market. Such regulations shall incorporate the recommendations of the Essential Health Services Panel, established pursuant to Chapter 847 of the 1992 Acts of Assembly. The Commission shall modify such regulations as necessary to incorporate any revisions to the essential and standard plans submitted by the Special Advisory Commission on Mandated Health Insurance Benefits pursuant to §[2.2-2503](#). Every health insurance issuer shall, as a condition of transacting business in Virginia with small employers, offer to small employers the essential and standard plans, subject to the provisions of §[38.2-3432.2](#). However, any regulation adopted by the Commission shall contain a provision requiring all health insurance issuers to offer an option permitting a small employer electing to be covered under either an essential or standard health benefit plan to choose coverage that does not provide dental benefits. The regulation shall also require a small employer electing such option, as a condition of continuing eligibility for coverage pursuant to this article, to purchase separate dental coverage for all eligible employees and eligible dependents from a dental services plan authorized pursuant to Chapter 45 of this title. All health insurance issuers shall issue the plans to every small employer that elects to be covered under either one of the plans and agrees to make the required premium payments, and shall satisfy the following provisions:~~

~~1. Such plan may include cost containment and cost sharing features such as, but not limited to, utilization review of health care services including review of medical necessity of hospital and physician services; case management; selective contracting with hospitals, physicians and other health care providers, subject to the limitations set forth in §§[38.2-3407](#) and [38.2-4209](#) and Chapter 43 (§[38.2-4300](#) et seq.) of this title; reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; co-payment, co-insurance, deductible or other cost sharing arrangement as those terms are defined in §[38.2-3407.12](#); or other managed care provisions. The essential and standard plans for health maintenance organizations shall contain benefits and cost sharing levels which are consistent with~~

~~the basic method of operation and benefit plans of federally qualified health maintenance organizations, if a health maintenance organization is federally qualified, and of nonfederally qualified health maintenance organizations, if a health maintenance organization is not federally qualified. The essential and standard plans of coverage for health maintenance organizations shall be actuarial equivalents of these plans for health insurance issuers.~~

~~2. No law requiring the coverage or offering of coverage of a benefit or provider pursuant to [§38.2-3408](#) or [§38.2-4221](#) shall apply to the essential or standard health care plan or riders thereof.~~

~~3. Every health insurance issuer offering group health insurance coverage shall, as a condition of transacting business in Virginia with small employers, offer and make available to small employers an essential and a standard health benefit plan, subject to the provisions of [§38.2-3432.2](#).~~

~~4. All essential and standard benefit plans issued to small employers shall use a policy form approved by the Commission providing coverage defined by the essential and standard benefit plans. Coverages providing benefits greater than and in addition to the essential and standard plans may be provided by rider, separate policy or plan provided that no rider, separate policy or plan shall reduce benefit or premium. A health insurance issuer shall submit all policy forms, including applications, enrollment forms, policies, subscription contracts, certificates, evidences of coverage, riders, amendments, endorsements and disclosure plans to the Commission for approval in the same manner as required by [§38.2-316](#). Each rider, separate policy or plan providing benefits greater than the essential and standard benefit plans may require a specific premium for the benefits provided in such rider, separate policy or plan. The premium for such riders shall be determined in the same manner as the premiums are determined for the essential and standard plans. The Commission at any time may, after providing notice and an opportunity for a hearing to a health insurance issuer, disapprove the continued use by the health insurance issuer of an essential or standard health benefit plan on the grounds that such plan does not meet the requirements of this article.~~

~~5. No health insurance issuer offering group health insurance coverage is required to offer coverage or accept applications pursuant to subdivisions 3 and 4 of this subsection:~~

~~a. From a small employer already covered under a health benefit plan except for coverage that is to commence on the group's anniversary date, but this subsection shall not be construed to prohibit a group from seeking coverage or a health insurance issuer offering group health insurance coverage from issuing coverage to a group prior to its anniversary date; or~~

~~b. If the Commission determines that acceptance of an application or applications would result in the health insurance issuer being declared an impaired insurer.~~

~~A health insurance issuer offering group health insurance coverage that does not offer coverage pursuant to subdivision 5 b may not offer coverage to small employers until the Commission determines that the health insurance issuer is no longer impaired.~~

~~6. Every health insurance issuer offering group health insurance coverage shall uniformly apply the provisions of subdivision C 5 of this section and shall fairly market the essential and standard health benefit plans to all small employers in their service area of the Commonwealth. A health insurance issuer offering group health insurance coverage that fails to fairly market as required by this subdivision may not offer coverage in the Commonwealth to new small employers until the later of 180 days after the unfair marketing has been identified and proven to the Commission or the date on which the health insurance issuer submits and the Commission approves a plan to fairly market to the health insurance issuer's service area.~~

~~7. No health maintenance organization is required to offer coverage or accept applications pursuant to subdivisions 3 and 4 of this subsection in the case of any of the following:~~

~~a. To small employers, where the policy would not be delivered or issued for delivery in the health maintenance organization's approved service areas;~~

~~b. To an employee, where the employee does not reside or work within the health maintenance organization's approved service areas;~~

~~c. To small employers if the health maintenance organization is a federally qualified health maintenance organization and it demonstrates to the satisfaction of the Commission that the federally qualified health maintenance organization is prevented from doing so by federal requirement; however, any such exemption under this subdivision would be limited to the essential plan; or~~

~~d. Within an area where the health maintenance organization demonstrates to the satisfaction of the Commission, that it will not have the capacity within that area and its network of providers to deliver services adequately to the enrollees of those groups because of its obligations to existing group contract holders and enrollees. A health maintenance organization that does not offer coverage pursuant to this subdivision may not offer coverage in the applicable area to new employer groups with more than 50 eligible employees until the later of 180 days after closure to new applications or the date on which the health maintenance organization notifies the Commission that it has regained capacity to deliver services to small employers. In the case of a health maintenance organization doing business in the small employer market in one service area of~~

~~this Commonwealth, the rules set forth in this subdivision shall apply to the health maintenance organization's operations in the service area, unless the provisions of subdivision 6 of this subsection apply.~~

~~8. In order to ensure the broadest availability of health benefit plans to small employers, the Commission shall set market conduct and other requirements for health insurance issuers, agents and third-party administrators, including requirements relating to the following:~~

~~a. Registration by each health insurance issuer offering group health insurance coverage with the Commission of its intention to offer health insurance coverage in the small group market under this article;~~

~~b. Publication by the Commission of a list of all health insurance issuers who offer coverage in the small group market, including a potential requirement applicable to agents, third-party administrators, and health insurance issuers that no health benefit plan may be sold to a small employer by a health insurance issuer not so identified as a health insurance issuer in the small group market;~~

~~c. The availability of a broadly publicized toll-free telephone number for the Commission's Bureau of Insurance for access by small employers to information concerning this article;~~

~~d. To the extent deemed to be necessary to ensure the fair distribution of small employers among carriers, periodic reports by health insurance issuers about plans issued to small employers; provided that reporting requirements shall be limited to information concerning case characteristics and numbers of health benefit plans in various categories marketed or issued to small employers. Health insurance issuers shall maintain data relating to the essential and standard benefit plans separate from data relating to additional benefits made available by rider for the purpose of complying with the reporting requirements of this section; and~~

~~e. Methods concerning periodic demonstration by health insurance issuers offering group health insurance coverage that they are marketing and issuing health benefit plans to small employers in fulfillment of the purposes of this article.~~

~~9. All essential and standard health benefits plans contracts delivered, issued for delivery, reissued, renewed, or extended in this Commonwealth on or after July 1, 1997, shall include coverage for 365 days of inpatient hospitalization for each covered individual during a 12-month period. If coverage under the essential or standard health benefits plan terminates while a covered person is hospitalized, the inpatient hospital benefits shall continue to be provided until the earliest of (i) the day the maximum amount of benefit has been provided or (ii) the day the covered person is no longer hospitalized as an~~

~~inpatient~~ *The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3432.1](#). Renewability.

A. Every health insurance issuer that offers health insurance coverage in the group market in this Commonwealth shall renew or continue in force such coverage with respect to all insureds at the option of the employer except:

1. For nonpayment of the required premiums by the policyholder, or contract holder, or where the health insurance issuer has not received timely premium payments;
2. When the health insurance issuer is ceasing to offer coverage in the small group market in accordance with subdivisions 9 and 10;
3. For fraud or misrepresentation by the employer, with respect to their coverage;
4. With regard to coverage provided to an eligible employee, for fraud or misrepresentation by the employee with regard to his or her coverage;
5. For failure to comply with contribution and participation requirements defined by the health benefit plan;
6. For failure to comply with health benefit plan provisions that have been approved by the Commission;
7. When a health insurance issuer offers health insurance coverage in the group market through a network plan, and there is no longer an enrollee in connection with such plan who lives, resides, or works in the service area of the health insurance issuer (or in the area for which the health insurance issuer is authorized to do business) and, in the case of the group market, the health insurance issuer would deny enrollment with respect to such plan under the provisions of subdivision 9 or 10;
8. When health insurance coverage is made available in the group market only through one or more bona fide associations, the membership of an employer in the association (on the basis of which the coverage is provided) ceases but only if such coverage is terminated under this subdivision uniformly without regard to any health status related factor relating to any covered individual;
9. When a health insurance issuer decides to discontinue offering a particular type of group health insurance coverage in the group market in this Commonwealth, coverage of such type may be discontinued by the health insurance issuer in accordance with the laws of this Commonwealth in such market only if (i) the health insurance issuer provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least ninety days prior to the date of the discontinuation of such coverage; (ii) the health

insurance issuer offers to each plan sponsor provided coverage of this type in such market, the option to purchase any other health insurance coverage currently being offered by the health insurance issuer to a group health plan in such market; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under this subdivision, the health insurance issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for such coverage;

10. In any case in which a health insurance issuer elects to discontinue offering all health insurance coverage in the group market in this Commonwealth, health insurance coverage may be discontinued by the health insurance issuer only in accordance with the laws of this Commonwealth and if: (i) the health insurance issuer provides notice to the Commission and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and (ii) all health insurance issued or delivered for issuance in this Commonwealth in such market (or markets) are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed;

11. In the case of a discontinuation under subdivision 10 of this subsection in a market, the health insurance issuer may not provide for the issuance of any health insurance coverage in the market and this Commonwealth during the five-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed;

12. At the time of coverage renewal, a health insurance issuer may modify the health insurance coverage for a product offered to a group health plan or health insurance issuer offering group health insurance coverage in the group market if, for coverage that is available in such market other than only through one or more bona fide associations, such modification is consistent with the laws of this Commonwealth and effective on a uniform basis among group health plans or health insurance issuers offering group health insurance coverage with that product; *or*

13. In applying this section in the case of health insurance coverage that is made available by a health insurance issuer in the group market to employers only through one or more associations, a reference to "plan sponsor" is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer; ~~or~~

~~14. Benefits and premiums which have been added by rider to the essential or standard benefit plans issued to small employers shall be renewable at the sole option of the health insurance issuer.~~

B. If coverage to the small employer market pursuant to this article ceases to be written, administered or otherwise provided, such coverage shall continue to be governed by this article with respect to business conducted under this article that was transacted prior to the effective date of termination and that remains in force.

§ [38.2-3432.2](#). Availability.

A. If coverage is offered under this article in the small employer market:

1. Such coverage shall be offered and made available to all the eligible employees of every small employer and their dependents, including late enrollees, that apply for such coverage. No coverage may be offered only to certain eligible employees or their dependents and no employees or their dependents may be excluded or charged additional premiums because of health status; and

2. All products that are approved for sale in the small group market that the health insurance issuer is actively marketing must be offered to all small employers, and the health insurance issuer must accept any employer that applies for any of those products. This subdivision shall not apply to health insurance coverage or products offered by a health insurance issuer if such coverage or product is made available in the small group market only through one or more bona fide associations.

B. No coverage offered under this article shall exclude an employer based solely on the nature of the employer's business.

C. A health insurance issuer that offers health insurance coverage in a small group market through a network plan may:

1. Limit the employers that may apply for such coverage to those eligible individuals who live, work or reside in the service area for such network plan; and

2. Within the service area of such plan, deny such coverage to such employers if the health insurance issuer has demonstrated, if required, to the satisfaction of the Commission that:

a. It will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and

b. It is applying this subdivision uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factors relating to such employees and dependents.

3. A health insurance issuer upon denying health insurance coverage in any service area in accordance with subdivision D 1, may not offer coverage in the small group market within such service area for a period of 180 days after the date such coverage is denied.

D. A health insurance issuer may deny health insurance coverage in the small group market if the health insurance issuer has demonstrated, if required, to the satisfaction of the Commission that:

1. It does not have the financial reserves necessary to underwrite additional coverage; and
2. It is applying this subdivision uniformly to all employers in the small group market in the Commonwealth consistent with the laws of this Commonwealth and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

E. A health insurance issuer upon denying health insurance coverage in accordance with subsection D in the Commonwealth may not offer coverage in the small group market for a period of 180 days after the date such coverage is denied or until the health insurance issuer has demonstrated to the satisfaction of the Commission that the health insurance issuer has sufficient financial reserves to underwrite additional coverage, whichever is later.

F. Nothing in this article shall be construed to preclude a health insurance issuer from establishing employer contribution rules or group participation rules in connection with a health benefit plan offered in the small group market. As used in this article, the term "employer contribution rule" means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of eligible individuals and the term "group participation rule" means a requirement relating to the minimum number of eligible employees that must be enrolled in relation to a specified percentage or number of eligible employees. Any employer contribution rule or group participation rule shall be applied uniformly among small employers without reference to the size of the small employer group, health status of the small employer group, or other factors.

*G. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3436](#). Eligibility to enroll.

A. A health insurance issuer offering group health insurance coverage, may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the health status-related factors.

B. The provisions of this section shall not be construed:

1. To require a group health insurance coverage to provide particular benefits other than those provided under the terms of such plan or coverage; or

2. To prevent a health insurance issuer offering group health insurance coverage from establishing limitations or restrictions on the amount, level, extent or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage rules for eligibility to enroll under a plan which includes rules defining any applicable waiting periods for such enrollment.

C. A health insurance issuer offering group health insurance coverage, may not require an individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

D. Nothing in subsection C shall be construed:

1. To restrict the amount that an employee may be charged for coverage under a group health plan or group health insurance coverage; or
2. To prevent a health insurance issuer offering group health insurance coverage, from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

*E. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3438](#). Definitions.

As used this article, unless the context requires a different meaning:

"Child" means a son, daughter, stepchild, adopted child, including a child placed for adoption, foster child or any other child eligible for coverage under the health benefit plan.

"Covered benefits" or "benefits" means those health care services to which an individual is entitled under the terms of a health benefit plan.

"Covered person" means a policyholder, subscriber, enrollee, participant, or other individual covered by a health benefit plan.

*"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.*

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in (i) serious jeopardy to the mental or

physical health of the individual, (ii) danger of serious impairment to bodily functions, (iii) serious dysfunction of any bodily organ or part, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Emergency services" means with respect to an emergency medical condition: (i) a medical screening examination as required under § 1867 of the Social Security Act (42 U.S.C. § 1395dd) that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate such emergency medical condition and (ii) such further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under § 1867 of the Social Security Act (42 U.S.C. § 1395dd(e)(3)) to stabilize the patient.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Essential health benefits" include the following general categories and the items and services covered within the categories in accordance with regulations issued pursuant to the PPACA: (i) ambulatory patient services; (ii) emergency services; (iii) hospitalization; (iv) laboratory services; (v) maternity and newborn care; (vi) mental health and substance abuse disorder services, including behavioral health treatment; (vii) pediatric services, including oral and vision care; (viii) prescription drugs; (ix) preventive and wellness services and chronic disease management; and (x) rehabilitative and habilitative services and devices.

"Facility" means an institution providing health care related services or a health care setting, including but not limited to hospitals and other licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and rehabilitation and other therapeutic health settings.

*"Genetic information" means, with respect to an individual, information about: (i) the individual's genetic tests; (ii) the genetic tests of the individual's family members; (iii) the manifestation of a disease or disorder in family members of the individual; or (iv) any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by the individual or any family member of the individual. "Genetic information" does not include information about the sex or age of any individual. As used in this definition, "family member" includes a first-degree, second-degree, third-degree, or fourth-degree relative of a covered person.*

*"Genetic services" means (i) a genetic test; (ii) genetic counseling, including obtaining, interpreting, or assessing genetic information; or (iii) genetic education.*

*"Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes. "Genetic test" does not include an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition.*

"Grandfathered plan" means coverage provided by a health carrier ~~in which~~ to (i) a small employer on March 23, 2010, or (ii) an individual that was enrolled on March 23, 2010, including any extension of coverage to an individual who becomes a dependent of a grandfathered enrollee after March 23, 2010, for as long as such plan maintains that status in accordance with federal law.

"Group health insurance coverage" means health insurance coverage offered in connection with a group health benefit plan.

"Group health plan" means an employee welfare benefit plan as defined in § 3(1) of ERISA to the extent that the plan provides medical care within the meaning of § 733(a) of ERISA to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition. "Health benefit plan" does not include the "excepted benefits" as defined in § [38.2-3431](#).

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with state law.

"Health care provider" or "provider" means a health care professional or facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

"Health carrier" means an entity subject to the insurance laws and regulations of the Commonwealth and subject to the jurisdiction of the Commission that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer licensed to sell accident and sickness insurance, a health maintenance organization, a health services plan, or any other entity providing a plan of health insurance, health benefits, or health care services.

"Health maintenance organization" means a person licensed pursuant to Chapter 43 (§ [38.2-4300](#) et seq.).

*"Health status-related factor" means any of the following factors: health status; medical condition, including physical and mental illnesses; claims experience; receipt of health care services; medical history; genetic information; evidence of insurability, including conditions arising out of acts of domestic violence; disability; or any other health status-related factor as determined by federal regulation.*

"Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association, or other discretionary group that is not an employer plan, but does not include coverage defined as "excepted benefits" in § [38.2-3431](#) or short-term limited duration insurance. *Student health insurance coverage shall be considered a type of individual health insurance coverage.* A health carrier offering health insurance coverage in connection with a group health plan shall not be deemed to be a health carrier offering individual health insurance coverage solely because the carrier offers a conversion policy.

"Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health benefit plan.

"Managed care plan" means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Network" means the group of participating providers providing services to a managed care plan.

"Open enrollment" means, with respect to individual health insurance coverage, the period of time during which any individual ~~under the age of 19~~ has the opportunity to apply for coverage under a health benefit plan offered by a health carrier and must be accepted for coverage under the plan without regard to a preexisting condition exclusion.

"Participating health care professional" means a health care professional who, under contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payments, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), and as it may be further amended.

"Preexisting condition exclusion" means a limitation or exclusion of benefits, including a denial of coverage, based on the fact that the condition was present before the effective date of coverage, or if the coverage is denied, the date of denial, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. "Preexisting condition exclusion" also includes a condition identified as a result of a pre-enrollment questionnaire or physical examination given to an individual, or review of medical records relating to the pre-enrollment period.

*"Premium" means all moneys paid by an employer, eligible employee, or covered person as a condition of coverage from a health carrier, including fees and other contributions associated with the health benefit plan.*

"Primary care health care professional" means a health care professional designated by a covered person to supervise, coordinate, or provide initial care or continuing care to the covered person and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

"Rescission" means a cancellation or discontinuance of coverage under a health benefit plan that has a retroactive effect. "Rescission" does not include:

1. A cancellation or discontinuance of coverage under a health benefit plan if the cancellation or discontinuance of coverage has only a prospective effect, or the cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage; or
2. A cancellation or discontinuance of coverage when the health benefit plan covers active employees and, if applicable, dependents and those covered under continuation coverage provisions, if the employee pays no premiums for coverage after termination of employment and the cancellation or discontinuance of coverage is effective retroactively back to the date of termination of employment due to a delay in administrative record-keeping.

"Stabilize" means with respect to an emergency medical condition, to provide such medical treatment as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to a pregnant woman, that the woman has delivered, including the placenta.

*"Student health insurance coverage" means a type of individual health insurance coverage that is provided pursuant to a written agreement between an institution of higher education, as defined by the Higher Education Act of 1965, and a health carrier and provided to students enrolled in that institution of higher education and their dependents,*

*and that does not make health insurance coverage available other than in connection with enrollment as a student, or as a dependent of a student, in the institution of higher education, and does not condition eligibility for health insurance coverage on any health status-related factor related to a student or a dependent of the student.*

*"Wellness program" means a program offered by an employer that is designed to promote health or prevent disease.*

§ [38.2-3439](#). Dependent coverage for individuals to age 26.

A. Notwithstanding any provision of § [38.2-3500](#) or [38.2-3525](#), or any other section of this title to the contrary, a health carrier that makes available dependent coverage for a child shall make that coverage available for a child until such child attains the age of 26.

1. A health carrier shall not define "dependent" for purposes of eligibility for dependent coverage for a child other than in terms of a relationship between a child and the covered person.

2. A health carrier shall not deny or restrict coverage for a child who has not attained the age of 26 based on the presence or absence of the child's financial dependency on the covered person, residency with the covered person, marital status, student status, employment, or any combination of those factors.

3. Nothing in this section shall be construed to require a health carrier to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the legal guardian or adoptive parent of that grandchild.

4. The terms of coverage in a health benefit plan offered by a health carrier providing dependent coverage may not vary based on age except for children who are 26 years of age or older.

*5. A health carrier shall not deny or restrict coverage of a child based on eligibility for other coverage.*

B. Any child whose coverage ended, who was denied coverage, or who was not eligible for group or individual health insurance coverage under a health benefit plan because, under the terms of such plan, the availability of dependent coverage of a child ended before the attainment of the age of 26, shall be given written notice of the opportunity to enroll. The child shall be offered all the benefit packages available to, and shall not be required to pay more for coverage than, similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

1. The health carrier shall give such child written notice of the opportunity to enroll not later than the first day of the next plan year or policy year, and shall provide for an enrollment period that continues for at least 30 days.

2. The written notice of opportunity to enroll shall include a statement that a child is eligible to enroll in dependent coverage if coverage ended, coverage was denied, or the child was ineligible for coverage because the availability of dependent coverage for a child ended before the attainment of the age of 26.

a. The notice may be provided to the covered person on behalf of the covered person's child.

b. For group health insurance coverage, the notice may be included with other enrollment materials that the health carrier distributes to employees, provided the statement is prominent.

3. For any child of a covered person who enrolls, the coverage shall take effect not later than the first day of such plan year or policy year.

C. This section shall apply to any health carrier providing individual or group health insurance coverage, except that for plan years beginning before January 1, 2014, a grandfathered group health plan that makes available dependent coverage for a child may exclude a child who has not attained the age of 26 from coverage only if the child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in § 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent. For plan years beginning on or after January 1, 2014, any grandfathered plan shall comply with the requirements of subsections A and B.

§ [38.2-3440](#). Lifetime and annual limits.

A. Notwithstanding any provision of § [38.2-3406.1](#), [38.2-3406.2](#), or [38.2-3418.5](#), or any other section of this title to the contrary, a health carrier offering group or individual health insurance coverage shall not establish a lifetime limit on the dollar amount of essential health benefits for any covered person.

~~B. Beginning on January 1, 2014, a~~ A health carrier shall not establish any annual limit on the dollar amount of essential health benefits for any covered person.

~~C. For a plan or policy year beginning prior to January 1, 2014, a health benefit plan may establish an annual limit on the dollar amount of essential health benefits for any covered person, provided the limit is no less than the following:~~

~~1. For a plan or policy year beginning after September 22, 2010, but before September 23, 2011, \$750,000;~~

~~2. For a plan or policy year beginning after September 22, 2011, but before September 23, 2012, \$1.25 million; and~~

~~3. For a plan or policy year beginning after September 22, 2012, but before January 1, 2014, \$2 million.~~

~~D-C. The provisions of this section shall not prevent a health carrier from placing annual or lifetime dollar limits for any covered person on specific covered benefits that are not essential health benefits to the extent that such limits are otherwise permitted under applicable federal or state law.~~

~~E. For a plan or policy year beginning prior to January 1, 2014, a health benefit plan is exempt from the annual limit requirements if the plan is approved for a waiver from such requirements by the U.S. Department of Health and Human Services, but such exemption only applies for the specified period of time that the waiver is applicable.~~

~~1. If a health benefit plan receives a waiver from the U.S. Department of Health and Human Services, the health carrier shall notify prospective applicants and affected policyholders and the Commission within 30 days of receipt of the waiver.~~

~~2. Within 30 days of when the waiver expires or is otherwise no longer in effect, the health carrier shall notify affected policyholders.~~

~~F. If an individual's benefits under a health benefit plan ended by reason of reaching a lifetime limit on the dollar amount of benefits, the health carrier shall provide such individual written notice that the lifetime limit on the dollar value of benefits no longer applies; and the individual, if still eligible to be covered under the plan, may be reinstated to receive benefits under the plan.~~

~~1. If the individual is not enrolled in the plan, or if an enrolled individual is eligible for any other benefit package offered under the plan, the health benefit plan shall provide an opportunity for the individual to enroll in any benefit packages offered under the plan for a period of at least 30 days.~~

~~2. For individual health insurance coverage, an individual is not entitled to reinstatement under the health benefit plan if the individual reached his lifetime limit and the contract is not renewed or is otherwise no longer in effect. Reinstatement shall apply to a family member who reached his lifetime limit in a family plan and other family members remain covered under the plan.~~

~~3. The notice and enrollment opportunity under this subsection shall be provided beginning not later than the first day of the next plan year or policy year.~~

~~4. The required notice shall be provided to a covered person, or the covered person on behalf of his dependent. For group health insurance coverage, the notice may be included with other enrollment materials that a health carrier distributes to employees, provided the notice is prominently presented with such materials.~~

~~5. Reinstatement shall occur not later than the first day of such plan year or policy year.~~

~~G.D.~~ This section shall apply to any health carrier providing individual or group health insurance coverage, except that the prohibition and limits on annual limits shall not apply to a grandfathered plan providing individual health insurance coverage.

§ [38.2-3442](#). Preventive services.

A. Notwithstanding any provision of § [38.2-3406.1](#), [38.2-3411.1](#), or any other section of this title to the contrary, a health carrier shall provide coverage for all of the following items and services, and shall not impose any cost-sharing requirements such as a copayment, coinsurance, or deductible with respect to the following items and services:

1. Evidence-based items or services that have in effect a rating of A or B in the recommendations of the U.S. Preventive Services Task Force ~~as of September 23, 2010~~, with respect to the individual involved;

2. Immunizations for routine use in children, adolescents, and adults that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention with respect to the individual involved. For purposes of this subdivision, a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is considered in effect after it has been adopted by the Director of the Centers for Disease Control and Prevention, and a recommendation is considered to be for routine use if it is listed on the Immunization Schedules of the Centers for Disease Control and Prevention;

3. With respect to infants, children, and adolescents, evidence-informed preventive care and screenings ~~in the Recommendations for Preventive Pediatric Health by the American Academy of Pediatrics and the Recommended Uniform Screening Panels by the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children~~ *provided for in comprehensive guidelines supported by the Health Resources and Services Administration*; and

4. With respect to women, evidence-informed preventive care and screenings recommended in comprehensive guidelines supported by the Health Resources and Services Administration.

B. A health carrier is not required to provide coverage for any items or services specified in any recommendation or guideline described in subsection A after the recommendation or guideline is no longer in effect.

C. A health carrier shall at least annually at the beginning of each new plan year or policy year revise the preventive services covered under its health benefit plans pursuant to this section consistent with the most current recommendations of the U.S. Preventive Services Task Force, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the guidelines with respect to infants,

children, adolescents, and women evidence-based preventive care and screenings by the Health Resources and Services Administration in effect at the time.

D. 1. A health carrier may impose cost-sharing requirements with respect to an office visit if an item or service is billed separately or is tracked as individual encounter data separately from the office visit.

2. A health carrier shall not impose cost-sharing requirements with respect to an office visit if an item or service is not billed separately or is not tracked as individual encounter data separately from the office visit and the primary purpose of the office visit is the delivery of the item or service.

3. A health carrier may impose cost-sharing requirements with respect to an office visit if an item or service is not billed separately or is not tracked as individual encounter data separately from the office visit and the primary purpose of the office visit is not the delivery of the item or service.

E. Nothing in this section shall preclude a health carrier that has a network of providers from imposing cost-sharing requirements for items or services that are delivered by an out-of-network provider.

F. This section shall apply to any health carrier providing individual or group health insurance coverage, except for any grandfathered plan.

§ [38.2-3444](#). Preexisting condition exclusions.

A. Notwithstanding any provision of § [38.2-508.1](#), [38.2-3432.3](#), [38.2-3438](#), [38.2-3503](#), [38.2-3520](#), [38.2-4216.1](#), or any other section of this title to the contrary, a health carrier providing individual or group health insurance coverage shall not limit or exclude coverage for an individual under the age of 19 by imposing a preexisting condition exclusion on that individual.

B. ~~Where a~~ A health carrier *that* offers individual health insurance coverage ~~that only covers individuals under the age of 19, such health carrier~~ may offer coverage continuously throughout the year or during an open enrollment period in January and July of each calendar year.

C. ~~During an open enrollment period, a health carrier shall not deny or unreasonably delay the issuance of a policy or refuse to issue a policy to an individual who is under the age of 19 on the basis of a preexisting condition.~~

D. ~~Coverage shall be effective for an individual applying during an open enrollment period on the same basis as any applicant qualifying for coverage on an underwritten basis.~~

E. ~~Each health carrier shall provide a prominent public notice on its website and written notice to each covered person at least 90 days prior to the open enrollment period of the~~

~~open enrollment rights for individuals under the age of 19 and provide information as to how an individual eligible for this open enrollment right may apply for coverage with the health carrier during an open enrollment period.~~

F.C. This section shall apply to any health carrier providing individual or group health insurance coverage, including a grandfathered plan for group health insurance coverage, but not including a grandfathered plan for individual health insurance coverage.

§ [38.2-3447](#). *Restrictions relating to premium rates.*

A. Notwithstanding any provision of § [38.2-3432.2](#), [38.2-3501](#), [38.2-4306](#), or any other section of this title to the contrary, a health carrier offering a health benefit plan providing individual or small group health insurance coverage shall develop its premium rates based on the following:

1. Whether the health benefit plan covers an individual or family;
2. Rating areas, as may be established by the Commission;
3. Age, except that the rate shall not vary by more than 3 to 1 for adults; and
4. Tobacco use, except that the rate shall not vary by more than 1.5 to 1.

B. A premium rate shall not vary with respect to any particular health benefit plan by any other factor not described in subsection A.

C. Rating variations for family coverage shall be applied based on the portion of the premium that is attributable to each family member covered under the health benefit plan.

§ [38.2-3448](#). *Guaranteed availability.*

A. Notwithstanding any provision of § [38.2-3430.3](#), [38.2-3436](#), or any other section of this title to the contrary, a health carrier offering a health benefit plan providing individual or group health insurance coverage shall issue such coverage to any eligible individual or employer in the Commonwealth that applies for such coverage. For purposes of this section, an "eligible individual" means any individual eligible for either individual or group health insurance coverage in the Commonwealth.

B. A health carrier may restrict enrollment in a health benefit plan to open or special enrollment periods. The Commission may establish open enrollment periods applicable to all health benefit plans.

§ [38.2-3449](#). *Prohibiting discrimination based on health status.*

A. Notwithstanding any provision of § [38.2-508.5](#), [38.2-3431](#), [38.2-3432.3](#), [38.2-3521.1](#), [38.2-3522.1](#), [38.2-3540.2](#), [38.2-3551](#), [38.2-4109](#), or any other section of this title to the contrary, a health carrier offering a health benefit plan providing individual or group health insurance coverage shall not establish rules for eligibility, including continued

*eligibility, of any covered person to enroll under the terms of coverage based on any health status-related factor in relation to the covered person.*

*B. A health carrier shall not require any covered person as a condition of enrollment or continued enrollment under a health benefit plan to pay a premium or contribution that is greater than such premium or contribution for a similarly situated covered person enrolled in the plan on the basis of any health status-related factor in relation to the covered person.*

*§ [38.2-3450](#). Genetic information and testing.*

*A. A health carrier offering a health benefit plan providing individual and group health insurance coverage shall not adjust premium or contribution amounts for a covered person under such plan on the basis of genetic information.*

*B. A health carrier shall not request or require a covered person to undergo a genetic test, or require or purchase genetic information for underwriting purposes. A health carrier shall not request, require, or purchase genetic information with respect to any covered person prior to the covered person's enrollment under the health benefit plan.*

*C. Genetic information may be obtained under the following circumstances:*

*1. A health care professional who is providing health care services to a covered person may request that the covered person undergo a genetic test.*

*a. A health carrier may obtain and use the results of a genetic test in making a determination regarding payment of a claim.*

*b. A health carrier may request only the minimum amount of information necessary to accomplish the intended purpose.*

*2. A health carrier may request, but not require, that a covered person undergo a genetic test if all of the following conditions are met:*

*a. The request is made pursuant to research that complies with Part 46 of Title 45 of the Code of Federal Regulations or equivalent federal regulations and any applicable state or local law or regulation for the protection of human subjects in research;*

*b. The health carrier clearly indicates to the covered person, or in the case of a minor child, to the legal guardian of the child, to whom the request is made that:*

*(1) Compliance with the request is voluntary; and*

*(2) Noncompliance will have no effect on enrollment status or premium or contribution amounts;*

*c. No genetic information collected or acquired under this subsection shall be used for underwriting purposes;*

*d. The health carrier notifies the federal Secretary of Health and Human Services in writing that the health carrier is conducting activities pursuant to the exception provided in this subsection, including a description of all the activities conducted; and*

*e. The health carrier complies with such other conditions as the Secretary may by regulation require for activities conducted under this subsection.*

*D. Any reference in this section to genetic information concerning a covered person shall:*

*1. With respect to the covered person who is a pregnant woman, include genetic information of any fetus carried by the pregnant woman; and*

*2. With respect to a covered person utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the covered person.*

*E. This section shall apply to any health carrier providing individual or group health insurance coverage, including any grandfathered plan.*

*§ [38.2-3451](#). Essential health benefits.*

*Notwithstanding any provision of § [38.2-3431](#) or any other section of this title to the contrary, a health carrier offering a health benefit plan providing individual or small group health insurance coverage shall provide that such coverage includes the essential health benefits as required by § 1302(a) of the PPACA. The essential health benefits package may also include associated cost-sharing requirements or limitations. No qualified health insurance plan that is sold or offered for sale through an exchange established or operating in the Commonwealth shall provide coverage for abortions, regardless of whether such coverage is provided through the plan or is offered as a separate optional rider thereto, provided that such limitation shall not apply to an abortion performed (i) when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (ii) when the pregnancy is the result of an alleged act of rape or incest.*

*§ [38.2-3452](#). Waiting periods.*

*Notwithstanding any provision of § [38.2-3436](#), [38.2-4216.1](#), or any other section of this title to the contrary, a health carrier offering a health benefit plan providing group health insurance coverage shall not apply any waiting period that exceeds 90 days.*

*§ [38.2-3453](#). Clinical trials.*

*A. Notwithstanding any provision of § [38.2-3418.8](#) or any other section of this title to the contrary, if a health carrier offering a health benefit plan providing individual or group health insurance coverage provides coverage to a qualified individual, then such plan*

*shall provide for participation in an approved clinical trial and cover routine patient costs for items and services furnished in connection with participation in such clinical trial. The health carrier shall not discriminate against the qualified individual on the basis of his participation in such clinical trial.*

*B. For purposes of this section:*

*1. "Approved clinical trial" means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, and the study or investigation is (i) a federally funded or approved trial, (ii) conducted under an investigational new drug application reviewed by the U.S. Food and Drug Administration, or (iii) a drug trial that is exempt from having an investigational new drug application.*

*2. "Life threatening condition" means any disease or condition from which the likelihood of death is probable unless the course of disease or condition is interrupted.*

*3. "Qualified individual" means a covered person who is eligible to participate in an approved clinical trial according to the trial protocol, with respect to treatment of cancer or other life-threatening disease or condition, and the referring health care professional has concluded that the individual's participation in such trial is appropriate to treat the disease or condition, or the individual's participation is based on medical and scientific information.*

*4. "Routine patient costs" means all items and services consistent with the coverage provided under the health benefit plan that is typically covered for a qualified individual who is not enrolled in a clinical trial. Routine patient costs do not include the investigational item, device, or service itself; items or services that are provided solely to satisfy data collection and analysis needs and that are not used in the direct clinical management of the patient; or a service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis.*

*C. Nothing in this section shall preclude a health benefit plan from requiring that a qualified individual participate in an approved clinical trial through a participating provider if such provider will accept the individual as a participant in the trial. However, a health benefit plan may not preclude a qualified individual from participating in an approved clinical trial conducted outside the state in which the individual resides.*

*This section shall not be construed to require that a health benefit plan provide benefits outside of the plan's health care provider network unless out-of-network benefits are otherwise provided under the plan.*

*D. This section shall not apply to any grandfathered plan providing individual or group health insurance coverage.*

§ [38.2-3454](#). *Wellness programs.*

A. A health carrier offering a health benefit plan providing group health insurance coverage may provide for a wellness program if such program is made available to all similarly situated individuals. A wellness program may include:

1. A program that reimburses all or part of the cost for membership to a fitness center;
2. A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes;
3. A program that encourages preventive care related to a health condition through the waiver of the copayment or deductible requirement under a group health plan for the cost of certain items or services related to a health condition, such as prenatal care or well-baby visits;
4. A program that reimburses individuals for the cost of smoking cessation programs without regard to whether the individual quits smoking; or
5. A program that provides a reward to individuals for attending a periodic health education seminar.

B. Notwithstanding any provision of § [38.2-3449](#), [38.2-3540.2](#), or any other section of this title to the contrary, a health carrier offering a health benefit plan providing group health insurance coverage shall not create conditions for obtaining a premium discount or rebate or other reward for participation in a wellness program that is based on an individual satisfying a standard related to a health status factor, except in instances where the following requirements are satisfied:

1. The reward for the wellness program, together with the reward for other wellness programs with respect to the plan that requires satisfaction of a standard related to a health status factor, does not exceed 30 percent of the cost of employee-only coverage. If, in addition to employees or individuals, any class of dependents may participate fully in the wellness program, such reward shall not exceed 30 percent of the cost of the coverage in which any employee or individual and any dependents are enrolled;
2. The wellness program is reasonably designed to promote health or prevent disease;
3. The health carrier gives individuals eligible for the program the opportunity to qualify for the reward under the program at least once each year;
4. The full reward under the wellness program is made available to all similarly situated individuals. The reward is not available to all similarly situated individuals for a period unless the wellness program allows for a reasonable alternative standard or waiver of the otherwise applicable standard for obtaining the reward for any individual for whom, for that period, (i) it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard or (ii) it is medically inadvisable to attempt to satisfy the

*otherwise applicable standard. The health carrier may seek verification, such as a statement from an individual's physician, that a health status factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard; and*

*5. The health carrier discloses, in all health benefit plan materials describing the terms of the wellness program, the availability of a reasonable alternative standard or the possibility of waiver of the otherwise applicable standard required under subdivision 4. If plan materials disclose that such a program is available without describing its terms, the disclosure under this subdivision shall not be required.*

§ [38.2-3501](#). Policy forms; powers of Commission.

A. Individual accident and sickness insurance policy forms and the rate manuals showing rules and classification of risks applicable to individual accident and sickness insurance policy forms shall be subject to the provisions of § [38.2-316](#). The Commission, subject to § [38.2-316](#), may disapprove or withdraw approval of any such policy form if it finds that the benefits provided in the policy form are or are likely to be unreasonable in relation to the premium charged. If the Commission disapproves a policy form or withdraws approval of a form, an insurer may proceed as indicated in § [38.2-1926](#).

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3503](#). Required accident and sickness policy provisions.

A. Except as provided in § [38.2-3505](#), each individual accident and sickness insurance policy delivered or issued for delivery in this Commonwealth shall contain the provisions specified in this section using the same words which appear in this section. Provisions 1 through 12 shall apply to all such policies. In addition, provision 13 shall apply to all such policies that are delivered, issued for delivery, renewed, or extended in this Commonwealth on or after January 1, 2001. An insurer may substitute corresponding provisions of different wording approved by the Commission that are in each instance not less favorable in any respect to the insured or the beneficiary. These provisions shall be preceded individually by the caption "REQUIRED PROVISIONS" or by such appropriate individual or group captions or subcaptions as the Commission may approve.

1. Provision 1:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless

such approval is endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

2. Provision 2:

TIME LIMIT ON CERTAIN DEFENSES: (a) Misstatements in the application: After two years from the date of this policy, only fraudulent misstatements in the application may be used to void the policy or deny any claim for loss incurred or disability (as defined in the policy) that starts after the two-year period.

Provision 2 shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of subdivisions 1, 2, 3, 4, and 5 of § [38.2-3504](#) in the event of misstatement with respect to age, occupation or other insurance.

Instead of Provision 2, a policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (i) until at least age 50 or, (ii) for a policy issued after age 44, for at least five years from its date of issue, may contain the following provision, from which the clause in parentheses may be omitted at the insurer's option:

INCONTESTABLE:

(a) Misstatements in the application: After this policy has been in force for two years during the Insured's lifetime (excluding any period during which the Insured is disabled), the Company cannot contest the statements in the application.

PREEXISTING CONDITIONS:

(b) No claim for loss incurred or disability (as defined in the policy) that starts after one year from the date of issue of this policy will be reduced or denied because a sickness or physical condition, not excluded by name or specific description before the date of loss, had existed before the effective date of coverage.

3. Provision 3:

GRACE PERIOD: This policy has a ..... day grace period. This means that if a renewal premium is not paid on or before the date it is due, it may be paid during the following ..... days. During the grace period the policy shall continue in force.

In Provision 3 a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "a" and "day," and between "following" and "days." *However, if provisions of federal law require a policy to have a grace period in excess of one month, the period of time that the policy shall continue in force during the grace period shall not be required to exceed one month from the beginning of the grace period.*

A policy that contains a cancellation provision may add, at the end of Provision 3: "subject to the right of the Company to cancel in accordance with the cancellation provision." A policy in which the insurer reserves the right to refuse any renewal shall have, in Provision 3, the following sentence:

The grace period will not apply if, at least . . . . . days before the premium due date, the Company has delivered or has mailed to the Insured's last address shown in the Company's records written notice of the Company's intent not to renew this policy.

In the above sentence a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "least" and "days."

4. Provision 4:

REINSTATEMENT: If the renewal premium is not paid before the grace period ends, the policy will lapse. Later acceptance of the premium by the Company or by an agent authorized to accept payment, without requiring an application for reinstatement, will reinstate the policy. If the Company or its agent requires an application for reinstatement, the Insured will be given a conditional receipt for the premium. If the application is approved the policy will be reinstated as of the approval date. Lacking such approval, the policy will be reinstated on the forty-fifth day after the date of the conditional receipt unless the Company has previously written the Insured of its disapproval. The reinstated policy will cover only loss that results from an injury sustained after the date of reinstatement and sickness that starts more than 10 days after such date. In all other respects the rights of the Insured and the Company will remain the same, subject to any provisions noted or attached to the reinstated policy. Any premiums the Company accepts for a reinstatement will be applied to a period for which premiums have not been paid. No premiums will be applied to any period more than 60 days prior to the date of reinstatement. The last sentence of Provision 4 may be omitted from any policy that the Insured has the right to continue in force subject to its terms by the timely payment of premiums (i) until at least age 50, or (ii) for a policy issued after age 44, for at least five years from its effective date.

5. Provision 5:

NOTICE OF CLAIM: Written notice of claim must be given within 20 days after a covered loss starts or as soon as reasonably possible. The notice can be given to the Company at ..... (insert the location of such office as the insurer may designate for the purpose), or to the Company's agent. Notice should include the name of the Insured, and Claimant if other than the Insured, and the policy number.

Optional paragraph: If the Insured has a disability for which benefits may be payable for at least two years, at least once in every six months after the Insured has given notice of claim, the Insured must give the Company notice that the disability has continued. The Insured need not do this if legally incapacitated. The first six months after any filing of proof by the Insured or any payment or denial of a claim by the Company will not be counted in applying this provision. If the Insured delays in giving this notice, the Insured's right to any benefits for the six months before the date the Insured gives notice will not be impaired.

6. Provision 6:

CLAIM FORMS: When the Company receives the notice of claim, it will send the Claimant forms for filing proof of loss. If these forms are not given to the Claimant within 15 days after the giving of such notice, the Claimant shall meet the proof of loss requirements by giving the Company a written statement of the nature and extent of the loss within the time limit stated in the Proofs of Loss Section.

7. Provision 7:

PROOFS OF LOSS: If the policy provides for periodic payment for a continuing loss, written proof of loss must be given the Company within 90 days after the end of each period for which the Company is liable. For any other loss, written proof must be given within 90 days after such loss. If it was not reasonably possible to give written proof in the time required, the Company shall not reduce or deny the claim for this reason if the proof is filed as soon as reasonably possible. In any event, except in the absence of legal capacity, the proof required must be given no later than one year from the time specified.

8. Provision 8:

TIME OF PAYMENT OF CLAIMS: After receiving written proof of loss, the Company will pay ..... (Insert period for payment which must not be less frequently than monthly) all benefits then due for . . . . (Insert type of loss). Benefits for any other loss covered by this policy will be paid as soon as the Company receives proper written proof.

9. Provision 9:

PAYMENT OF CLAIMS: Benefits will be paid to the Insured. Loss of life benefits are payable in accordance with the beneficiary designation in effect at the time of payment. If none is then in effect, the benefits will be paid to the Insured's estate. Any other benefits unpaid at death may be paid, at the Company's option, either to the Insured's beneficiary or the Insured's estate.

Optional paragraph: If benefits are payable to the Insured's estate or a beneficiary who cannot execute a valid release, the Company can pay benefits up to \$..... (insert an amount which shall not exceed \$2,000), to someone related to the Insured or beneficiary

by blood or by marriage whom the Company considers to be entitled to the benefits. The Company will be discharged to the extent of any payment made in good faith.

Optional paragraph: The Company may pay all or a portion of any indemnities provided for health care services to the health care services provider, unless the Insured directs otherwise in writing by the time proofs of loss are filed. The Company cannot require that the services be rendered by a particular health care services provider.

10. Provision 10:

PHYSICAL EXAMINATIONS AND AUTOPSY: The Company at its own expense has the right to have the Insured examined as often as reasonably necessary while a claim is pending. It may also have an autopsy made unless prohibited by law.

11. Provision 11:

LEGAL ACTIONS: No legal action may be brought to recover on this policy within 60 days after written proof of loss has been given as required by this policy. No legal action may be brought after three years from the time written proof of loss is required to be given.

12. Provision 12:

CHANGE OF BENEFICIARY: The Insured can change the beneficiary at any time by giving the Company written notice. The beneficiary's consent is not required for this or any other change in the policy, unless the designation of the beneficiary is irrevocable.

13. Provision 13:

CANCELLATION BY INSURED: The Insured may cancel this policy at any time by written notice delivered or mailed to the Company effective upon receipt or on such later date as may be specified in the notice. In the event of cancellation, the Company shall return promptly the unearned portion of any premium paid. The earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3520](#). Coverage of preexisting conditions.

A. Notwithstanding the provisions of § [38.2-3503](#), if an insurer elects to use a simplified application form, with or without a specific question as to the applicant's health, but without any detailed questions concerning the insured's health history or medical treatment history, the policy shall cover any loss occurring after twelve months from the effective date of coverage from any preexisting condition not specifically excluded from

coverage by terms of the policy. Except as so provided, the policy shall not include wording that would permit a defense based upon preexisting conditions.

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3521.1](#). Group accident and sickness insurance definitions.

Except as provided in § [38.2-3522.1](#), no policy of group accident and sickness insurance shall be delivered in this Commonwealth unless it conforms to one of the following descriptions:

A. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

1. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

2. The premium for the policy shall be paid either from the employer's funds or from funds contributed by the insured employees, or from both. Except as provided in subdivision 3 of this subsection, a policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject such coverage in writing.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

B. A policy which is:

1. Not subject to Chapter 37.1 (§ [38.2-3727](#) et seq.) of this title, and

2. Issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee,

trustees or agent shall be deemed the policyholder, to insure debtors of the creditor or creditors with respect to their indebtedness, subject to the following requirements:

a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors, or all of any class or classes thereof. The policy may provide that the term "debtors" shall include:

(1) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction;

(2) The debtors of one or more subsidiary corporations; and

(3) The debtors of one or more affiliated corporations, proprietorships or partnerships if the business of the policyholder and of such affiliated corporations, proprietorships or partnerships is under common control.

b. The premium for the policy shall be paid either from the creditor's funds, or from charges collected from the insured debtors, or from both. Except as provided in subdivision 3 of this subsection, a policy on which no part of the premium is to be derived from funds contributed by insured debtors specifically for their insurance must insure all eligible debtors.

3. An insurer may exclude any debtors as to whom evidence of individual insurability is not satisfactory to the insurer.

4. The total amount of insurance payable with respect to an indebtedness shall not exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor. The insurer may exclude any payments which are delinquent on the date the debtor becomes disabled as defined in the policy.

5. The insurance may be payable to the creditor or any successor to the right, title, and interest of the creditor. Such payment or payments shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of each such payment and any excess of the insurance shall be payable to the insured or the estate of the insured.

6. Notwithstanding the preceding provisions of this section, insurance on agricultural credit transaction commitments may be written up to the amount of the loan commitment. Insurance on educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan.

C. A policy issued to a labor union, or similar employee organization, which labor union or organization shall be deemed to be the policyholder, to insure members of such union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the union or organization, or all of any class or classes thereof.

2. The premium for the policy shall be paid either from funds of the union or organization, or from funds contributed by the insured members specifically for their insurance, or from both. Except as provided in subdivision 3 of this subsection, a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject such coverage in writing.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

D. A policy issued (i) to or for a multiple employer welfare arrangement, a rural electric cooperative, or a rural electric telephone cooperative as these terms are defined in 29 U.S.C. § 1002, or (ii) to a trust, or to the trustees of a fund, established or adopted by or for two or more employers, or by one or more labor unions of similar employee organizations, or by one or more employers and one or more labor unions or similar employee organizations, which trust or trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations, subject to the following requirements:

1. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes thereof. The policy may provide that the term "employee" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships or partnerships if the business of the employer and of such affiliated corporations, proprietorships or partnerships is under common control. The policy may provide that the term "employees" shall include retired employees, former employees and directors of a corporate employer. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

2. The premium for the policy shall be paid from funds contributed by the employer or employers of the insured persons, or by the union or unions or similar employee organizations, or by both, or from funds contributed by the insured persons or from both the insured persons and the employers or unions or similar employee organizations. Except as provided in subdivision 3 of this subsection, a policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, except those who reject such coverage in writing.

3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

E. 1. A policy issued to an association or to a trust or to the trustees of a fund established, created, or maintained for the benefit of members of one or more associations which association or trust shall be deemed the policyholder. The association or associations shall:

- a. Have at the outset a minimum of 100 persons;
- b. Have been organized and maintained in good faith for purposes other than that of obtaining insurance;
- c. Have been in active existence for at least five years;
- d. Have a constitution and bylaws which provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members, (ii) except for credit unions, the association or associations collect dues or solicit contributions from members, and (iii) the members have voting privileges and representation on the governing board and committees;
- e. Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);
- f. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);
- g. Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
- h. Meets such additional requirements as may be imposed under the laws of this Commonwealth.

2. The policy shall be subject to the following requirements:

- a. The policy may insure members of such association or associations, employees thereof or employees of members, or one or more of the preceding or all of any class or classes thereof for the benefit of persons other than the employee's employer.
- b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members.

3. Except as provided in subdivision 4 of this subsection, a policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for

their insurance must insure all eligible persons, except those who reject such coverage in writing.

4. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

F. A policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees, or agent shall be deemed the policyholder, to insure members of such credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials, subject to the following requirements:

1. The members eligible for insurance shall be all of the members of the credit union or credit unions, or all of any class or classes thereof.
2. The premium for the policy shall be paid by the policyholder from the credit union's funds and, except as provided in subdivision 3 of this subsection, must insure all eligible members.
3. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

G. A policy issued to a health maintenance organization as provided in subsection B of § [38.2-4314](#).

*H. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3522.1](#). Limits of group accident and sickness insurance.

Group accident and sickness insurance offered to a resident of this Commonwealth under a group accident and sickness insurance policy issued to a group other than one described in § [38.2-3521.1](#) shall be subject to the following requirements:

A. No such group accident and sickness insurance policy shall be delivered in this Commonwealth unless the Commission finds that:

1. The issuance of such group policy is not contrary to Virginia's public policy and is in the best interest of the citizens of this Commonwealth;
2. The issuance of the group policy would result in economies of acquisition or administration; and
3. The benefits are reasonable in relation to the premiums charged.

Insurers filing policy forms seeking approval under the provisions of this subsection shall accompany the forms with a certification, signed by the officer of the company with the responsibility for forms compliance, in which the company certifies that each such policy

form will be issued only where the requirements set forth in subdivisions 1 through 3 of this subsection have been met.

B. No such group accident and sickness insurance coverage may be offered in this Commonwealth by an insurer under a policy issued in another state unless this Commonwealth or another state having requirements substantially similar to those contained in subdivisions 1, 2, and 3 of subsection A has made a determination that such requirements have been met.

1. An insurer offering group accident and sickness insurance coverage in this Commonwealth under this subsection shall file a certification, signed by the officer of the company having responsibility for forms compliance, in which the company certifies that all group insurance coverage marketed to residents of this Commonwealth under policies which have not been approved by this Commonwealth will comply with the provisions of § [38.2-3521.1](#) or have met the requirements set forth in subdivisions A 1 through A 3 of this section, and which clearly demonstrates that the substantially similar requirements of the state in which the contract will be issued have been met. The certification shall be accompanied by documentation from such state, evidencing the determination that such requirements have been met.

2. An insurer offering group accident and sickness insurance in this Commonwealth under this subsection that is unable to provide the documentation required in subdivision 1 of this subsection shall be required to file policy forms consistent with requirements in § [38.2-316](#) which are imposed on policies issued in Virginia. The policy shall be required to be approved as meeting all requirements of this title prior to its being offered to residents of this Commonwealth.

C. The premium for the policy shall be paid either from the policyholder's funds or from funds contributed by the covered persons, or from both.

D. An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer, except as otherwise prohibited in this title.

*E. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3523.4](#). Minimum number of persons covered.

A. A group accident and sickness insurance policy shall on the issue date and at each policy anniversary date, cover at least two persons, other than spouses or minor children, unless such spouse or minor child is determined to be an eligible employee as defined in § [38.2-3431](#).

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3540.2](#). Employee wellness program.

A. Each group accident and sickness insurance policy and health care plan may provide a premium discount to every employer instituting and maintaining an employee wellness program satisfying such criteria as each insurer may establish. An employer instituting and maintaining an employee wellness program in accordance with the insurer's criteria may require that any employee wishing to enroll in such program undergo a health assessment as a condition of enrollment.

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-3551](#). Definitions.

A. As used in this article:

"Eligible dependent" means an individual who may be covered as a dependent under a group health policy or policies and who is eligible, as determined by a small employer health group cooperative, for coverage as a dependent of an eligible employee under a group health policy or policies issued to or through such small employer health group cooperative.

"Eligible employee" means an employee who works for a small employer on a full-time basis, has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and is not a part-time, temporary, or substitute employee.

"Employer-member" means a small employer participating in a small employer health group cooperative.

"Group health policy" or "policy" means a group insurance policy providing hospital, medical and surgical or major medical coverage on an expense-incurred basis, a group accident and sickness insurance policy or subscription contract, and a group health care plan for health care services or limited health care services provided by a health maintenance organization. For the purposes of this article, a group health policy or policy shall also mean a policy or plan provided by a dental or optometric services plan, dental plan organization, and a health maintenance organization offering limited health care services as defined in § [38.2-4300](#).

"Health insurance issuer" or "issuer" means a company authorized to issue coverage under Article 3 (§ [38.2-3521.1](#) et seq.) of Chapter 35, Chapter 42 (§ [38.2-4200](#) et seq.),

Chapter 43 (§ [38.2-4300](#) et seq.), Chapter 45 (§ [38.2-4500](#) et seq.), or Chapter 61 (§ [38.2-6100](#) et seq.) of this title.

"Health status-related factor" means the following in relation to the individual or a dependent eligible for coverage under a group health plan or health insurance coverage offered by a health insurance issuer:

1. Health status;
  2. Medical condition, including both physical and mental illnesses;
  3. Claims experience;
  4. Receipt of health care;
  5. Medical history;
  6. Genetic information;
  7. Evidence of insurability, including conditions arising out of acts of domestic violence;
- or
8. Disability.

"Service area" means the geographic area within which a health insurance issuer is authorized to sell a group health policy or policies.

"Small employer" means, in connection with a group health policy with respect to a calendar year and a plan year, an employer who employed an average of at least ~~two~~ *one* but not more than 50 employees on business days during the preceding calendar year and who employs at least ~~two employees~~ *one employee* on the first day of the plan year. *Effective January 1, 2016, "small employer" means, in connection with a group health policy with respect to a calendar year and a plan year, an employer who employed an average of at least one but not more than 100 employees on business days during the preceding calendar year and who employs at least one employee on the first day of the plan year.*

"Small employer health group cooperative" or "cooperative" means an entity authorized by its employer-members to negotiate with health insurance issuers on their behalf as to the terms, including premium rates, under which a group health policy or policies may be issued, providing coverage for the eligible employees of such employer-members and their eligible dependents.

*B. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-4109](#). Organization of domestic society on or after October 1, 1986.

A. On or after October 1, 1986, seven or more citizens of the United States, a majority of whom are citizens of this Commonwealth, who desire to form a fraternal benefit society,

may make, sign and acknowledge before some officer competent to take acknowledgement of deeds, articles of incorporation, which shall state:

1. The proposed corporate name of the society, which shall not so closely resemble the name of any other society or insurer as to be misleading or confusing;
2. The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter;
3. The names and residences of the incorporators and the names, residences and official titles of all officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

B. Such articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the Commission, which may require any further information it deems necessary. The bond, with sureties approved by the Commission, shall be not less than \$50,000 nor more than \$200,000, as required by the Commission. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the Commission shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

C. No preliminary certificate of authority granted under the provisions of this section shall be valid after ~~one~~ year from its date or after such further period, not exceeding one year, as may be authorized by the Commission upon cause shown, unless the 500 required applicants have been secured and the organization has been duly completed. The articles of incorporation and all other proceedings under those articles shall become void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business.

D. Upon receipt of a preliminary certificate of authority from the Commission, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance

with its table of rates, and shall issue to each such applicant a receipt for the amount collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

1. Actual bona fide applicants for benefits have been secured on not less than 500 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;
2. At least ~~ten~~ 10 subordinate lodges have been established into which the 500 applicants have been admitted;
3. There has been submitted to the Commission, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and their premiums; and
4. It has been shown to the Commission, by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least ~~four~~ one regular monthly premium, which shall total at least \$150,000. Advance premiums shall be held in trust during the period of organization and, if the society has not qualified for a certificate of authority within one year, such premiums shall be returned to the applicants.

E. The Commission may examine and require any further information it deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to do business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate. The Commission shall cause a record of such certificate of authority to be made. A certified copy of such record shall have the same effect as the original certificate of authority.

F. Any incorporated society authorized to do business in this Commonwealth at the time this chapter becomes effective shall not be required to reincorporate.

*G. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-4214](#). Application of certain provisions of law.

No provision of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ [38.2-200](#), [38.2-203](#), [38.2-209](#) through [38.2-213](#), [38.2-218](#) through [38.2-225](#), [38.2-230](#), [38.2-232](#), [38.2-305](#), [38.2-316](#), [38.2-322](#), [38.2-400](#), [38.2-402](#) through [38.2-](#)

[413](#), [38.2-500](#) through [38.2-515](#), [38.2-600](#) through [38.2-620](#), [38.2-700](#) through [38.2-705](#), [38.2-900](#) through [38.2-904](#), [38.2-1017](#), [38.2-1018](#), [38.2-1038](#), [38.2-1040](#) through [38.2-1044](#), Articles 1 (§ [38.2-1300](#) et seq.) and 2 (§ [38.2-1306.2](#) et seq.) of Chapter 13, §§ [38.2-1312](#), [38.2-1314](#), [38.2-1315.1](#), [38.2-1317](#) through [38.2-1328](#), [38.2-1334](#), [38.2-1340](#), [38.2-1400](#) through [38.2-1444](#), [38.2-1800](#) through [38.2-1836](#), [38.2-3400](#), [38.2-3401](#), [38.2-3404](#), [38.2-3405](#), [38.2-3405.1](#), [38.2-3406.1](#), [38.2-3406.2](#), [38.2-3407.1](#) through [38.2-3407.6:1](#), [38.2-3407.9](#) through [38.2-3407.18](#), [38.2-3409](#), [38.2-3411](#) through [38.2-3419.1](#), [38.2-3430.1](#) through [38.2-3446](#)[38.2-3454](#), [38.2-3501](#), [38.2-3502](#), subdivision 13 of § [38.2-3503](#), subdivision 8 of § [38.2-3504](#), §§ [38.2-3514.1](#), [38.2-3514.2](#), §§ [38.2-3516](#) through [38.2-3520](#) as they apply to Medicare supplement policies, §§ [38.2-3522.1](#) through [38.2-3523.4](#), [38.2-3525](#), [38.2-3540.1](#), [38.2-3541](#) through [38.2-3542](#), [38.2-3543.2](#), Article 5 (§ [38.2-3551](#) et seq.) of Chapter 35, Chapter 35.1 (§ [38.2-3556](#) et seq.), §§ [38.2-3600](#) through [38.2-3607](#), Chapter 52 (§ [38.2-5200](#) et seq.), Chapter 55 (§ [38.2-5500](#) et seq.), and Chapter 58 (§ [38.2-5800](#) et seq.) of this title shall apply to the operation of a plan.

§ [38.2-4306](#). Evidence of coverage and charges for health care services.

- A. 1. Each subscriber shall be entitled to evidence of coverage under a health care plan.
2. No evidence of coverage, or amendment to it, shall be delivered or issued for delivery in this Commonwealth until a copy of the form of the evidence of coverage, or amendment to it, has been filed with and approved by the Commission, subject to the provisions of subsection C of this section. Any evidence of coverage for enrollees in the plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, is excluded from the provisions of this section.
3. No evidence of coverage shall contain provisions or statements which are unjust, unfair, untrue, inequitable, misleading, deceptive or misrepresentative.
4. An evidence of coverage shall contain a clear and complete statement if a contract, or a reasonably complete summary if a certificate, of:
  - a. The health care services and any insurance or other benefits to which the enrollee is entitled under the health care plan;
  - b. Any limitations on the services, kind of services, benefits, or kind of benefits to be provided, including any deductible or copayment feature, or both;
  - c. Where and in what manner information is available as to how services may be obtained;

- d. The total amount of payment for health care services and any indemnity or service benefits that the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory for group certificates;
- e. A description of the health maintenance organization's method for resolving enrollee complaints. Any subsequent change may be evidenced in a separate document issued to the enrollee;
- f. A list of providers and a description of the service area which shall be provided with the evidence of coverage, if such information is not given to the subscriber at the time of enrollment; and
- g. Any right of subscribers covered under a group contract to convert their coverages to an individual contract issued by the health maintenance organization.

B. Pursuant to this subsection:

1. No schedule of charges or amendment to the schedule of charges for enrollee coverage for health care services may be used in conjunction with any health care plan until a copy of the schedule, or its amendment, has been filed with the Commission. Any schedule of charges or amendment to the schedule of charges for enrollees in the plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, is excluded from the provisions of this subsection.
2. The charges may be established for various categories of enrollees based upon sound actuarial principles, provided that charges applying to an enrollee in a group health plan shall not be individually determined based on the status of his health. A certification on the appropriateness of the charges, based upon reasonable assumptions, may be required by the Commission to be filed along with adequate supporting information. This certification shall be prepared by a qualified actuary or other qualified professional approved by the Commission.

C. The Commission shall, within a reasonable period, approve any form if the requirements of subsection A of this section are met. It shall be unlawful to issue a form until approved. If the Commission disapproves a filing, it shall notify the filer. The Commission shall specify the reasons for its disapproval in the notice. A written request for a hearing on the disapproval may be made to the Commission within 30 days after notice of the disapproval. If the Commission does not disapprove any form within 30 days of the filing of such form, it shall be deemed approved unless the filer is notified in writing that the waiting period is extended by the Commission for an additional 30 days. Filing of the form means actual receipt by the Commission.

D. The Commission may require the submission of any relevant information it considers necessary in determining whether to approve or disapprove a filing made under this section.

*E. The provisions of this section shall not apply in any instance in which the provisions of this section are inconsistent or in conflict with a provision of Article 6 (§ [38.2-3438](#) et seq.) of Chapter 34.*

§ [38.2-4319](#). Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ [38.2-100](#), [38.2-136](#), [38.2-200](#), [38.2-203](#), [38.2-209](#) through [38.2-213](#), [38.2-216](#), [38.2-218](#) through [38.2-225](#), [38.2-229](#), [38.2-232](#), [38.2-305](#), [38.2-316](#), [38.2-322](#), [38.2-400](#), [38.2-402](#) through [38.2-413](#), [38.2-500](#) through [38.2-515](#), [38.2-600](#) through [38.2-620](#), Chapter 9 (§ [38.2-900](#) et seq.), §§ [38.2-1016.1](#) through [38.2-1023](#), [38.2-1057](#), [38.2-1306.1](#), Article 2 (§ [38.2-1306.2](#) et seq.), § [38.2-1315.1](#), Articles 3.1 (§ [38.2-1316.1](#) et seq.), 4 (§ [38.2-1317](#) et seq.) and 5 (§ [38.2-1322](#) et seq.) of Chapter 13, Articles 1 (§ [38.2-1400](#) et seq.) and 2 (§ [38.2-1412](#) et seq.) of Chapter 14, §§ [38.2-1800](#) through [38.2-1836](#), [38.2-3401](#), [38.2-3405](#), [38.2-3405.1](#), [38.2-3406.1](#), [38.2-3407.2](#) through [38.2-3407.6:1](#), [38.2-3407.9](#) through [38.2-3407.18](#), [38.2-3411.2](#), [38.2-3411.3](#), [38.2-3411.4](#), [38.2-3412.1:01](#), [38.2-3414.1](#), [38.2-3418.1](#) through [38.2-3418.17](#), [38.2-3419.1](#), [38.2-3430.1](#) through [38.2-3446](#), [38.2-3454](#), [38.2-3500](#), subdivision 13 of § [38.2-3503](#), subdivision 8 of § [38.2-3504](#), §§ [38.2-3514.1](#), [38.2-3514.2](#), [38.2-3522.1](#) through [38.2-3523.4](#), [38.2-3525](#), [38.2-3540.1](#), [38.2-3540.2](#), [38.2-3541.1](#), [38.2-3541.2](#), [38.2-3542](#), [38.2-3543.2](#), Article 5 (§ [38.2-3551](#) et seq.) of Chapter 35, Chapter 35.1 (§ [38.2-3556](#) et seq.), Chapter 52 (§ [38.2-5200](#) et seq.), Chapter 55 (§ [38.2-5500](#) et seq.), and Chapter 58 (§ [38.2-5800](#) et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ [38.2-4200](#) et seq.) except with respect to the activities of its health maintenance organization.

B. For plans administered by the Department of Medical Assistance Services that provide benefits pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ [38.2-100](#), [38.2-136](#), [38.2-200](#), [38.2-203](#), [38.2-209](#) through [38.2-213](#), [38.2-216](#), [38.2-218](#) through [38.2-225](#), [38.2-229](#), [38.2-232](#), [38.2-322](#), [38.2-400](#), [38.2-402](#) through [38.2-413](#), [38.2-500](#) through [38.2-515](#), [38.2-600](#) through [38.2-620](#), Chapter 9 (§ [38.2-900](#) et seq.), §§ [38.2-1016.1](#) through [38.2-1023](#), [38.2-1057](#), [38.2-](#)

[1306.1](#), Article 2 (§ [38.2-1306.2](#) et seq.), § [38.2-1315.1](#), Articles 3.1 (§ [38.2-1316.1](#) et seq.), 4 (§ [38.2-1317](#) et seq.) and 5 (§ [38.2-1322](#) et seq.) of Chapter 13, Articles 1 (§ [38.2-1400](#) et seq.) and 2 (§ [38.2-1412](#) et seq.) of Chapter 14, §§ [38.2-3401](#), [38.2-3405](#), [38.2-3407.2](#) through [38.2-3407.5](#), [38.2-3407.6](#), and [38.2-3407.6:1](#), [38.2-3407.9](#), [38.2-3407.9:01](#), and [38.2-3407.9:02](#), subdivisions F 1, F 2, and F 3 of § [38.2-3407.10](#), §§ [38.2-3407.11](#), [38.2-3407.11:3](#), [38.2-3407.13](#), [38.2-3407.13:1](#), [38.2-3407.14](#), [38.2-3411.2](#), [38.2-3418.1](#), [38.2-3418.2](#), [38.2-3419.1](#), [38.2-3430.1](#) through [38.2-3437](#), [38.2-3500](#), subdivision 13 of § [38.2-3503](#), subdivision 8 of § [38.2-3504](#), §§ [38.2-3514.1](#), [38.2-3514.2](#), [38.2-3522.1](#) through [38.2-3523.4](#), [38.2-3525](#), [38.2-3540.1](#), [38.2-3540.2](#), [38.2-3541.2](#), [38.2-3542](#), [38.2-3543.2](#), Chapter 52 (§ [38.2-5200](#) et seq.), Chapter 55 (§ [38.2-5500](#) et seq.), and Chapter 58 (§ [38.2-5800](#) et seq.) shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ [38.2-4200](#) et seq.) except with respect to the activities of its health maintenance organization.

C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

E. Notwithstanding the definition of an eligible employee as set forth in § [38.2-3431](#), a health maintenance organization providing health care plans pursuant to § [38.2-3431](#) shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

F. For purposes of applying this section, "insurer" when used in a section cited in subsections A and B shall be construed to mean and include "health maintenance organizations" unless the section cited clearly applies to health maintenance organizations without such construction.

2. That § [38.2-3433](#) of the Code of Virginia is repealed.
3. That the third enactment of Chapter 788 of the Acts of Assembly of 2011 is repealed.
4. That the second enactment of Chapter 882 of the Acts of Assembly of 2011 is repealed.
5. That the provisions of this act shall become effective on January 1, 2014.

## Chapter 753 Loudoun County; DGS to convey by quitclaim deed, certain real property of former Town of Waterford.

An Act to vest title to real property of the former Town of Waterford to the County of Loudoun.

[\[H 1983\]](#)

Approved April 3, 2013

Whereas, title to all real property held in the name of the former Town of Waterford, whose charter was repealed by Chapter 280 of the Acts of Assembly of 1936, vested in the Commonwealth of Virginia without any further act or deed as of the date the charter was repealed to the extent such title did not otherwise vest in another; now, therefore, Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of General Services, with the approval of the Governor pursuant to § [2.2-1150](#) of the Code of Virginia, is hereby authorized to convey by quitclaim deed, without warranty of any kind, to the County of Loudoun, all of the Commonwealth's right, title, and interest, if any, in and to, and to release any claim upon, said real property held in the name of the former Town of Waterford, less and except those lands that now comprise any part of the systems of state highways. The conveyance documents shall be in a form approved by the Attorney General. The conveyance shall be made for the nominal monetary consideration of \$1. The County of Loudoun shall pay all costs and expenses incurred in the transfer of the property and shall be responsible for the abatement, and related costs, of any currently existing environmental contamination on the property to the extent required by applicable law. The Board of Supervisors of Loudoun County shall have and may exercise the powers to alter or vacate the streets, alleys, and other public rights-of-way as laid out in accordance with the survey and plan of the former town made pursuant to Chapter 161 of the Acts of Assembly of 1874-75, and to authorize encroachments thereon, using the procedures set forth in §§ [15.2-2006](#) through [15.2-2012](#) of the Code of Virginia. No provision of this act shall alter any private rights to property in the former Town of Waterford. Nothing herein shall be construed to affect the status of, or jurisdiction over, any road or easement that, as of July 1, 2013, or thereafter, comprises any part of the systems of state highways.*

## **Chapter 760 Menhaden fish; allowable catch for those landed in State, report. Emergency.**

An Act to amend and reenact §§ [2.2-4002](#), [28.2-204.1](#), [28.2-402](#), [28.2-403](#), and [28.2-1000.2](#) of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010; to amend the Code of Virginia by adding sections numbered [28.2-400.1](#) through [28.2-400.6](#); and to repeal § [28.2-1000.2](#) of the Code of Virginia, relating to management of the menhaden fishery.

[\[H 2254\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-4002](#), [28.2-204.1](#), [28.2-402](#), [28.2-403](#), and [28.2-1000.2](#) of the Code of Virginia and the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [28.2-400.1](#) through [28.2-400.6](#) as follows:

§ [2.2-4002](#). Exemptions from chapter generally.

A. Although required to comply with § [2.2-4103](#) of the Virginia Register Act (§ [2.2-4100](#) et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ [2.2-4024](#), [2.2-4030](#), and [2.2-4031](#)::

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ [29.1-200](#) et seq.), 3 (§ [29.1-300](#) et seq.), 4 (§ [29.1-400](#) et seq.), 5 (§ [29.1-500](#) et seq.), and 7 (§ [29.1-700](#) et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to [§ 2.2-4031](#), such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to [§ 2.2-1164](#).
11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to [§ 23-9.6:2](#).
12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of [§ 3.2-6002](#) and in adopting regulations pursuant to [§ 3.2-6023](#).
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of [§ 3.2-3601](#), subsection B of [§ 3.2-3701](#), [§ 3.2-4002](#), subsections B and D of [§ 3.2-4801](#), [§§ 3.2-5121](#) and [3.2-5206](#), and subsection A of [§ 3.2-5406](#).
14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 ([§ 54.1-3222](#) et seq.) of Chapter 32 of Title 54.1.
15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to subdivision 18 of [§ 2.2-2004](#).
16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to [§ 22.1-203.2](#).
17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.
18. The Virginia Small Business Financing Authority.
19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § [59.1-156](#).
  21. The Insurance Continuing Education Board pursuant to § [38.2-1867](#).
  22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § [32.1-35](#) and in adopting, amending or repealing regulations pursuant to subsection C of § [35.1-14](#) that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.
  23. (Expires January 1, 2014) ~~The Secretary of Natural Resources~~ *Commissioner of the Marine Resources Commission* in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § [28.2-1000.2](#).
  24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § [54.1-3314.1](#).
  25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § [58.1-3219.7](#).
- B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
  2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
  3. The location, design, specifications or construction of public buildings or other facilities.
  4. Grants of state or federal funds or property.
  5. The chartering of corporations.
  6. Customary military, militia, naval or police functions.
  7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
  8. The conduct of elections or eligibility to vote.
  9. Inmates of prisons or other such facilities or parolees therefrom.
  10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
  11. Traffic signs, markers or control devices.
  12. Instructions for application or renewal of a license, certificate, or registration required by law.
  13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ [2.2-4700](#) et seq.).
  15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
  16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ [28.2-803](#) et seq.) of Chapter 8 of Title 28.2.
  17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § [32.1-283.1](#).
  18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.
  19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ [51.5-178](#) et seq.) of Chapter 14 of Title 51.5.
  20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ [10.1-1197.1](#) et seq.) of Chapter 11.1 of Title 10.1.
  21. The Virginia Breeders Fund created pursuant to § [59.1-372](#).
  22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
  23. The administration of medication or other substances foreign to the natural horse.
- C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ [2.2-4100](#) et seq.), made by the Virginia Code Commission pursuant to § [30-150](#), shall be exempt from the provisions of this chapter.
- § [28.2-204.1](#). Limited sale of gear licenses and permits; regulations.
- A. The Commission may limit the number of gear licenses or permits to fish, except those licenses issued pursuant to *subdivisions 1 and 2 of* § [28.2-402](#), issued for use in a specific fishery. The Commission may, despite any such limits, issue such gear licenses or permits to fish to any person who has resided for at least five years on an island in the Commonwealth that is at least three miles from the mainland.
  - B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:
    1. Economic and social consequences;
    2. Food production;
    3. Dependence on the fishery by licensees;

4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

§ [28.2-400.1](#). *Criteria for qualifying for a limited entry purse seine menhaden bait license.*

*A. The Commission shall establish and administer a limited entry purse seine menhaden bait license that meets the requirements of this section.*

*B. In order to qualify for a limited entry purse seine menhaden bait license, an applicant shall have held a purse seine license, as established in § [28.2-402](#), in 2011 and shall have landed menhaden in the Commonwealth in each of the years 2009, 2010, and 2011. Such person shall also have used purse seine gear to harvest menhaden in at least one of those three years. Proof of landings and gear usage shall be in the form of receipts, landing reports, or other verifiable documents as designated by the Commission.*

§ [28.2-400.2](#). *Total allowable landings for menhaden.*

*A. Except as provided for in subsections B, C, and D, the total allowable landings for menhaden shall be 144,272.84 metric tons per year.*

*B. If the total allowable landings specified in subsection A are exceeded in any year, the total allowable landings for the subsequent year will be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in § [28.2-400.3](#).*

*C. The Commissioner may request a transfer of menhaden landings from any other state that is a member of the Atlantic States Marine Fisheries Commission. If the Commonwealth receives a transfer of menhaden in any year from another state, the total allowable landings for only that year shall increase by the amount of transferred landings. The Commissioner may transfer menhaden to another state only if there are unused landings after December 15.*

*D. Any portion of the one percent of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable landings for that year.*

§ [28.2-400.3](#). *Allocation of the total allowable landings for menhaden.*

A. The total allowable landings for menhaden specified in § [28.2-400.2](#) shall be allocated among the purse seine menhaden reduction sector, purse seine menhaden bait sector, and non-purse seine menhaden bait sector in proportion to each sector's share of average landings in 2002 through 2011, and in proportion to each gear type landings within the non-purse seine bait sector during that period.

B. The Commission shall establish an Individual Transferable Quota System for any purse seine menhaden bait licensee that meets the requirements of § [28.2-400.1](#). The Commission shall not consider a limited entry purse seine menhaden bait licensee's landings of menhaden for reduction purposes for any purposes under the Individual Transferable Quota System required by this subsection.

C. Any landings of menhaden by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports required to be submitted under § [28.2-400.5](#), shall be attributed to the menhaden reduction sector for all purposes under this chapter. A qualified menhaden processing factory is one located in the Commonwealth and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

§ [28.2-400.4](#). Administration of the menhaden management program.

A. Closure of the menhaden fishery shall occur when the Commissioner projects and announces that 100 percent of the total allowable landings have been taken. The Commissioner shall monitor the mandatory daily landings reports required to be submitted under § [28.2-400.5](#) by the:

1. Purse seine menhaden reduction sector and promptly announce the date of closure when the portion of the total allowable landings allocated to the purse seine menhaden reduction sector under § [28.2-400.3](#) are projected to be taken. The Commissioner shall also notify the operators of any qualified menhaden processing factory of the date of closure by the most convenient and expeditious means available;

2. Purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the purse seine fishery for bait under § [28.2-400.3](#) is projected to be taken. The Commissioner shall also notify the purse seine menhaden bait sector of the date of closure by the most convenient and expeditious means available; and

3. Non-purse seine menhaden bait sector and promptly announce the date of closure when the portion of total allowable landings allocated to the non-purse seine fishery for bait under § [28.2-400.3](#) is projected to be taken. The Commissioner shall also notify the operators of the non-purse seine bait fishery of the date of closure by the most

*convenient and expeditious means available. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day, provided that such person is fishing in accordance with all laws and regulations.*

*B. The Commissioner may reopen a fishery sector closed pursuant to this section if, after all reports have been received, the portion of the total allowable landings has not been harvested by that sector. The Commission may establish any regulations it deems necessary and advisable, including trip limits or a time-limited reopening, to ensure that the allowable landings for a reopened sector is not exceeded. Any such reopening and subsequent closure shall be done by direct notice to the relevant sector of the fishery.*

*C. The Commission shall maintain on its website a periodically updated tally of the menhaden harvest for each sector receiving an allocation under this section.*

*D. Except as provided in subdivision A 3, no person shall harvest menhaden for bait or reduction purposes after the portion of the total allowable landings for the sector in which that person holds a license has been closed. Any person violating this provision is guilty of a Class 1 misdemeanor.*

*§ [28.2-400.5](#). Reporting requirements.*

*A. Any person licensed for the purse seine menhaden reduction sector or purse seine menhaden bait sector shall submit landings reports to the Commissioner each non-weekend or non-holiday day that the applicable sector of the menhaden fishery is open for harvest utilizing the Captain's Daily Fishing Report produced by the National Marine Fisheries Service.*

*B. Persons licensed for the non-purse seine menhaden bait sector shall submit a report on a form and on a schedule established by the Commission. The reporting period established by the Commission shall be longer than one week.*

*C. The reporting form required to be developed by the Commission shall require the following information:*

- 1. Trip start date;*
- 2. Vessel identification number;*
- 3. Individual fisherman identifier;*
- 4. Identification of dealer purchasing landings;*
- 5. Trip number;*
- 6. Species harvested;*
- 7. Quantity of fish landed and discarded in pounds or metric tons;*
- 8. Disposition of the landings;*
- 9. County or port landed;*

10. Gear type used;
11. Quantity of gear used;
12. Number of sets made during each trip;
13. Time fishing gear is in the water;
14. Days or hours at sea;
15. Number of crewmembers;
16. Area fished; and
17. Date of unloading.

§ [28.2-400.6](#). *Biological sampling program and adult abundance index.*

A. *The Commission shall:*

1. *Establish a biological sampling program to collect one 10-fish sample per 200 landed metric tons for length and weight-at-age data from the commercial menhaden harvest; and*
2. *Initiate a program to add Atlantic menhaden to the Virginia Marine Resources Commission's finfish biological sampling program in order to develop an adult menhaden survey index from Virginia pound nets.*

B. *By no later than December 1, 2013, the Commission shall submit a report to the General Assembly and the Governor that (i) describes progress in establishing the biological sampling program and development of the adult menhaden survey index called for by this section, (ii) discusses any difficulties in implementing the requirements of this section, including a lack of resources to properly implement the program, and (iii) provides a list of resources the Commission believes are necessary to properly implement the sampling program and index, with detailed justification, including an estimate of the cost of each item requested.*

§ [28.2-402](#). *License fee to take menhaden with purse nets.*

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § [28.2-201](#):

1. *On each boat or vessel under ~~seventy~~ 70 gross tons fishing ~~with purse net~~, ~~\$3 per gross ton~~, but not more than ~~\$150~~ for the purse seine menhaden reduction sector, \$249.*
2. *On each vessel ~~over seventy~~ 70 gross tons or over fishing ~~with purse net~~, ~~\$5 per gross ton~~, provided the maximum license fee for such vessels shall not be more than ~~\$600~~ for the purse seine menhaden reduction sector, \$996.*
3. *On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector, \$249.*

4. *On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector, \$996.*

~~The officer or agent shall thereupon grant a license to use such net or other device and state in the license the name or names of the person or persons who shall use the same and the amount of the license fee.~~

§ [28.2-403](#). Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals.

A. If the Commissioner is satisfied that the disclosures required by § [28.2-400](#) have been made and that the application conforms in other respects to the provisions of that section or to § [28.2-400.1](#), and upon payment of the license fee specified in § [28.2-402](#), the Commissioner, or the officer through whom or in whose district the application was made, shall issue to the applicant a license for each of the purse seines, vessels, or other watercraft specified in the application. The license shall state the name of the licensee and the name of the vessel or other watercraft licensed.

If any vessel or other watercraft so licensed becomes disabled during the period of such license, the licensee may, with the consent of the Commissioner, hire or charter a vessel or other craft belonging to a nonresident to replace the disabled one for the unexpired period of such license. In such a case, the officer shall transfer the license issued for the disabled vessel or other craft to the one so hired or chartered without requiring any additional license.

B. The Commissioner may delegate to the officers his authority under this section. However, any person aggrieved by any action of an officer exercising such delegated authority shall have the right to appeal to the Commissioner for a review and correction of the actions of the officer. The appeal may be made by mailing a statement of the officer's action, together with the appellant's objections and the grounds for his objections, to the Commissioner. Upon receipt of such appeal, the Commissioner shall immediately notify the officer involved, who shall, within three days, deliver to the Commissioner all papers in his possession concerning the subject matter of the appeal, together with a written statement of and reasons for his actions. The Commissioner shall issue his ruling granting, transferring, refusing, or refusing to transfer the license within ten days after receipt by him of the appeal.

§ [28.2-1000.2](#). (Expires January 1, 2014) Annual closure of the Chesapeake Bay purse seine fishery for Atlantic menhaden.

A. For the purpose of this section:

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"Purse seine fishery for Atlantic menhaden" means those vessels licensed pursuant to § [28.2-402](#) that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

~~B. Upon notification by the National Marine Fisheries Service of the date on which a determination that the purse seine fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay, the Secretary of Natural Resources Commissioner shall promptly publish a notice in the Virginia Register announcing the date of closure. The Secretary of Natural Resources Commissioner shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily catch-landings reports submitted to the National Marine Fisheries Service required to be submitted under § [28.2-400.5](#) by the purse seine fishery for Atlantic menhaden.~~

C. The annual menhaden harvest cap for the purse seine fishery for Atlantic menhaden shall be ~~109,020~~ 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed ~~122,740~~ 98,192 metric tons in any one year.

D. If the harvest of the purse seine fishery for Atlantic menhaden does not exceed ~~109,020~~ 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the purse seine fishery for Atlantic menhaden for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.

~~E. The 2007 harvest cap for the purse seine fishery for Atlantic menhaden shall be adjusted for any underage or overage, as specified in subsection D, from the actual 2006 harvest of the purse seine fishery for Atlantic menhaden.~~

~~F. No person shall take Atlantic menhaden by purse seine for reduction purposes from the Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date that actual notice is provided of such closure pursuant to subsection B. Any person violating this provision shall be guilty of a Class 1 misdemeanor.~~

2. That the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, is amended and reenacted as follows:

2. That the provisions of this act shall expire on January 1, ~~2014~~ 2015.

3. That § [28.2-1000.2](#) of the Code of Virginia is repealed effective January 1, 2015.

4. That the provisions of this act shall expire on January 1, 2015.

5. That an emergency exists and this act is in force from its passage.

## **Chapter 766 Revenues and appropriations of State; changes to revenues collected and distribution, report.**

An Act to amend and reenact §§ [15.2-4838.1](#), [33.1-23.03:8](#), [33.1-23.5:1](#), [33.1-221.1:1.3](#), [58.1-300](#), [58.1-520](#), as it is currently effective and as it may become effective, [58.1-601](#), [58.1-602](#), [58.1-603](#), [58.1-604](#), [58.1-604.1](#), [58.1-605](#), [58.1-606](#), [58.1-608.3](#), [58.1-612](#), as it is currently effective and as it may become effective, [58.1-614](#), [58.1-615](#), [58.1-625](#), as it is currently effective and as it shall become effective, [58.1-635](#), [58.1-638](#), [58.1-639](#), [58.1-811](#), [58.1-2201](#), [58.1-2217](#), [58.1-2249](#), [58.1-2251](#), [58.1-2259](#), [58.1-2289](#), as it is currently effective, [58.1-2295](#), [58.1-2299.20](#), [58.1-2401](#), [58.1-2402](#), [58.1-2425](#), [58.1-2701](#), as it is currently effective, and [58.1-2706](#) of the Code of Virginia; to amend Chapter 896 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding sections numbered [15.2-4838.01](#), [33.1-23.5:3](#), [58.1-603.1](#), [58.1-604.01](#), [58.1-638.2](#), [58.1-638.3](#), [58.1-802.2](#), and [58.1-2290.1](#); to amend the Code of Virginia by adding in Chapter 17 of Title 58.1 an article numbered 10, consisting of a section numbered [58.1-1742](#); and to repeal Article 22 (§§ [58.1-540](#) through [58.1-549](#)) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ [58.1-609.13](#), [58.1-2289](#) as it may become effective, [58.1-2290](#), and [58.1-2701](#), as it may become effective, of the Code of Virginia, and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, relating to revenues and appropriations primarily for transportation.

[\[H 2313\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-4838.1](#), [33.1-23.03:8](#), [33.1-23.5:1](#), [33.1-221.1:1.3](#), [58.1-300](#), [58.1-520](#), as it is currently effective and as it may become effective, [58.1-601](#), [58.1-602](#), [58.1-603](#), [58.1-604](#), [58.1-604.1](#), [58.1-605](#), [58.1-606](#), [58.1-608.3](#), [58.1-612](#), as it is currently effective and as it may become effective, [58.1-614](#), [58.1-615](#), [58.1-625](#), as it is currently effective and as it shall become effective, [58.1-635](#), [58.1-638](#), [58.1-639](#), [58.1-811](#), [58.1-2201](#), [58.1-2217](#), [58.1-2249](#), [58.1-2251](#), [58.1-2259](#), [58.1-2289](#), as it is currently effective, [58.1-2295](#), [58.1-2299.20](#), [58.1-2401](#), [58.1-2402](#), [58.1-2425](#), [58.1-2701](#), as it is currently effective, and [58.1-2706](#) of the Code of Virginia and Chapter 896 of the Acts of Assembly of 2007 are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [15.2-4838.01](#), [33.1-23.5:3](#), [58.1-603.1](#), [58.1-604.01](#), [58.1-638.2](#), [58.1-638.3](#), [58.1-802.2](#), and [58.1-2290.1](#) and by adding in Chapter 17 of Title 58.1 an article numbered 10, consisting of a section numbered [58.1-1742](#), as follows:

§ [15.2-4838.01](#). *Northern Virginia Transportation Authority Fund established.*

*There is hereby created in the state treasury a special nonreverting fund for Planning District 8 to be known as the Northern Virginia Transportation Authority Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ [58.1-638](#), [58.1-802.2](#), and [58.1-1742](#), any other funds that may be appropriated by the General Assembly, and any funds that may be received for the credit of the Fund from any other source shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.*

*The amounts dedicated to the Fund pursuant to §§ [58.1-638](#), [58.1-802.2](#), and [58.1-1742](#) shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Northern Virginia Transportation Authority as soon as practicable for use in accordance with § [15.2-4838.1](#). If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § [15.2-4838.1](#), the Authority may invest such excess moneys to the same extent as provided in § [33.1-23.03:5](#) for excess funds in the Transportation Trust Fund.*

*The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of local, federal, or state revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to*

*pay for public education, upon which appropriations of state revenues to local governments for public education are determined.*

§ [15.2-4838.1](#). Use of certain revenues by the Authority.

A. All moneys received by the Authority and the proceeds of bonds issued pursuant to § [15.2-4839](#) shall be used by the Authority solely for transportation purposes benefiting those counties and cities that are embraced by the Authority.

B. ~~Forty~~ 1. *Except as provided in subdivision 2, 30 percent of the revenues received by the Authority under subsection A shall be distributed on a pro rata basis, with each locality's share being the total of such fees~~fee~~ and taxes assessed or imposed by the Authority and received by the Authority that are generated or attributable to the locality divided by the total of such fees~~fee~~ and taxes assessed or imposed by the Authority and received by the Authority. Of the revenues distributed pursuant to this subsection (i) in the Cities of Alexandria, Fairfax, and Falls Church and the County of Arlington the first 50% shall be used solely for urban or secondary road construction and improvements and for public transportation purposes, and (ii) in the remaining localities, the first 50% shall be used solely for urban or secondary road construction and improvements. The remainder, as determined solely by the applicable locality, such revenues shall be used either for additional urban or secondary road construction; for other capital improvements that reduce congestion; for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by the Authority; or for public transportation purposes. Solely for purposes of calculating the 40% of revenues to be distributed pursuant to this subsection, the revenue generated pursuant to §[58.1-3221.3](#) and Article 8 (§[15.2-2317](#) et seq.) of Chapter 22 of this title by the counties and cities embraced by the Authority shall be considered revenue of the Authority. None of the revenue distributed by this subsection may be used to repay debt issued before July 1, ~~2007~~ 2013. Each locality shall create a separate, special fund in which all revenues received pursuant to this subsection and from the tax imposed pursuant to § [58.1-3221.3](#) shall be deposited. Each locality shall provide annually to the Northern Virginia Transportation Authority sufficient documentation as required by the Authority showing that the funds distributed under this subsection were used as required by this subsection.*

2. *If a locality has not deposited into its special fund (i) revenues from the tax collected under § [58.1-3221.3](#) pursuant to the maximum tax rate allowed under that section or (ii) an amount, from sources other than moneys received from the Authority, that is equivalent to the revenue that the locality would receive if it was imposing the maximum tax*

authorized by § [58.1-3221.3](#), then the amount of revenue distributed to the locality pursuant to subdivision 1 shall be reduced by the difference between the amount of revenue that the locality would receive if it was imposing the maximum tax authorized by such section and the amount of revenue deposited into its special fund pursuant to clause (i) or (ii), as applicable. The amount of any such reduction in revenue shall be redistributed according to subsection C. The provisions of this subdivision shall be ongoing and apply over annual periods as determined by the Authority.

C. 1. The remaining ~~60%~~ 70 percent of the revenues from such sources received by the Authority under subsection A, plus the amount of any revenue to be redistributed pursuant to subsection B, shall be used by the Authority solely for transportation projects and purposes that benefit the counties and cities embraced by the Authority to fund (i) transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with § [15.2-4830](#) and that have been rated in accordance with § [33.1-13.03:1](#) or (ii) mass transit capital projects that increase capacity. For only those regional funds received in fiscal year 2014, the requirement for rating in accordance with § [33.1-13.03:1](#) shall not apply. The Authority shall give priority to selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project and shall document this information for each project selected. Such projects selected by the Authority for funding shall be located (a) only in localities embraced by the Authority or (b) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the localities embraced by the Authority.

~~1. The revenues under this subsection shall be used first to pay any debt service owing on any bonds issued pursuant to § [15.2-4839](#), and then as follows:-~~

~~a. The next \$50 million each fiscal year shall be distributed to the Washington Metropolitan Area Transit Authority (WMATA) and shall be used for capital improvements benefiting the area embraced by the Authority for WMATA's transit service (Metro). The Authority shall first make use of that portion of such annual distribution as may be necessary under the requirements of federal law for the payment of federal funds to WMATA, but only if the matching federal funds are exclusive of and in addition to the amount of other federal funds appropriated for such purposes and are in an amount not less than the amount of such funds appropriated in the federal fiscal year ending September 30, 2007;-~~

~~For each year after 2018 any portion of the amount distributed pursuant to this subsection may be used for mass transit improvements in Prince William County;-~~

~~b. The next \$25 million each fiscal year shall be distributed to the Virginia Railway Express for operating and capital improvements, including but not limited to track lease payments, construction of parking, dedicated rail on the Fredericksburg line, rolling stock, expanded service in Prince William County, and service as may be needed as a result of the Base Realignment and Closure Commission's action regarding Fort Belvoir.~~

2. All transportation projects undertaken by the Northern Virginia Transportation Authority shall be completed by private contractors accompanied by performance measurement standards, and all contracts shall contain a provision granting the Authority the option to terminate the contract if contractors do not meet such standards. Notwithstanding the foregoing, any locality may provide engineering services or right-of-way acquisition for any project with its own forces. The Authority shall avail itself of the strategies permitted under the Public-Private Transportation Act (§ [56-556](#) et seq.) whenever feasible and advantageous. The Authority is independent of any state or local entity, including the Virginia Department of Transportation (VDOT) and the Commonwealth Transportation Board (CTB), but the Authority, VDOT and CTB shall consult with one another to avoid duplication of efforts and, at the option of the Authority, may combine efforts to complete specific projects. Notwithstanding the foregoing, at the request of the Authority, VDOT may provide the Authority with engineering services or right-of-way acquisition for the project with its own forces. ~~When determining what projects to construct under this subsection, the Authority shall base its decisions on the combination that (i) equitably distributes the funds throughout the localities, and (ii) constructs projects that move the most people or commercial traffic in the most cost-effective manner, and on such other factors as approved by the Authority.~~

3. ~~All revenues deposited to the credit of the Authority shall be used for projects benefiting the localities embraced by the Authority, with each locality's total long-term benefits being approximately equal to~~ *With regard to the revenues distributed under subdivision 1, each locality's total long-term benefit shall be approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the locality divided by the total of such fees and taxes received by the Authority.*

D. For road construction and improvements pursuant to subsection B, the Department of Transportation may, on a reimbursement basis, provide the locality with planning, engineering, right-of-way, and construction services for projects funded in whole by the revenues provided to the locality by the Authority.

§ [33.1-23.03:8](#). Priority Transportation Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Priority Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. All funds as may be designated in the appropriation act for deposit to the Fund shall be paid into the state treasury and credited to the Fund. Such funds shall include:

1. ~~A portion of the moneys actually collected, including penalty and interest, attributable to any increase in revenues from the taxes imposed under Chapter 22 (§[58.1-2200](#) et seq.) of Title 58.1, with such increase being calculated as the difference between such tax revenues collected in the manner prescribed under Chapter 22 less such tax revenues that would have been collected using the prescribed manner in effect immediately before the effective date of Chapter 22, computed without regard to increases in the rates of taxes under Chapter 22 pursuant to enactments of the 2007 Session of the General Assembly. The portion to be deposited to the Fund shall be the moneys actually collected from such increase in revenues and allocated for highway and mass transit improvement projects as set forth in §[33.1-23.03:2](#), but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section. There shall also be deposited into the Fund all additional federal revenues attributable to Chapter 22 (§[58.1-2200](#) et seq.) of Title 58.1;~~
2. Beginning with the fiscal year ending June 30, 2000, and for fiscal years thereafter, all revenues that exceed the official forecast, pursuant to § [2.2-1503](#), for (i) the Highway Maintenance and Operating Fund and (ii) the allocation to highway and mass transit improvement projects as set forth in § [33.1-23.03:2](#), but not including any amounts that are allocated to the Commonwealth Port Fund and the Commonwealth Airport Fund under such section;
- ~~3.2.~~ All revenues deposited into the Fund pursuant to § [58.1-2531](#);
3. *All revenues deposited into the Fund pursuant to subsection E of § [58.1-2289](#)*; and
4. Any other such funds as may be transferred, allocated, or appropriated.

All moneys in the Fund shall first be used for debt service payments on bonds or obligations for which the Fund is expressly required for making debt service payments, to the extent needed. The Fund shall be considered a part of the Transportation Trust Fund.

Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection B ~~of this section~~.

Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller.

B. The Commonwealth Transportation Board shall use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. The Board may use the Fund either (i) by expending amounts therein on such projects directly, (ii) by payment to any authority, locality, commission or other entity for the purpose of paying the costs thereof, or (iii) by using such amounts to support, secure, or leverage financing for such projects. No expenditures from or other use of amounts in the Fund shall be considered in allocating highway maintenance and construction funds under § [33.1-23.1](#) or apportioning Transportation Trust Fund funds under § [58.1-638](#), but shall be in addition thereto. The Board shall use the Fund to facilitate the financing of priority transportation projects as designated by the General Assembly; provided, however, that, at the discretion of the Commonwealth Transportation Board, funds allocated to projects within a transportation district may be allocated among projects within the same transportation district as needed to meet construction cash-flow needs.

C. Notwithstanding any other provision of this section, beginning July 1, 2007, no bonds, obligations, or other evidences of debt (the bonds) that expressly require as a source for debt service payments or for the repayment of such bonds the revenues of the Fund, shall be issued or entered into unless at the time of the issuance the revenues then in the Fund or reasonably anticipated to be deposited into the Fund pursuant to the law then in effect are by themselves sufficient to make ~~100%~~ *100 percent* of the contractually required debt service payments on all such bonds, including any interest related thereto and the retirement of such bonds.

§ [33.1-23.5:1](#). Funds for counties which have withdrawn or elect to withdraw from the secondary system of state highways.

Notwithstanding the provisions of § [33.1-23.5](#), pursuant to subsection A of § [33.1-23.1](#), the Commonwealth Transportation Board shall make the following payments to counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, and which have not elected to return: to any county having withdrawn prior to June 30, 1985, and having an area greater than 100 square miles, an amount equal to ~~\$3,616 per lane-mile for fiscal year 1986~~, *\$12,529 per moving lane-mile for fiscal year 2014*, and to any county having an area less than 100 square miles, an amount equal to ~~\$7,201 per lane-mile for fiscal year 1986~~ *\$17,218 per moving lane-mile for fiscal year 2014*; to any county that elects to withdraw after June 30, 1985, the Commonwealth Transportation Board shall establish a rate per lane-mile for the first year using (i) an amount for maintenance based on maintenance standards and unit costs used by the Department of Transportation to

prepare its secondary system maintenance budget for the year in which the county withdraws; and (ii) an amount for administration equal to five percent of the maintenance figure determined in *clause* (i) above. The payment rates shall be adjusted annually by the Board in accordance with procedures established for adjusting payments to cities and towns under § [33.1-41.1](#), and lane mileage shall be adjusted annually to include (i) streets and highways accepted for maintenance in the county system by the local governing body; or (ii) streets and highways constructed according to standards set forth in the county subdivision ordinance or county thoroughfare plan, and being not less than the standards set by the Department of Transportation. Such counties shall, in addition, each receive for construction from funds allocated pursuant to subdivision B 3 of § [33.1-23.1](#) an annual amount calculated in the same manner as payments for construction in the state secondary highway system are calculated.

Payment of the funds shall be made in four equal sums, one in each quarter of the fiscal year, and shall be reduced, in the case of each such county, by the amount of federal-aid construction funds credited to each such county.

The chief administrative officer of such counties receiving such funds shall make annual reports of expenditures to the Board, in such form as the Board shall prescribe, accounting for all expenditures, including delineation between construction and maintenance expenditures and reporting on their performance as specified in subdivision B 3 of § [33.1-23.02](#). Such reports shall be included in the scope of the annual audit of each county conducted by independent certified public accountants.

§ [33.1-23.5:3](#). *Hampton Roads Transportation Fund established.*

*There is hereby created in the state treasury a special nonreverting fund for Planning District 23 to be known as the Hampton Roads Transportation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to § [58.1-638](#) and Chapter 22.1 (§ [58.1-2291](#) et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the fund shall be used solely for new construction projects on new or existing roads, bridges, and tunnels in the localities comprising Planning District 23 as approved by the Hampton Roads Transportation Planning Organization. The Hampton Roads Transportation Planning Organization shall give priority to those projects that are expected to provide*

*the greatest impact on reducing congestion and shall ensure that the moneys shall be used for such construction projects in all localities comprising Planning District 23. The amounts dedicated to the Fund shall be deposited monthly by the Comptroller into the Fund. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of local, federal, or state revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.*

§ [33.1-221.1:1](#).3. Intercity Passenger Rail Operating and Capital Fund.

A. The General Assembly declares it to be in the public interest that developing and continuing intercity passenger rail operations and the development of rail infrastructure, rolling stock, and support facilities to support intercity passenger rail service are important elements of a balanced transportation system in the Commonwealth and further declares it to be in the public interest that the retention, maintenance, improvement, and development of intercity passenger rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Intercity Passenger Rail Operating and Capital Fund, which shall be considered a special fund within the Transportation Trust Fund. The Intercity Passenger Rail Operating and Capital Fund shall be established on the books of the Comptroller and shall consist of funds *designated pursuant to subdivision A 2 of § [58.1-638.3](#)* and as may be set forth in the appropriation act and by allocation of funds for operations and projects pursuant to this section by the Commonwealth Transportation Board in accordance with § [33.1-23.1](#). Interest earned on moneys in the Intercity Passenger Rail Operating and Capital Fund shall remain in the Intercity Passenger Rail Operating and Capital Fund and be credited to it. Any moneys remaining in the Intercity Passenger Rail Operating and Capital Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Intercity Passenger Rail Operating and Capital Fund. Moneys in the Intercity Passenger Rail Operating and Capital Fund shall be used solely as provided in this section. Expenditures and disbursements from the Intercity Passenger Rail Operating and Capital Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or his designee.

C. The Director of the Virginia Department of Rail and Public Transportation or his designee shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Intercity Passenger Rail Operating and Capital Fund to support the cost of operating intercity passenger rail service; acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for intercity passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support intercity passenger rail projects.

D. Capital projects including tracks and facilities constructed and property, equipment, and rolling stock purchased with funds under this section shall be the property of the Commonwealth for the useful life of the project, as determined by the Director of the Department of Rail and Public Transportation, and shall be made available for use by all intercity passenger rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Projects undertaken pursuant to this section shall be limited to those of a region of the Commonwealth or the Commonwealth as a whole. Such projects undertaken pursuant to this section shall not require a matching contribution; however, projects proposed with matching funds may receive more favorable consideration. Matching funds may be provided from any source except Commonwealth Transportation Fund revenues. § [58.1-300](#). Incomes not subject to local taxation.

~~Except as provided in § [58.1-540](#),~~ no county, city, town or other political subdivision of this Commonwealth shall impose any tax or levy upon incomes, incomes being hereby segregated for state taxation only.

§ [58.1-520](#). (Contingent expiration) Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state or local income tax refund payable pursuant to §§ [58.1-309](#) and [58.1-546](#). This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § [58.1-324](#) B 2.

§ [58.1-520](#). (Contingent effective date) Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's (i) Virginia state or local income tax refund payable pursuant to §§ [58.1-309](#) and [58.1-546](#)—or (ii) federal income tax refund payable pursuant to § 6402 of the Internal Revenue Code. This term also includes any refund belonging to a

debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § [58.1-324](#) B 2.

§ [58.1-601](#). Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, *including the collection and administration of all state and local sales and use taxes imposed on remote sellers.*

B. *To comply with any provisions in any legislation enacted by the Congress of the United States that require states to simplify the administration of their sales and use taxes as a condition to require remote sellers to collect and remit their state and local sales taxes, the Tax Commissioner shall take all administrative actions he deems necessary to facilitate the Commonwealth's compliance with the minimum simplification requirements, including but not limited to: (i) providing adequate software and services to remote sellers and single and consolidated providers that identify the applicable destination rate, including the state and local sales tax rate (if any), to be applied on sales on which the Commonwealth imposes sales and use tax; (ii) providing certification procedures for both single providers and consolidated providers to make software and services available to remote sellers; (iii) ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions within the Commonwealth; and (iv) requiring that no more than one sales and use tax return per month be filed with the Department of Taxation by any remote seller or any single or consolidated provider on behalf of such remote seller.*

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance ~~which~~ *that* the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

§ [58.1-602](#). Definitions.

A. As used in this chapter, unless the context clearly shows otherwise, ~~the term or phrase:~~

"Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and

production supervision. Any person providing advertising as defined herein shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program which is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" shall not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § [58.1-605](#) or [58.1-606](#).

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and

"exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, such term shall not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected world-wide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. The term "manufacturing" shall also include the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months. The determination whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" shall include, but not be limited to, those

businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but shall not be limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ [36-70](#) et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a modular building shall not include a mobile office as defined in § [58.1-2401](#) or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person or corporation who owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person who purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § [58.1-2401](#), taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ [58.1-2400](#) et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, shall also include Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of such term shall mean the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax. The terms "retail sale" and a "sale at retail" shall specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; and (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

The term "transient" shall not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or

constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient; provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" shall not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" shall not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed ~~20%~~ *20 percent* of the price of the meal.

Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities. The term "tangible personal property" shall include (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. The term does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. The term does not include any sale determined to be a gift transaction, subject to tax under § [58.1-604.6](#).

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage as herein defined.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities which are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, it shall refer to the activities specified above, and in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person or entity that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator including, but not limited to, Internet service.

*B. Notwithstanding the definitions in subsection A, to the extent that conformity to any remote collection authority legislation enacted by the Congress of the United States shall so require, the words and terms used in this chapter related to the minimum simplification requirements shall have the same meaning as provided in such federal legislation.*

§ [58.1-603](#). Imposition of sales tax.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ *4.3 percent*.

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.
2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.
3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.

4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in § [58.1-602](#).

5. Of the gross sales of any services which *that* are expressly stated as taxable within this chapter.

§ [58.1-603.1](#). *Additional state sales tax in certain counties and cities.*

*A. In addition to the sales tax imposed pursuant to § [58.1-603](#), there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i), a retail sales tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in § [58.1-611.1](#). Such tax shall be added to the rate of the state sales tax imposed pursuant to § [58.1-603](#) in each such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed for the tax imposed under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax under § [58.1-603](#).*

*The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [15.2-4838.01](#). In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.1-23.5:3](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.*

*B. The transitional provisions of § [58.1-639](#) shall apply, mutatis mutandis, to the taxes imposed pursuant to this section.*

§ [58.1-604](#). Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004~~ *4.3 percent*.

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property ~~which~~ *that* has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).
2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.
3. A transaction taxed under § [58.1-603](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.
4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.
5. ~~The use tax shall not apply to out-of-state mail-order catalog purchases totaling \$100 or less during any calendar year.~~

§ [58.1-604.01](#). *Additional state use tax in certain counties and cities.*

*A. In addition to the use tax imposed pursuant to § [58.1-604](#), there is hereby levied and imposed in each county and city located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of 1.5 million or more, as shown by the most recent United States Census, has not less than 1.2 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million riders per year across all transit systems within the*

*Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and rider-ship criteria set forth in clause (i), a retail use tax at the rate of 0.70 percent. In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met. Such tax shall not be levied upon food purchased for human consumption as defined in § [58.1-611.1](#). Such tax shall be added to the rate of the state use tax imposed pursuant to § [58.1-604](#) in such county and city and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed for the tax described under this section. Such tax shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax under § [58.1-604](#). The revenue generated and collected pursuant to the tax authorized under this section, less the applicable portion of any refunds to taxpayers, shall be deposited by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [15.2-4838.01](#). In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.1-23.5.3](#). For any additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.*

*B. The transitional provisions of § [58.1-639](#) shall apply, mutatis mutandis, to the taxes imposed pursuant to this section.*

§ [58.1-604.1](#). Use tax on motor vehicles, machinery, tools and equipment brought into Virginia for use in performing contracts.

In addition to the use tax levied pursuant to § [58.1-604](#) and notwithstanding the provisions of § [58.1-611](#), a use tax is levied upon the storage or use of all motor vehicles, machines, machinery, tools or other equipment brought, imported or caused to be brought into this Commonwealth for use in constructing, building or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading, or other improvement or structure, or any part thereof. The rate of tax is ~~three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004,~~ 4.3 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate of ~~three percent~~ set forth in § [58.1-2402](#); aircraft, which shall be taxed at the rate of two percent;

and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000. *However, the total rate of the state use tax in any county or city for which the tax under § [58.1-604.01](#) is imposed shall be 5.0 percent on all tangible personal property except motor vehicles, which shall be taxed at the rate set forth in § [58.1-2402](#); aircraft, which shall be taxed at the rate of two percent; and watercraft, which shall be taxed at the rate of two percent with a maximum tax of \$1,000.*

For purposes of this section ~~the words~~, "motor vehicle" means any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment or any vehicle designed primarily for use in work off the highway.

The tax shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this Commonwealth bears to the total useful life thereof. For purposes of this section, ~~the word~~ "use" means use, storage, consumption and "stand-by" time occasioned by weather conditions, controversies or other causes. The tax shall be computed upon the basis of the relative time each item of equipment is in this Commonwealth rather than upon the basis of actual use. In the absence of satisfactory evidence as to the period of use intended in this Commonwealth, it will be presumed that such property will remain in this Commonwealth for the remainder of its useful life, which shall be determined in accordance with the experiences and practices of the building and construction trades.

A transaction taxed under § [58.1-604](#), [58.1-605](#), [58.1-1402](#), [58.1-1502](#), [58.1-1736](#), or [58.1-2402](#) shall not also be taxed under this section, nor shall the same transaction be taxed more than once under any section.

§ [58.1-605](#). To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ [58.1-603](#) and [58.1-604](#) and shall be subject to all the provisions of this chapter and the rules and

regulations published with respect thereto. No discount under § [58.1-622](#) shall be allowed on a local sales tax.

C. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

*D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.*

E. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

~~E-F.~~ All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

~~F-G.~~ As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be

charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

~~G.~~*H.* Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

~~H.~~*I.* One-half of such payments to counties are subject to the further qualification, other than as set out in subsection ~~G.~~ *above H*, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service,

such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

~~I-J.~~ Notwithstanding the provisions of subsection ~~H~~ I, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

~~J-K.~~ It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection ~~G~~ or H of this section or I be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

§ [58.1-606](#). To what extent and under what conditions cities and counties may levy local use tax; collection thereof by Commonwealth and return of revenues to the cities and counties.

A. The council of any city and the governing body of any county which has levied or may hereafter levy a city or county sales tax under § [58.1-605](#) may levy a city or county use tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state use tax imposed by this chapter and shall be subject to all the provisions of this chapter, and all amendments thereof, and the rules and regulations published with respect thereto, except that no discount under § [58.1-622](#) shall be allowed on a local use tax.

B. The council of any city and the governing body of any county desiring to impose a local use tax under this section may do so in the manner following:

1. If the city or county has previously imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by the council or governing body by the adoption of a resolution by a majority of all the members thereof, by a recorded yea and nay vote, stating its purpose and referring to this section, and providing that the local use tax shall

become effective on the first day of a month at least 60 days after the adoption of the resolution. A certified copy of such resolution shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption. The resolution authorized by this paragraph may be adopted in the manner stated notwithstanding any other provision of law, including any charter provision.

2. If the city or county has not imposed the local sales tax authorized by § [58.1-605](#), the local use tax may be imposed by ordinance together with the local sales tax in the manner set out in subsections B and C of § [58.1-605](#).

C. Any local use tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state use tax.

*D. Prior to any change in the rate of the local sales and use tax, the Tax Commissioner shall provide remote sellers and single and consolidated providers with at least 30 days' notice. Any change in the rate of local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to hold the remote seller or single or consolidated provider harmless for collecting the tax at the immediately preceding effective rate for any period of time prior to 30 days after notification is provided.*

E. The local use tax authorized by this section shall not apply to transactions to which the sales tax applies, the situs of which for state and local sales tax purposes is the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. However, the local use tax authorized by this section shall apply to tangible personal property purchased without this Commonwealth for use or consumption within the city or county imposing the local use tax, or stored within the city or county for use or consumption, where the property would have been subject to the sales tax if it had been purchased within this Commonwealth. The local use tax shall also apply to leases or rentals of tangible personal property where the place of business of the lessor is without this Commonwealth and such leases or rentals are subject to the state tax. Moreover, the local use tax shall apply in all cases in which the state use tax applies.

~~E-F.~~ Out-of-state dealers who hold certificates of registration to collect the use tax from their customers for remittance to this Commonwealth shall, to the extent reasonably practicable, in filing their monthly use tax returns with the Tax Commissioner, break down their shipments into this Commonwealth by cities and counties so as to show the city or county of destination. If, however, the out-of-state dealer is unable accurately to assign any shipment to a particular city or county, the local use tax on the tangible personal

property involved shall be remitted to the Commonwealth by such dealer without attempting to assign the shipment to any city or county.

~~F.~~~~G.~~ Local use tax revenue shall be distributed among the cities and counties for which it is collected, respectively, as shown by the records of the Department, and the procedure shall be the same as that prescribed for distribution of local sales tax revenue under § [58.1-605](#). The local use tax revenue that is not accurately assignable to a particular city or county shall be distributed monthly by the appropriate state authorities among the cities and counties in this Commonwealth imposing the local use tax upon the basis of taxable retail sales in the respective cities and counties in which the local sales and use tax was in effect in the taxable month involved, as shown by the records of the Department, and computed with respect to taxable retail sales as reflected by the amounts of the local sales tax revenue distributed among such cities and counties, respectively, in the month of distribution. Notwithstanding any other provision of this section, the Tax Commissioner shall develop a uniform method to distribute local use tax. Any significant changes to the method of local use tax distribution shall be phased in over a five-year period. Distribution information shall be shared with the affected localities prior to implementation of the changes.

~~G.~~~~H.~~ All local use tax revenue shall be used, applied or disbursed by the cities and counties as provided in § [58.1-605](#) with respect to local sales tax revenue.

§ [58.1-608.3](#). Entitlement to certain sales tax revenues.

A. As used in this section, the following words and terms have the following meanings, unless some other meaning is plainly intended:

"Bonds" means any obligations of a municipality for the payment of money.

"Cost," as applied to any public facility or to extensions or additions to any public facility, includes: (i) the purchase price of any public facility acquired by the municipality or the cost of acquiring all of the capital stock of the corporation owning the public facility and the amount to be paid to discharge any obligations in order to vest title to the public facility or any part of it in the municipality; (ii) expenses incident to determining the feasibility or practicability of the public facility; (iii) the cost of plans and specifications, surveys and estimates of costs and of revenues; (iv) the cost of all land, property, rights, easements and franchises acquired; (v) the cost of improvements, property or equipment; (vi) the cost of engineering, legal and other professional services; (vii) the cost of construction or reconstruction; (viii) the cost of all labor, materials, machinery and equipment; (ix) financing charges; (x) interest before and during construction and for up to one year after completion of construction; (xi) start-up costs and operating capital; (xii) payments by a

municipality of its share of the cost of any multijurisdictional public facility; (xiii) administrative expense; (xiv) any amounts to be deposited to reserve or replacement funds; and (xv) other expenses as may be necessary or incident to the financing of the public facility. Any obligation or expense incurred by the public facility in connection with any of the foregoing items of cost may be regarded as a part of the cost.

"Municipality" means any county, city, town, authority, commission, or other public entity.

"Public facility" means (i) any auditorium, coliseum, convention center, sports facility that is designed for use primarily as a baseball stadium for a minor league professional baseball affiliated team or structures attached thereto, or conference center, which is owned by a Virginia county, city, town, authority, or other public entity and where exhibits, meetings, conferences, conventions, seminars, or similar public events may be conducted; (ii) any hotel which is owned by a foundation whose sole purpose is to benefit a state-supported university and which is attached to and is an integral part of such facility, together with any lands reasonably necessary for the conduct of the operation of such events; (iii) any hotel which is attached to and is an integral part of such facility; or (iv) any hotel that is adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space. However, such public facility must be located in the City of Hampton, City of Lynchburg, City of Newport News, City of Norfolk, City of Portsmouth, City of Richmond, City of Roanoke, City of Salem, City of Staunton, City of Suffolk, City of Virginia Beach, or City of Winchester. Any property, real, personal, or mixed, which is necessary or desirable in connection with any such auditorium, coliseum, convention center, baseball stadium or conference center, including, without limitation, facilities for food preparation and serving, parking facilities, and administration offices, is encompassed within this definition. However, structures commonly referred to as "shopping centers" or "malls" shall not constitute a public facility hereunder. A public facility shall not include residential condominiums, townhomes, or other residential units. In addition, only a new public facility, or a public facility which will undergo a substantial and significant renovation or expansion, shall be eligible under subsection C of this section. A new public facility is one whose construction began after December 31, 1991. A substantial and significant renovation entails a project whose cost is at least 50 percent of the original cost of the facility being renovated and shall have begun after December 31, 1991. A substantial and significant expansion entails an increase in floor space of at least 50 percent over that existing in the preexisting facility and shall have begun after December 31, 1991; or an increase in floor space of at least 10 percent over that existing

in a public facility that qualified as such under this section and was constructed after December 31, 1991.

"Sales tax revenues" means such tax collections realized under the Virginia Retail Sales and Use Tax Act (§ [58.1-600](#) et seq.) of this title, as limited herein. "Sales tax revenues" does not include the revenue generated by (i) the ~~one-half~~ 0.5 percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly which shall be paid to the Transportation Trust Fund as defined in § [33.1-23.03:1](#), nor shall it include (ii) the ~~one~~ 1.0 percent of the state sales and use tax revenue distributed among the counties and cities of the Commonwealth pursuant to subsection D of § [58.1-638](#) on the basis of school age population, or (iii) any sales and use tax revenues generated by increases or allocation changes imposed by the 2013 Session of the General Assembly. For a public facility that is a sports facility, "sales tax revenues" shall include such revenues generated by transactions taking place upon the premises of a baseball stadium or structures attached thereto.

B. Notwithstanding the definition of "public facility" in subsection A, a development project that meets the requirements for a "development of regional impact" set forth herein shall be deemed to be a public facility under the provisions of this section. The locality in which the public facility is located shall be entitled to all sales tax revenues generated by transactions taking place at such public facility solely to pay the cost of any bonds issued to pay the cost, or portion thereof, of such public facility pursuant to subsection C. For purposes of this subsection, the development of regional impact must be located in the City of Bristol.

For purposes of this subsection, a "development of regional impact" means a development project (i) towards which the locality contributes infrastructure or real property as part of a public-private partnership with the developer that is equal to at least 20 percent of the aggregate cost of development, (ii) that is reasonably expected to require a capital investment of at least \$50 million, (iii) that is reasonably expected to generate at least \$5 million annually in state sales and use tax revenue from sales within the development, (iv) that is reasonably expected to attract at least one million visitors annually, (v) that is reasonably expected to create at least 2,000 permanent jobs, (vi) that is located in a locality that had a rate of unemployment at least three percentage points higher than the statewide average in November 2011, and (vii) that is located in a locality that is adjacent to a state that has adopted a Border Region Retail Tourism Development District Act. Within 30 days from the date of notification by a locality that it intends to contribute infrastructure or real property as part of a public-private partnership with the developer of a development of regional impact, the Department of Taxation shall review the findings

of the locality with respect to clauses (i) through (vi) and shall file a written report with the Chairmen of the House Committee on Finance, the House Committee on Appropriations, and the Senate Committee on Finance.

C. Any municipality which has issued bonds (i) after December 31, 1991, but before January 1, 1996, (ii) on or after January 1, 1998, but before July 1, 1999, (iii) on or after January 1, 1999, but before July 1, 2001, (iv) on or after July 1, 2000, but before July 1, 2003, (v) on or after July 1, 2001, but before July 1, 2005, (vi) on or after July 1, 2004, but before July 1, 2007, (vii) on or after July 1, 2009, but before July 1, 2012, or (viii) on or after January 1, 2011, but prior to July 1, 2015, to pay the cost, or portion thereof, of any public facility shall be entitled to all sales tax revenues generated by transactions taking place in such public facility. Such entitlement shall continue for the lifetime of such bonds, which entitlement shall not exceed 35 years, and all such sales tax revenues shall be applied to repayment of the bonds. The State Comptroller shall remit such sales tax revenues to the municipality on a quarterly basis, subject to such reasonable processing delays as may be required by the Department of Taxation to calculate the actual net sales tax revenues derived from the public facility. The State Comptroller shall make such remittances to eligible municipalities, as provided herein, notwithstanding any provisions to the contrary in the Virginia Retail Sales and Use Tax Act (§ [58.1-600](#) et seq.). No such remittances shall be made until construction is completed and, in the case of a renovation or expansion, until the governing body of the municipality has certified that the renovation or expansion is completed.

D. Nothing in this section shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any bonds. Any appropriation made pursuant to this section shall be made only from sales tax revenues derived from the public facility for which bonds may have been issued to pay the cost, in whole or in part, of such public facility.

§ [58.1-612](#). (Contingent expiration date) Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ [58.1-603](#) and [58.1-604](#) shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections B and C hereof.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;
4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;
5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;
6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;
7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § [58.1-613](#); or
8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § [58.1-613](#).

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § [58.1-613](#) if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;
2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;
3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;
4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than ~~twelve~~ 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;
6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;
7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;
8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § [58.1-613](#); or
9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth.

D. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person who has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § [58.1-613](#):

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;
2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;
3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and
4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

E. In addition to the jurisdictional standards contained in subsection C ~~of this section~~, nothing contained herein (other than subsection D) shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is

intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

*F. Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.*

§ [58.1-612](#). (Contingent effective date) Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ [58.1-603](#) and [58.1-604](#) shall be collectible from all persons who are dealers, as hereinafter defined, and who have sufficient contact with the Commonwealth to qualify under subsections (i) B and C or (ii) B and D ~~hereof~~.

B. The term "dealer," as used in this chapter, shall include every person who:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
3. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;
4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;
5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;
6. Is the lessee or rentee of tangible personal property and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;

7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § [58.1-613](#); or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether he holds, or is required to hold, a certificate of registration under § [58.1-613](#).

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § [58.1-613](#) if he:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;

2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;

3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;

4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;

6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;

7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;

8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § [58.1-613](#); or

9. Owns tangible personal property that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § [58.1-613](#) (unless the presumption is rebutted as provided herein) if

any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person who has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § [58.1-613](#):

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;
2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;
3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and
4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained herein (other than subsection E) shall limit any authority which this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer who regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster,

printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

*G. Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.*

§ [58.1-614](#). Vending machine sales.

A. Notwithstanding the provisions of §§ [58.1-603](#) and [58.1-604](#), whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, as determined by the Tax Commissioner, such dealer shall be required to report his wholesale purchases for sale at retail from vending machines and shall be required to remit an amount based on ~~four and one-half percent through midnight on July 31, 2004, and five percent beginning on and after August 1, 2004,~~ 5.3 percent of such wholesale purchases. *However, any dealer located in any county or city for which the taxes under §§ [58.1-603.1](#) and [58.1-604.01](#) are imposed shall be required to remit an amount based on 6.0 percent of such wholesale purchases.*

B. Notwithstanding the provisions of §§ [58.1-605](#) and [58.1-606](#), dealers making sales of tangible personal property through vending machines shall report and remit the one percent local sales and use tax computed as provided in subsection A ~~of this section~~.

C. The provisions of subsections A and B ~~of this section~~ shall not be applicable to vending machine operators all of whose machines are under contract to nonprofit organizations. Such operators shall report only the gross receipts from machines selling items for more than 10 cents and shall be required to remit an amount based on a percentage of their remaining gross sales established by the Tax Commissioner to take into account the inclusion of sales tax.

D. Notwithstanding any other provisions in this section, when the Tax Commissioner determines that it is impractical to collect the tax in the manner provided by those sections, such dealer shall be required to remit an amount based on a percentage of gross receipts which takes into account the inclusion of the sales tax.

E. The provisions of this section shall not be applicable to any dealer who fails to maintain records satisfactory to the Tax Commissioner. A dealer making sales of tangible personal property through vending machines shall obtain a certificate of registration under § [58.1-613](#) in relevant form for each county or city in which he has machines.

§ [58.1-615](#). Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period. *The Tax Commissioner shall not require that more than one return per month be used or filed by any remote seller, single provider, or consolidated provider subject to the sales or use tax.*

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than

the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer who elects to file a consolidated sales tax return for any taxable period and who is required to remit payment by electronic funds transfer pursuant to subsection B of § [58.1-202.1](#) beginning on and after July 1, 2010, shall file his monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

§ [58.1-625](#). (Effective until July 1, 2017) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § [58.1-613](#) or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

*E. Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated*

*provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § [58.1-601](#).*

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ [58.1-611.2](#) and [58.1-611.3](#) or subdivision ~~18~~ 16 of § [58.1-609.1](#) not to collect the tax levied by this chapter or levied under the authority granted in §§ [58.1-605](#) and [58.1-606](#) from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

§ [58.1-625](#). (Effective July 1, 2017) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer who is not registered under § [58.1-613](#) or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has since been refunded to the purchaser or credited to his account.

D. Any dealer who neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer who neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

*E. Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § [58.1-601](#).*

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § [58.1-611.2](#) not to collect the tax levied by this chapter or levied under the authority granted in §§ [58.1-605](#) and [58.1-606](#) from the purchaser, and to absorb such tax himself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as he is for tax collected from a purchaser pursuant to this section.

§ [58.1-635](#). Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~thirty~~ 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports his gross sales, gross proceeds or cost price, as the case may be, at ~~thirty~~ 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § [58.1-15](#), shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § [58.1-15](#), after which interest shall accrue as provided therein.

*D. Notwithstanding any other provision of this section, any remote seller, single provider, or consolidated provider who collects an incorrect amount of sales or use tax shall be relieved of any liability, including penalties and interest, if collection of the improper amount is the result of the remote seller, single provider, or consolidated provider's reasonable reliance on information that has been provided by the Commonwealth.*

§ [58.1-638](#). Disposition of state sales and use tax revenue; localities' share; Game Protection Fund.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § [33.1-23.03:1](#). Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port

Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth.

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § [5.1-2.16](#), or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than \$50,000 nor more than \$2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWAA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the

Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.

Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § [33.1-23.03:2](#) shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be used to support the public transportation administrative costs and the costs borne by the locality for the purchase of fuels, lubricants, tires and maintenance parts and supplies for public transportation at a state share of 80 percent in 2002 and 95 percent in 2003 and succeeding years. These amounts may be used to support up to 95 percent of the local or nonfederal share of capital project costs for public transportation and ridesharing equipment, facilities, and associated costs. Capital costs may include debt service payments on local or agency transit bonds. The term "borne by the locality" means the local share eligible for state assistance consisting of costs in excess of the sum of fares and other operating revenues plus federal assistance received by the locality.

c. Commonwealth Mass Transit Fund revenue shall be allocated by the Commonwealth Transportation Board as follows:

(1) Funds for special programs, which shall include ridesharing, experimental transit, and technical assistance, shall not exceed 1.5 percent of the Fund.

(2) The Board may allocate these funds to any locality or planning district commission to finance up to 80 percent of the local share of all costs associated with the development, implementation, and continuation of ridesharing programs.

(3) Funds allocated for experimental transit projects may be paid to any local governing body, transportation district commission, or public corporation or may be used directly by the Department of Rail and Public Transportation for the following purposes:

(a) To finance up to 95 percent of the capital costs related to the development, implementation and promotion of experimental public transportation and ridesharing projects approved by the Board.

(b) To finance up to 95 percent of the operating costs of experimental mass transportation and ridesharing projects approved by the Board for a period of time not to exceed 12 months.

(c) To finance up to 95 percent of the cost of the development and implementation of any other project designated by the Board where the purpose of such project is to enhance the provision and use of public transportation services.

d. Funds allocated for public transportation promotion and operation studies may be paid to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(1) At the approval of the Board to finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(2) To finance up to 50 percent of the local share of public transportation operations planning and technical study projects approved by the Board.

e. At least 73.5 percent of the Fund shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

f. The remaining 25 percent shall be distributed for capital purposes on the basis of 95 percent of the nonfederal share for federal projects and 95 percent of the total costs for nonfederal projects. In the event that total capital funds available under this subdivision are insufficient to fund the complete list of eligible projects, the funds shall be distributed to each transit property in the same proportion that such capital expenditure bears to the statewide total of capital projects. Prior to the annual adoption of the Six-Year Improvement Program, the Commonwealth Transportation Board may allocate up to 20 percent of the funds in the Commonwealth Mass Transit Fund designated for capital purposes to

transit operating assistance if operating funds for the next fiscal year are estimated to be less than the current fiscal year's allocation, to attempt to maintain transit operations at approximately the same level as the previous fiscal year.

g. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in [§ 56-557](#) and for purposes as enumerated in subdivision 4c of [§ 33.1-269](#) or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. Projects financed by the Commonwealth Transit Capital Fund shall receive local, regional or private funding for at least 20 percent of the nonfederal share of the total project cost.

5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church and Fairfax in the following manner:

a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.

b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.

Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the

several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § [29.1-101](#) and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the Capital Improvement Fund, established under § [29.1-101.01](#), is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § [29.1-101](#), in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#) an amount equivalent

to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. *Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#), and be used for the state's share of Standards of Quality basic aid payments.*

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. *Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund:*

1. *For fiscal year 2014, an amount equal to 10 percent;*
2. *For fiscal year 2015, an amount equal to 20 percent;*
3. *For fiscal year 2016, an amount equal to 30 percent; and*
4. *For fiscal year 2017 and thereafter, an amount equal to 35 percent.*

*The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.*

H. 1. *The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [15.2-4838.01](#).*

2. *The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.1-23.5:3](#).*

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

H-J. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ [58.1-638.2](#). *Disposition of state and local sales tax revenue collected pursuant to federal legislation granting remote collection authority.*

Notwithstanding any provisions of § [58.1-638](#) to the contrary, any state and local sales and use tax revenue collected pursuant to federal legislation granting the Commonwealth authority to compel remote sellers to collect the tax for sales made into the Commonwealth shall be paid in the manner provided in this section:

1. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections F and G of §§ [58.1-605](#) and [58.1-606](#). Each locality shall be required to designate an amount equal to 50 percent of the local sales and use tax distribution to transportation needs.

2. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D of § [58.1-638](#).

3. The sales and use tax revenue generated by a 0.25 percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in § [58.1-638.1](#).

4. The Comptroller shall transfer annually to each locality that levied the local tax on fuels for domestic consumption pursuant to the former § [58.1-609.13](#) an amount to compensate the locality for the locality's revenue loss resulting from cessation of the local authority to impose tax on the sale of fuel for domestic consumption due to the repeal of § [58.1-609.13](#). The amount paid to the locality shall be an amount equal to the locality's

revenue from its tax on fuels for domestic consumption in the calendar year prior to the repeal of § [58.1-609.13](#), but the aggregate amount of such revenue paid to all localities shall not exceed \$7.5 million per year. If the total aggregate amount exceeds \$7.5 million, then each locality shall receive a pro rata portion based on the proportion that the locality's revenue from its tax on fuels for domestic consumption in the calendar year preceding the repeal of § [58.1-609.13](#) is to the total amount of such revenue in all localities that levied such tax.

5. Notwithstanding §§ [58.1-605](#), [58.1-606](#), and [58.1-638](#), all remaining revenue collected pursuant to this section, as estimated by the Department, shall be transferred to the Transportation Trust Fund to be allocated pursuant to § [33.1-23.03:2](#).

§ [58.1-638.3](#). Disposition of 0.3 percent state and local sales tax for transportation.

A. The sales and use tax revenue generated by the 0.3 percent sales and use tax increase enacted by the 2013 Session of the General Assembly shall be allocated as follows:

1. An amount equal to a 0.175 percent sales and use tax shall be deposited into the Highway Maintenance and Operating Fund;
2. An amount equal to a 0.05 percent sales and use tax shall be deposited into the Intercity Passenger Rail Operating and Capital Fund established under § [33.1-221.1:1.3](#); and
3. An amount equal to a 0.075 percent sales and use tax shall be deposited into the Commonwealth Mass Transit Fund.

B. The net revenues distributable under this section shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the funds set forth in subsection A on the last day of each month.

§ [58.1-639](#). Transitional provisions.

A. To the extent of the ~~one-half~~ 0.3 percent increase in the state sales and use tax rate effective ~~August 1, 2004~~ July 1, 2013, enacted by the ~~2004 Special Session~~ 2013 Session of the Virginia General Assembly, the Tax Commissioner, upon application of the purchaser in accordance with regulations promulgated by the Commissioner, shall have the authority to refund state sales or use taxes paid on purchases of tangible personal property made pursuant to bona fide real estate construction contracts, contracts for the sale of tangible personal property, and leases, provided that the real estate construction contract, contract for the sale of tangible personal property or lease is entered into prior to the date of enactment of such increase in the state sales and use tax rate; and further

provided that the date of delivery of the tangible personal property is on or before ~~October 31, 2004~~ *September 30, 2013*. The term "bona fide contract," when used in this section in relation to real estate construction contracts, shall include but not be limited to those contracts which are entered into prior to the enactment of such increase in the state sales and use tax rate, provided that such contracts include plans and specifications.

B. Notwithstanding the foregoing ~~October 31, 2004~~ *September 30, 2013*, delivery date requirement, with respect to bona fide real estate construction contracts which contain a specific and stated date of completion, the date of delivery of such tangible personal property shall be on or before the completion date of the applicable project.

C. Applications for refunds pursuant to this section shall be made in accordance with the provisions of § [58.1-1823](#). Interest computed in accordance with § [58.1-1833](#) shall be added to the tax refunded pursuant to this section.

§ [58.1-802.2](#). *Regional congestion relief fee.*

*In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional congestion relief fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city in a Planning District described in this section is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The fee shall be imposed in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. In any case in which the fee is imposed pursuant to clause (ii) such fee shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria under such clause have been met.*

*The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.*

*No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.*

*Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury as soon as practicable. Such fees shall then be deposited into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [15.2-4838.01](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.*

§ [58.1-811](#). Exemptions.

A. The taxes imposed by §§ [58.1-801](#) and [58.1-807](#) shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;
2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § [57-16.1](#), where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;
3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;
4. To the Virginia Division of the United Daughters of the Confederacy;
5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;
6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;
7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;
8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entit-

ies are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company; provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a security trust defined in § [55-58.1](#), and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument; or

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means.

B. The taxes imposed by §§ [58.1-803](#) and [58.1-804](#) shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § [57-16.1](#);

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;
  4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;
- or
5. Securing a loan made by an organization described in subdivision A 14 ~~of subsection A of this section.~~

C. The tax imposed by § [58.1-802](#) and the fee imposed by § [58.1-802.2](#) shall not apply to any:

1. Transaction described in subdivisions A 6 through 13 ~~of subsection A of this section;~~
2. Instrument or writing given to secure a debt;
3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;
4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district or other political subdivision thereof;
5. Conveyance of real estate to the Commonwealth or any county, city, town, district or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § [58.1-802](#) or subject to the fee under § [58.1-802.2](#); or
6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § [57-16.1](#).

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § [58.1-807](#) shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ [58.1-801](#), [58.1-802](#), [58.1-802.2](#), [58.1-807](#), [58.1-808](#), and [58.1-814](#) shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A, subdivision 2 of subsection B, and subdivision 6 of subsection C, include the trustees mentioned in § [57-8](#) and the ecclesiastical officers mentioned in § [57-16](#).

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ [56-556](#) et seq.) or similar federal law.

*Article 10.*

*Regional Transient Occupancy Tax.*

§ [58.1-1742](#). *Regional transient occupancy tax.*

*In addition all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer into the state treasury pursuant to § [2.2-806](#) and transferred by the Comptroller into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § [15.2-4838.01](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.*

§ [58.1-2201](#). Definitions.

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

"Alternative fuel" means a combustible gas, liquid or other energy source that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle *or a hybrid electric motor vehicle*.

*"Alternative fuel vehicle" means a vehicle equipped to be powered by a combustible gas, liquid, or other source of energy that can be used to generate power to operate a highway vehicle and that is neither a motor fuel nor electricity used to recharge an electric motor vehicle or a hybrid electric motor vehicle.*

"Assessment" means a written determination by the Department of the amount of taxes owed by a taxpayer. Assessments made by the Department shall be deemed to be made when a written notice of assessment is delivered to the taxpayer by the Department or is mailed to the taxpayer at the last known address appearing in the Commissioner's files.

"Aviation consumer" means any person who uses in excess of 100,000 gallons of aviation jet fuel in any fiscal year and is licensed pursuant to Article 2 (§ [58.1-2204](#) et seq.) of this chapter.

"Aviation fuel" means aviation gasoline or aviation jet fuel.

"Aviation gasoline" means fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

"Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

"Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.

"Blender" means a person who produces blended fuel outside the terminal transfer system.

"Bonded aviation jet fuel" means aviation jet fuel held in bonded storage under United States Customs Law and delivered into a fuel tank of aircraft operated by certificated air carriers on international flights.

"Bonded importer" means a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in which (i) the state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state; (ii) the supplier of the fuel is not an elective supplier; or (iii) the supplier of the fuel is not a permissive supplier.

"Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.

"Bulk user" means a person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle, watercraft, or aircraft.

"Bulk user of alternative fuel" means a person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.

"Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire, or any other trade or business unless the watercraft is used in an activity of a type generally considered entertainment, amusement, or recreation. The definition shall include a watercraft owned by a private business and used in the conduct of its own business or operations, including but not limited to the transport of persons or property.

"Commissioner" means the Commissioner of the Department of Motor Vehicles.

"Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as such officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting, or remitting obligations.

"Department" means the Department of Motor Vehicles, acting directly or through its duly authorized officers and agents.

"Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner or his designee to be used as a fuel inspection site.

"Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

"Diesel fuel" means any liquid that is suitable for use as a fuel in a diesel-powered highway vehicle or watercraft. The term shall include undyed #1 fuel oil and undyed #2 fuel oil, but shall not include gasoline or aviation jet fuel.

"Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale.

"Dyed diesel fuel" means diesel fuel that meets the dyeing and marking requirements of 26 U.S.C. § 4082.

"Elective supplier" means a supplier who (i) is required to be licensed in the Commonwealth and (ii) elects to collect the tax due the Commonwealth on motor fuel that is removed at a terminal located in another state and has Virginia as its destination state.

"Electric motor vehicle" means a motor vehicle that uses electricity as its only source of motive power.

"End seller" means the person who sells fuel to the ultimate user of the fuel.

"Export" means to obtain motor fuel in Virginia for sale or distribution in another state, territory, or foreign country. Motor fuel delivered out-of-state by or for the seller constitutes an export by the seller, and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.

"Exporter" means a person who obtains motor fuel in Virginia for sale or distribution in another state, territory, or foreign country.

"Fuel" includes motor fuel and alternative fuel.

"Fuel alcohol" means methanol or fuel grade ethanol.

"Fuel alcohol provider" means a person who (i) produces fuel alcohol or (ii) imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, a tank wagon, or a railroad tank car.

"Gasohol" means a blended fuel composed of gasoline and fuel grade ethanol.

"Gasoline" means (i) all products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, aircraft, or watercraft, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method; (ii) a petroleum product component of gasoline, such as naphtha, reformate, or toluene; (iii) gasohol; and (iv) fuel grade ethanol. The term does not include aviation gasoline sold for use in an aircraft engine.

"Governmental entity" means (i) the Commonwealth or any political subdivision thereof or (ii) the United States or its departments, agencies, and instrumentalities.

"Gross gallons" means an amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.

"Heating oil" means any combustible liquid, including but not limited to dyed #1 fuel oil, dyed #2 fuel oil, and kerosene, that is burned in a boiler, furnace, or stove for heating or for industrial processing purposes.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Highway vehicle" means a self-propelled vehicle designed for use on a highway.

*"Hybrid electric motor vehicle" means a motor vehicle that uses electricity and another source of motive power.*

"Import" means to bring motor fuel into Virginia by any means of conveyance other than in the fuel supply tank of a highway vehicle. Motor fuel delivered into Virginia from out-of-

state by or for the seller constitutes an import by the seller, and motor fuel delivered into Virginia from out-of-state by or for the purchaser constitutes an import by the purchaser. "Importer" means a person who obtains motor fuel outside of Virginia and brings that motor fuel into Virginia by any means of conveyance other than in the fuel tank of a highway vehicle. For purposes of this chapter, a motor fuel transporter shall not be considered an importer.

"In-state-only supplier" means (i) a supplier who is required to have a license and who elects not to collect the tax due the Commonwealth on motor fuel that is removed by that supplier at a terminal located in another state and has Virginia as its destination state or (ii) a supplier who does business only in Virginia.

"Licensee" means any person licensed by the Commissioner pursuant to Article 2 (§ [58.1-2204](#) et seq.) of this chapter or § [58.1-2244](#).

"Liquid" means any substance that is liquid above its freezing point.

"Motor fuel" means gasoline, diesel fuel, blended fuel, and aviation fuel.

"Motor fuel transporter" means a person who transports motor fuel for hire by means of a pipeline, a tank wagon, a transport truck, a railroad tank car, or a marine vessel.

"Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

"Occasional importer" means any person who (i) imports motor fuel by any means outside the terminal transfer system and (ii) is not required to be licensed as a bonded importer.

"Permissive supplier" means an out-of-state supplier who elects, but is not required, to have a supplier's license under this chapter.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including but not limited to the Commonwealth, any other state, and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any other state.

"Position holder" means a person who holds an inventory position of motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds an "inventory position of motor fuel" when he has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.

"Principal" means (i) if a partnership, all its partners; (ii) if a corporation, all its officers, directors, and controlling direct or indirect owners; (iii) if a limited liability company, all its members; and (iv) or an individual.

"Provider of alternative fuel" means a person who (i) acquires alternative fuel for sale or delivery to a bulk user or a retailer; (ii) maintains storage facilities for alternative fuel, part or all of which the person sells to someone other than a bulk user or a retailer to operate a highway vehicle; (iii) sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle; or (iv) imports alternative fuel into Virginia, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for sale or use by that person to operate a highway vehicle.

"Rack" means a facility that contains a mechanism for delivering motor fuel from a refinery, terminal, or bulk plant into a transport truck, railroad tank car, or other means of transfer that is outside the terminal transfer system.

"Refiner" means any person who owns, operates, or otherwise controls a refinery.

"Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

"Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or other means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.

"Retailer" means a person who (i) maintains storage facilities for motor fuel and (ii) sells the fuel at retail or dispenses the fuel at a retail location.

"Retailer of alternative fuel" means a person who (i) maintains storage facilities for alternative fuel and (ii) sells or dispenses the fuel at retail, to be used to generate power to operate a highway vehicle.

"Supplier" means (i) a position holder, or (ii) a person who receives motor fuel pursuant to a two-party exchange. A licensed supplier includes a licensed elective supplier and licensed permissive supplier.

"System transfer" means a transfer (i) of motor fuel within the terminal transfer system or (ii) of fuel grade ethanol by transport truck or railroad tank car.

"Tank wagon" means a straight truck or straight truck/trailer combination designed or used to carry fuel and having a capacity of less than 6,000 gallons.

"Terminal" means a motor fuel storage and distribution facility (i) to which a terminal control number has been assigned by the Internal Revenue Service, (ii) to which motor fuel

is supplied by pipeline or marine vessel, and (iii) from which motor fuel may be removed at a rack.

"Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

"Terminal transfer system" means a motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals, and which is a "bulk transfer/terminal system" under 26 C.F.R. Part 48.4081-1.

"Transmix" means (i) the buffer or interface between two different products in a pipeline shipment or (ii) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

"Transport truck" means a tractor truck/semitrailer combination designed or used to transport cargoes of motor fuel over a highway.

"Trustee" means a person who (i) is licensed as a supplier, an elective supplier, or a permissive supplier and receives tax payments from and on behalf of a licensed or unlicensed distributor, or other person pursuant to § [58.1-2231](#) or (ii) is licensed as a provider of alternative fuel and receives tax payments from and on behalf of a bulk user of alternative fuel, retailer of alternative fuel or other person pursuant to § [58.1-2252](#).

"Two-party exchange" means a transaction in which fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement, which transaction (i) includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator and (ii) is completed prior to removal of the product from the terminal by the receiving exchange partner.

"Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency or Internal Revenue Service fuel-dyeing requirements.

"Use" means the actual consumption or receipt of motor fuel by any person into a highway vehicle, aircraft, or watercraft.

"Watercraft" means any vehicle used on waterways.

*"Wholesale price" means the price at the rack.*

§ [58.1-2217](#). Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. *Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of 3.5 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.*

*In computing the average wholesale price of a gallon of unleaded regular gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.*

B. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. *Beginning July 1, 2013, the seventeen and one-half cents per gallon tax shall be replaced with a tax at a rate of six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner. In computing the average wholesale price of a gallon of diesel fuel the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.*

B. ~~(Contingent effective date)~~ ~~There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.~~

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the ~~rate of seventeen and one-half cents per gallon~~ *levied on gasoline and gasohol*, along with any penalties and interest that may accrue.

E. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel,

excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of seventeen and one-half cents per gallon *levied on diesel fuel*, along with any penalties and interest that may accrue.

~~E. (Contingent effective date) There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and interest that may accrue.~~

F. In accordance with § [62.1-44.34:13](#), a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

§ [58.1-2249](#). Tax on alternative fuel.

~~A. (Contingent expiration date) There is hereby levied a tax at the rate of seventeen and one-half cents per gallon *levied on gasoline and gasohol* on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to seventeen and one-half cents per gallon *that levied on gasoline and gasohol* on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.~~

~~A. (Contingent effective date) There is hereby levied a tax at the rate of sixteen cents per gallon on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. There is hereby levied a tax at a rate equivalent to sixteen cents per gallon on all other alternative fuel used to operate a highway vehicle. The Commissioner shall determine the equivalent rate applicable to such other alternative fuels.~~

B. In addition to any tax imposed by this article, there is hereby levied an annual license tax of ~~\$50~~\$64 per vehicle on each highway vehicle registered in Virginia that is an electric motor vehicle, a hybrid electric motor vehicle, or an alternative fuel vehicle. However, no license tax shall be levied on any vehicle that (i) is subject to the tax on fuels levied pursuant to subsection A, (ii) is subject to the federal excise tax levied under § 4041 of the Internal Revenue Code, (iii) is a moped as defined in § [46.2-100](#), or (iv) is registered under the International Registration Plan. If such a highway vehicle is registered for a period other than one year as provided under § [46.2-646](#), the license tax shall be multiplied by the number of years or fraction thereof that the vehicle will be registered. The revenues generated by this subsection shall be deposited in the Highway Maintenance and Operating Fund.

§ [58.1-2251](#). Liability for tax; filing returns; payment of tax.

A. A bulk user of alternative fuel or retailer of alternative fuel who stores highway and nonhighway alternative fuel in the same storage tank shall be liable for the tax imposed by this article, and shall file tax returns and remit taxes in accordance with subsection D. The tax payable by a bulk user of alternative fuel or retailer of alternative fuel is imposed at the point that alternative fuel is withdrawn from the storage tank.

B. A provider of alternative fuel who sells or delivers alternative fuel shall be liable for the tax imposed by this article (i) on sales to a bulk user of alternative fuel or retailer of alternative fuel who stores highway product in a separate storage tank or (ii) if the alternative fuel is sold or used by the provider of alternative fuel for highway use.

C. The owner of a highway vehicle subject to an annual license tax pursuant to subsection B of § [58.1-2249](#) shall be liable for such annual license tax. The annual license tax shall be due ~~on or before the last day of December of each year~~ when the highway vehicle is first registered in Virginia and upon each subsequent renewal of registration.

D. 1. Each (i) bulk user of alternative fuel or retailer of alternative fuel liable for tax pursuant to subsection A and (ii) provider of alternative fuel liable for the tax pursuant to subsection B shall file a monthly tax return with the Department. The tax on alternative fuel levied by this article, except for the annual license tax imposed under subsection B of § [58.1-2249](#), that is required to be remitted to the Commonwealth shall be payable to the Commonwealth not later than the date on which the return is due. A return and payment shall be (i) postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or (ii) received by the Department by the twentieth day of the second month succeeding the month for which the return and payment are due. However, a monthly return of the tax for the month of May shall be (i)

postmarked by June 25 or (ii) received by the Commissioner by the last business day the Department is open for business in June.

2. If a tax return and payment due date falls on a Saturday, Sunday, or a state or banking holiday, the return shall be postmarked on or before the fifteenth day of the second month succeeding the month for which the return and payment are due or received by the Department by midnight of the next business day the Department is open for business. This provision shall not apply to a return of the tax for the month of May.

3. A return and payment shall be deemed postmarked if it carries the official cancellation mark of the United States Postal Service or other postal or delivery service.

4. A return shall be filed with the Commissioner and shall be in the form and contain the information required by the Commissioner.

§ [58.1-2259](#). Fuel uses eligible for refund of taxes paid for motor fuels.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § [58.1-2261](#) to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;
2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;
3. Sold and delivered to an organization described in subdivision 2 of § [58.1-2226](#) or subdivision 2 of § [58.1-2250](#) for its exclusive use in the operation of an aircraft;
4. Used by an organization described in subdivision 2 of § [58.1-2226](#) or subdivision 2 of § [58.1-2250](#) for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;
5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;
6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ [15.2-4500](#) et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for Aging and Rehabilitative Services, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;
8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;
9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;
10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;
11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;
12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and rescue purposes;
13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;
14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;
15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;
16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;
17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;
18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The

amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § [58.1-2289](#). If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § [58.1-2289](#). If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § [28.2-208](#);

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank; or

21. Used in operating or propelling recreational and pleasure watercraft.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § [46.2-2075](#) or [46.2-2099.4](#) providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers

using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less \$0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ [33.1-23.01](#) et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. *Any person purchasing diesel fuel used in operating or propelling a passenger car, a pickup or panel truck, or a truck having a gross vehicle weight rating of 10,000 pounds or less is entitled to a refund of a portion of the taxes paid in an amount equal to the difference between the rate of tax on diesel fuel and the rate of tax on gasoline and gasohol pursuant to § [58.1-2217](#). For purposes of this subsection, "passenger car," "pickup or panel truck," and "truck" shall have the meaning given in § [46.2-100](#). Notwithstanding any other provision of law, diesel fuel used in a vehicle upon which the fuels tax has been refunded pursuant to this subsection shall be exempt from the tax imposed under Chapter 6 (§ [58.1-600](#) et seq.).*

F. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § [58.1-2233](#).

F.G. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

§ [58.1-2289](#). Disposition of tax revenue generally.

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. ~~Except as provided in § [33.1-23.03:1](#), no portion of the revenue derived from taxes collected pursuant to §§ [58.1-2217](#), [58.1-2249](#) or [58.1-2701](#), and remaining after authorized refunds for nonhighway use of fuel, shall be used for any purpose other than the construction, reconstruction or maintenance of the roads and projects comprising the State Highway System, the Interstate System and the secondary system of state highways and expenditures directly and necessarily required for such purposes, including the retirement of revenue bonds.~~

~~Revenues collected under this chapter may be also used for (i) contributions toward the construction, reconstruction or maintenance of streets in cities and towns of such sums as may be provided by law and (ii) expenditures for the operation and maintenance of the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, and the Department of Motor Vehicles as may be provided by law.~~

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

~~B. Except as provided in subsection F, the *The* tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is~~

proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.1-223](#), a sum as established by the General Assembly.

~~E. Notwithstanding other provisions of this section, there shall be transferred from moneys collected pursuant to this section to a special fund within the Commonwealth~~

~~Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, an amount equal to one percent of a sum to be calculated as follows: the tax revenues collected pursuant to this chapter, at the tax rates in effect on December 31, 1986, less refunds authorized by this chapter and less taxes collected for aviation fuels.~~

~~F. The additional revenues, less any additional refunds authorized, generated by increases in the rates of taxes under this chapter pursuant to enactments of the 2007 Session of the General Assembly shall be collected pursuant to Article 4 of this chapter and deposited into the Highway Maintenance and Operating Fund.~~

*E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund, (ii) 15 percent shall be deposited into the Transportation Trust Fund, (iii) four percent shall be deposited into the Priority Transportation Fund, and (iv) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles.*

§ [58.1-2290.1](#). Tax on fuel in inventory.

*A. In addition to any other tax levied under this chapter, there is hereby levied a tax on taxable gasoline, gasohol, and diesel fuel held in storage by a licensed distributor as of the close of the business day preceding July 1, 2013. For the purposes of this section, "close of the business day" means the time at which the last transaction has occurred for that day. The tax shall be payable by the licensed distributor. The amount of the tax liability shall be determined separately for gasoline and gasohol and for diesel fuel and shall be calculated as the difference between (i) the tax rate specified for the type of fuel under § [58.1-2217](#) and (ii) the tax rate as specified for that type of fuel under § [58.1-2217](#) as it was in effect on June 30, 2013, multiplied by the number of gallons of that type of fuel in storage as of the close of the business day preceding July 1, 2013.*

*B. A licensed distributor in possession of taxable gasoline, gasohol, or diesel fuel in storage as of the close of the business day preceding July 1, 2013, shall take an inventory at the close of that day to determine the number of gallons in storage for each type of fuel and shall report this inventory, on forms provided by the Commissioner, no later than January 1, 2014. In addition:*

*1. If the net amount of the tax liability for all fuel types is a positive number, the distributor shall remit that amount to the Department no later than January 1, 2014.*

*2. If the net amount of the tax liability for all fuel types is a negative number, the distributor may apply to the Department for a refund of that amount no later than January 1, 2014. However, the Department shall not issue any such refund prior to September 1, 2013.*

*C. In determining the amount of the tax liability under this section, the licensed distributor shall exclude the amount of taxable fuel in dead storage. For the purposes of this section, "dead storage" means the amount of taxable fuel that will not be pumped out of a storage tank because that fuel is below the mouth of the draw pipe. The distributor may assume that the amount of fuel in dead storage is 200 gallons for a draw tank with a capacity of less than 10,000 gallons and 400 gallons for a tank with a capacity of 10,000 gallons or more. Alternatively, the amount of fuel in dead storage in a tank may be computed using the manufacturer's conversion table for the tank and the number of inches between the bottom of the tank and the mouth of the draw pipe. If the conversion table method is used to compute the amount of fuel in dead storage, the distance between the bottom of the tank and the mouth of the draw pipe will be assumed to be six inches, unless otherwise established.*

§ [58.1-2295](#). (Effective July 1, 2013) Levy; payment of tax.

A. *1. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is a member of (i) any transportation district in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § [15.2-4502](#) or (ii) any transportation district that is subject to subsection C of § [15.2-4515](#) and that is contiguous to the Northern Virginia Transportation District.*

*2. In addition to all other taxes now imposed by law, there is hereby imposed a tax upon every distributor who engages in the business of selling fuels at wholesale to retail dealers for retail sale in any county or city that is located in a Planning District established pursuant to Chapter 42 (§ [15.2-4200](#) et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of not less than 1.5 million but fewer than two million, as shown by the most recent United States Census, has not less than 1.2 million but fewer than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 15 million but fewer than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership*

*criteria set forth in clause (i). In any case in which the tax is imposed pursuant to clause (ii) such tax shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria have been met.*

*B. The tax shall be imposed at a rate of 2.1 percent of the sales price charged by a distributor for fuels sold to a retail dealer for retail sale in any such county or city. In any such sale to a retail dealer in which the distributor and the retail dealer are the same person, the sales price charged by the distributor shall be the cost price to the distributor of the fuel.*

The tax levied under this section shall be imposed at the time of sale by the distributor to the retail dealer.

*B C. The tax imposed by this section shall be paid by the distributor, but the distributor shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the retail dealer to the distributor until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter shall be maintained in the Commonwealth by any distributor who is not registered under § [58.1-2299.2](#) or is delinquent in the payment of taxes imposed under this chapter.*

§ [58.1-2299.20](#). (Effective July 1, 2013) Disposition of tax revenues.

*A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 1 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of ..... " The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § [15.2-4515](#), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § [15.2-4515](#), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. The direct costs of administration shall be credited to the funds appropriated to the Department.*

*B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or*

*city set forth in subdivision A 2 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited into special funds established by law. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.1-23.5:3](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation. The direct cost of administration shall be credited to the funds appropriated to the Department.*

§ [58.1-2401](#). Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase: "Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through its duly authorized officers and agents.

"Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites.

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § [46.2-100](#) and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ [59.1-207.9](#) et seq.). Where the replacement

motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a sale.

"Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale price" shall not include (i) *any manufacturer rebate or manufacturer incentive payment applied to the transaction by the customer or dealer whether as a reduction in the sales price or as payment for the vehicle* and (ii) the cost of controls, lifts, automatic transmission, power steering, power brakes or any other equipment installed in or added to a motor vehicle which is required by law or regulation as a condition for operation of a motor vehicle by a handicapped person.

§ [58.1-2402](#). Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price:

1. Three percent *through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent (4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016*, of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a manufactured home as defined in § [36-85.3](#), the tax shall be three percent of the sale price of each such manufactured home sold in the Commonwealth; if such vehicle is a mobile office as defined in § [58.1-2401](#), the tax shall be two percent of the sale price of each mobile office sold in the Commonwealth; if such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle sold in the Commonwealth.
2. Three percent *through midnight on June 30, 2013, four percent (4.0%) beginning July 1, 2013, through midnight on June 30, 2014, four and five-hundredths of a percent*

*(4.05%) beginning July 1, 2014, through midnight on June 30, 2015, four and one tenth of a percent (4.1%) beginning July 1, 2015, through midnight on June 30, 2016, and four and fifteen-hundredths (4.15%) of a percent beginning on and after July 1, 2016, of the sale price of each motor vehicle, or ~~three percent of the sale price of each manufactured home as defined in § [36-85.3](#), or two percent of the sale price of each mobile office as defined in § [58.1-2401](#)~~; not sold in Virginia but used or stored for use in the Commonwealth; or *three percent of the sale price of each manufactured home as defined in § [36-85.3](#), or two percent of the sale price of each mobile office as defined in § [58.1-2401](#), not sold in Virginia but used or stored for use in this Commonwealth.* If such vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more and is neither (i) a manufactured home as defined in § [36-85.3](#), (ii) a mobile office as defined in § [58.1-2401](#), (iii) a trailer or semitrailer as severally defined in § [46.2-100](#) that is not designed or used to carry property, nor (iv) a vehicle registered under § [46.2-700](#), the tax shall be zero percent of the sale price of each such vehicle not sold in the Commonwealth but used or stored for use in the Commonwealth. When any motor vehicle or manufactured home not sold in the Commonwealth is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.*

3. The minimum tax levied on the sale of any motor vehicle in the Commonwealth that is subject to taxation at a rate exceeding zero percent shall be ~~\$35~~\$75, except as provided by those exemptions defined in § [58.1-2403](#).

4 through 7. [Repealed.]

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § [58.1-2403](#) shall be subject to the tax, based on the current market value when such vehicle is no longer owned or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof, unless such vehicle is then rented, in which case the tax imposed by § [58.1-1736](#) shall apply, subject to the exemptions provided in § [58.1-1737](#). Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § [58.1-2403](#) or §§ [46.2-663](#) through [46.2-674](#) shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of the Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale,

assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision A 10 of § [46.2-1530](#), shall be subject to the tax.

§ [58.1-2425](#). Disposition of revenues.

A. Funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § [46.2-100](#), shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; ~~and~~ (ii) effective January 1, 1987, an amount equivalent to the net additional revenues from the sales and use tax on motor vehicles generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), [58.1-2401](#), [58.1-2402](#), and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; *and (iii) the net additional revenues generated by increases in the rates of taxes under subdivisions A 1 and A 2 of § [58.1-2402](#) and generated by the increase in the minimum tax under subdivision A 3 of § [58.1-2402](#) pursuant to enactments of a Session of the General Assembly held in 2013 shall be deposited by the Comptroller into the Highway Maintenance and Operating Fund.*

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to clause (ii) of subsection A ~~of this section~~, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

§ [58.1-2701](#). Amount of tax.

A. Except as provided in subsection B, every motor carrier shall pay a road tax equivalent to ~~\$0.21~~ per gallon *equivalent to the cents per gallon credit for diesel fuel as determined under subsection A of § [58.1-2706](#) for the relevant period plus an additional \$0.035 per gallon* calculated on the amount of motor fuel, diesel fuel or liquefied gases (which would not exist as liquids at a temperature of ~~sixty~~60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute), used in its operations within the Commonwealth.

The tax imposed by this chapter shall be in addition to all other taxes of whatever character imposed on a motor carrier by any other provision of law.

B. In lieu of the tax imposed in subsection A, motor carriers registering qualified highway vehicles that are not registered under the International Registration Plan shall pay a fee of \$150 per year for each qualified highway vehicle regardless of whether such vehicle will be included on the motor carrier's IFTA return. The fee is due and payable when the vehicle registration fees are paid pursuant to the provisions of Article 7 (§ [46.2-685](#) et seq.) of Chapter 6 of Title 46.2.

If a vehicle becomes a qualified highway vehicle before the end of its registration period, the fee due at the time the vehicle becomes a qualified highway vehicle shall be prorated monthly to the registration expiration month. Fees paid under this subsection shall not be refunded unless a full refund of the registration fee paid is authorized by law.

C. All taxes and fees paid under the provisions of this chapter shall be credited to the Highway Maintenance and Operating Fund, a special fund within the Commonwealth Transportation Fund.

§ [58.1-2706](#). Credit for payment of motor fuel, diesel fuel or liquefied gases tax.

A. Every motor carrier subject to the road tax shall be entitled to a credit on such tax equivalent to ~~seventeen and one-half cents per gallon on all~~ *every gallon of* motor fuel, diesel fuel and liquefied gases purchased by such carrier within the Commonwealth for use in its operations either within or without the Commonwealth and upon which the motor fuel, diesel fuel or liquefied gases tax imposed by the laws of the Commonwealth has been paid by such carrier. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the Department shall be furnished by each carrier claiming the credit herein allowed. *The credit for diesel fuel shall be at a cents per gallon rate equivalent to the tax imposed under subsection B of § [58.1-2217](#) for the relevant period as converted by the Commissioner to a cents per gallon tax for purposes of this credit. The credit for all other motor fuels and liquefied gases shall be at a cents per*

*gallon rate equivalent to the tax imposed under subsection A of § [58.1-2217](#) for the relevant period as converted by the Commissioner to a cents per gallon tax for purposes of this credit.*

B. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the tax for which such carrier is liable for the same quarter, the excess may: (i) be allowed as a credit on the tax for which such carrier would be otherwise liable for any of the eight succeeding quarters or (ii) be refunded, upon application, duly verified and presented and supported by such evidence as may be satisfactory to the Department.

C. The Department may allow a refund upon receipt of proper application and review. It shall be at the discretion of the Department to determine whether an audit is required.

D. The refund may be allowed without a formal hearing if the amount of refund is agreed to by the applicant. Otherwise, a formal hearing on the application shall be held by the Department after notice of not less than ~~ten~~ 10 days to the applicant and the Attorney General.

E. Whenever any refund is ordered it shall be paid out of the Highway Maintenance and Construction Fund.

F. Whenever a person operating under lease to a motor carrier to perform transport services on behalf of the carrier purchases motor fuel, diesel fuel or liquefied gases relating to such services, such payments or purchases may, at the discretion of the Department, be considered payment or purchases by the carrier.

2. That § [58.1-2217](#) of the Code of Virginia is amended and reenacted effective January 1, 2015, if the United States Congress has not enacted legislation granting the Commonwealth the authority to compel the remote sellers to collect state and local retail sales and use tax for sales made in the Commonwealth by such date, as follows:

§ [58.1-2217](#). Taxes levied; rate.

A. There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on gasoline and gasohol. *Beginning January 1, 2015, the tax rate shall be 5.1 percent of the statewide average wholesale price of a gallon of unleaded regular gasoline for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.*

*In computing the average wholesale price of a gallon of gasoline, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base*

*period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of unleaded regular gasoline on February 20, 2013.*

B. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of seventeen and one-half cents per gallon on diesel fuel. *Beginning January 1, 2015, the tax rate shall be six percent of the statewide average wholesale price of a gallon of diesel fuel for the applicable base period, excluding federal and state excise taxes, as determined by the Commissioner.*

*In computing the average wholesale price of a gallon of diesel fuel, the Commissioner shall use the period from December 1 through May 31 as the base period for such determination for the immediately following period beginning July 1 and ending December 31, inclusive. The period from June 1 through November 30 shall be the next base period for the immediately following period beginning January 1 and ending June 30, inclusive. In no case shall the average wholesale price computed for purposes of this section be less than the statewide average wholesale price of a gallon of diesel fuel on February 20, 2013.*

B. ~~(Contingent effective date)~~ ~~There is hereby levied a tax at the rate of sixteen cents per gallon on diesel fuel.~~

C. Blended fuel that contains gasoline shall be taxed at the rate levied on gasoline. Blended fuel that contains diesel fuel shall be taxed at the rate levied on diesel fuel.

D. There is hereby levied a tax at the rate of five cents per gallon on aviation gasoline. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation gasoline shall be liable for the tax at the rate of ~~seventeen and one-half cents per gallon~~ *levied on gasoline and gasohol*, along with any penalties and interest that may accrue.

E. ~~(Contingent expiration date)~~ There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate-

~~of seventeen and one-half cents per gallon levied on diesel fuel, along with any penalties and interest that may accrue.~~

~~E. (Contingent effective date) There is hereby levied a tax at the rate of five cents per gallon on aviation jet fuel purchased or acquired for use by a user of aviation fuel other than an aviation consumer. There is hereby levied a tax at the rate of five cents per gallon upon the first 100,000 gallons of aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by any aviation consumer in any fiscal year. There is hereby levied a tax at the rate of one-half cent per gallon on all aviation jet fuel, excluding bonded aviation jet fuel, purchased or acquired for use by an aviation consumer in excess of 100,000 gallons in any fiscal year. Any person, whether or not licensed under this chapter, who uses, acquires for use, sells or delivers for use in highway vehicles any aviation jet fuel taxable under this chapter shall be liable for the tax imposed at the rate of sixteen cents per gallon, along with any penalties and interest that may accrue.~~

F. In accordance with § [62.1-44.34:13](#), a storage tank fee is imposed on each gallon of gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered or used in the Commonwealth.

3. That if the United States Congress has not enacted legislation granting the Commonwealth the authority to compel remote sellers to collect state and local retail sales and use tax for sales made in the Commonwealth by January 1, 2015, the amount of general funds transferred to the Highway Maintenance and Operating Fund pursuant to subsection G of § [58.1-638](#) as added by this act shall not be increased after fiscal year 2015.

4. That Article 22 (§§ [58.1-540](#) through [58.1-549](#)) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ [58.1-609.13](#), [58.1-2289](#), as it may become effective, [58.1-2290](#), and [58.1-2701](#), as it may become effective, of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, are repealed.

5. That in computing the amount of sales and use tax revenue paid under subdivision F 2 and subsections G and H of § [58.1-638](#) as added by this act and § [58.1-638.3](#) as added by this act, the amount of such revenue attributable to sales and use tax on food for human consumption, as defined in § [58.1-611.1](#) of the Code of Virginia, shall be excluded.

6. That \$100 million of the increased revenues provided to the Highway Maintenance and Operating Fund pursuant to this act in fiscal years 2014, 2015, and 2016 shall be dedicated to Phase 2 of the Dulles Corridor Metrorail Extension Project, provided,

however, that the Metropolitan Washington Airports Authority (MWAA) Board of Directors first address all recommendations cited in the Office of the Inspector General of the U.S. Department of Transportation's Report on MWAA Governance and the accountability officer appointed by the U.S. Secretary of Transportation determines that such recommendations have been addressed. Notwithstanding the foregoing provisions of this enactment, in the event that all conditions for dedication of funds are satisfied, the Commonwealth Transportation Board may provide funding from other available revenue sources to satisfy the requirements of this provision in order to maximize the use of increased revenues provided under this act.

7. That the provisions of this act amending §§ [58.1-601](#), [58.1-602](#), [58.1-605](#), [58.1-606](#), [58.1-612](#), as it is currently effective and as it may become effective, [58.1-615](#), [58.1-625](#), as it is currently effective and as it may become effective, [58.1-635](#), [58.1-638.2](#), and subdivision 5 of § [58.1-604](#), and repealing § [58.1-609.13](#), shall not become effective unless the federal government enacts legislation that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state. If the federal government enacts such legislation, then such amendments and the repeal of § [58.1-609.13](#) shall become effective 30 days after the effective date of the federal legislation.

8. That the Northern Virginia Transportation Authority and the counties and cities embraced by the Authority shall work cooperatively with towns with a population greater than 3,500 located within such counties for purposes of implementing the provisions of this act and to ensure that such towns receive their respective share of the revenues pursuant to subdivision B 1 of § [15.2-4838.1](#).

9. That the Texas Transportation Institute's annual report on highway congestion ranks the Northern Virginia/Washington, D.C. area as the worst area for traffic congestion in the nation, and the Hampton Roads region as the twentieth most congested area of the 101 areas studies. Such congestion has an average commuter cost of nearly \$1,400 in Northern Virginia and \$877 per commuter in Hampton Roads. Such congestion negatively impacts Virginia's economic prosperity, strategic military connectivity, emergency preparedness, and environmental quality. Regions with populations in excess of 1.5 million citizens and 1.2 million registered vehicles are prone to greater levels of congestion and growing transit needs. Therefore, the General Assembly finds that transportation construction and maintenance in the Northern Virginia and Hampton Roads regions are

high priorities, and that as other regions of the Commonwealth continue to grow, the same priority shall be given.

10. That each county or city located in Planning District 8 or Planning District 23 as of January 1, 2013, shall expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the county or city, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. Each county or city located in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the county or city, excluding bond proceeds or debt service payments and federal or state grants, during the 36-month period immediately prior to the effective date of the imposition of such state taxes or fees in the Planning District. In the event that any such county or city does not expend or disburse such an amount, that county or city shall not be the direct beneficiary of any of the revenues generated by the state taxes or fees imposed solely in Planning Districts pursuant to this act in the immediately succeeding year.

11. That no tolls shall be imposed or collected on Interstate 95 south of Fredericksburg pursuant to the Interstate System Reconstruction and Rehabilitation Pilot Program without the prior approval of the General Assembly.

12. That Chapter 896 of the Acts of Assembly of 2007 is amended by adding a twenty-fourth enactment as follows:

**24. That the provisions of the twenty-second enactment of this act shall not apply to any revenues generated pursuant to subsections B and E of § [58.1-2217](#), subsection A of § [58.1-2249](#), or § [58.1-2289](#) or [58.1-2701](#) of the Code of Virginia.**

13. That beginning in fiscal year 2020, \$20 million from the highway construction share of the Transportation Trust Fund shall be deposited into the Route 58 Corridor Development Fund.

14. That the provisions of this act that generate additional revenue through state taxes or fees for transportation (i) throughout the Commonwealth and in Planning District 8 and Planning District 23 or (ii) in any other Planning District that becomes subject to the state taxes or fees imposed solely in Planning Districts pursuant to this act shall expire on December 31 of any year in which the General Assembly appropriates any of such additional revenues for any non-transportation-related purpose or transfers any of such

additional revenues that are to be deposited into the Commonwealth Transportation Fund or any subfund thereof pursuant to general law for a non-transportation-related purpose. In the event a local government of any county or city wherein the additional taxes and fees are levied appropriates or allocates any of such additional revenues to a non-transportation purpose, such locality shall not be the direct beneficiary of any of the revenues generated by the taxes or fees in the year immediately succeeding the year in which revenues were appropriated or allocated to a non-transportation purpose.

15. That if the federal government enacts legislation on or after January 1, 2015, that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state, then the provisions of § [58.1-2217](#) shall revert to the provisions of those statutes as set forth in the first enactment on the January 1 immediately following the calendar year in which such federal legislation was enacted.

16. That the Department of Taxation shall develop and publish guidelines implementing the provisions of this act relating to the state Retail Sales and Use tax increase, the regional state sales and use taxes, and the regional state Transient Occupancy Tax and shall update such guidelines thereafter as deemed necessary by the Tax Commissioner. The development and publication of such guidelines and rules shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq.).

17. That the Virginia Department of Transportation, the Department of the Treasury, the Department of Taxation, and any other department or group necessary shall conduct a review of the implementation of the regional taxing authorities as provided by this act. The purpose of such review shall be to determine what additional powers and authorities regional transportation authorities, commissions, etc., may need to ensure the proper utilization of the regional revenues. Such review shall include whether bonding authority should be authorized if a local transportation entity does not already have such authority. The departments shall issue and report and make recommendations, if any are necessary, to the General Assembly no later than December 1, 2013.

18. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions of this act shall remain in effect.

## **Chapter 755 Drones; moratorium on use of unmanned aircraft systems by state or local government department, etc.**

An Act to place a moratorium on the use of unmanned aircraft systems.

[\[H 2012\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No state or local government department, agency, or instrumentality having jurisdiction over criminal law enforcement or regulatory violations, including but not limited to the Department of State Police, and no department of law enforcement as defined in § [15.2-836](#) of the Code of Virginia of any county, city, or town shall utilize an unmanned aircraft system before July 1, 2015.*

*Notwithstanding the prohibition in this section, an unmanned aircraft system may be deployed before July 1, 2015, (i) when an Amber Alert is activated pursuant to § [52-34.3](#) of the Code of Virginia, (ii) when a Senior Alert is activated pursuant to § [52-34.6](#) of the Code of Virginia, (iii) when a Blue Alert is activated pursuant to § [52-34.9](#) of the Code of Virginia, (iv) for the purpose of a search or rescue operation where use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to any person, or (v) for training exercises related to such uses. In no case may a weaponized unmanned aircraft system be deployed or its use facilitated by a state or local agency in Virginia.*

*The prohibitions in this section shall not apply to the Virginia National Guard while utilizing unmanned aircraft systems during training required to maintain readiness for its federal mission, when facilitating training for other United States Department of Defense units, or when such systems are utilized to support the Commonwealth for purposes other than law enforcement, including damage assessment, traffic assessment, flood stages, and wildfire assessment. Nothing herein shall prohibit use of unmanned aircraft systems solely for research and development purposes by institutions of higher education and other research organizations or institutions.*

2. That the Department of Criminal Justice Services, in consultation with the Office of the Attorney General and other state agencies, shall develop model protocols for use of unmanned aircraft systems by law-enforcement agencies and shall report such findings to the Governor and the General Assembly on or before November 1, 2013.

## **Chapter 795 Real property; DGS authorized to convey property to Mennel Milling Company in Roanoke County.**

An Act to amend and reenact § 1 of Chapters 256 and 309 of the Acts of Assembly of 2011 and to repeal the second enactment of Chapters 256 and 309 of the Acts of Assembly of 2011, relating to the conveyance of certain real property to the Mennel Milling Company located in Roanoke County.

[\[S 1317\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapters 256 and 309 of the Acts of Assembly of 2011 are amended and reenacted as follows:

§ 1. That the Department of General Services is hereby authorized to convey, with the approval of the Governor in the manner set forth in § [2.2-1156](#) of the Code of Virginia, a parcel of land (tax map 087.14-03-02.05) containing 7.766 acres, more or less, to the Mennel Milling Company, in exchange for three parcels of land (tax map 087.11-03-08 and 087.11-03-21 and 087.11-03-07) containing 6.25 acres, more or less, of improved property, at no cost to the Commonwealth *relating to the conveyance such as title insurance fees and premiums, environmental investigations, and survey costs, but expressly excluding any potential costs expended by the Commonwealth related to the improvement and use of the property exchanged or for costs expended by the Commonwealth in connection with the use of the parcel conveyed*, for use by the Virginia Department of Transportation as an area maintenance headquarters to serve the southwestern portion of Roanoke County.

2. That the second enactment of Chapters 256 and 309 of the Acts of Assembly of 2011 are repealed.

## **Chapter 806 Budget Bill.**

An Act to amend and reenact Chapter 3 of the 2012 Acts of Assembly, Special Session I, which appropriated funds for the 2012-14 Biennium, and to provide a portion of revenues for the two years ending, respectively, on the thirtieth day of June, 2013, and the thirtieth

day of June, 2014, and to amend and reenact §§ [2.2-1508](#), [2.2-1509](#), [17.1-507](#), [30-310](#), [62.1-132.3:2](#) of the Code of Virginia, and add a new section, § [30-339](#), Code of Virginia.

[\[H 1500\]](#)

Approved May 3, 2013

Be it enacted by the General Assembly of Virginia:

## **Chapter 796 Drones; moratorium on use of unmanned aircraft systems by state or local government department, etc.**

An Act to place a moratorium on the use of unmanned aircraft systems.

[\[S 1331\]](#)

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No state or local government department, agency, or instrumentality having jurisdiction over criminal law enforcement or regulatory violations, including but not limited to the Department of State Police, and no department of law enforcement as defined in § [15.2-836](#) of the Code of Virginia of any county, city, or town shall utilize an unmanned aircraft system before July 1, 2015.*

*Notwithstanding the prohibition in this section, an unmanned aircraft system may be deployed before July 1, 2015, (i) when an Amber Alert is activated pursuant to § [52-34.3](#) of the Code of Virginia, (ii) when a Senior Alert is activated pursuant to § [52-34.6](#) of the Code of Virginia, (iii) when a Blue Alert is activated pursuant to § [52-34.9](#) of the Code of Virginia, (iv) for the purpose of a search or rescue operation where use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to any person, or (v) for training exercises related to such uses. In no case may a weaponized unmanned aircraft system be deployed or its use facilitated by a state or local agency in Virginia.*

*The prohibitions in this section shall not apply to the Virginia National Guard while utilizing unmanned aircraft systems during training required to maintain readiness for its federal mission, when facilitating training for other United States Department of Defense units, or when such systems are utilized to support the Commonwealth for purposes*

*other than law enforcement, including damage assessment, traffic assessment, flood stages, and wildfire assessment. Nothing herein shall prohibit use of unmanned aircraft systems solely for research and development purposes by institutions of higher education and other research organizations or institutions.*

2. That the Department of Criminal Justice Services, in consultation with the Office of the Attorney General and other state agencies, shall develop model protocols for use of unmanned aircraft systems by law-enforcement agencies and shall report such findings to the Governor and the General Assembly on or before November 1, 2013.

# Uncodified Acts of Assembly - 2014

## Chapter 29 King William County and Town of West Point; localities to govern allocation of revenues for schools.

### CHAPTER 29

An Act to create a special school tax district in King William County and to govern allocation of tax revenue for schools in King William County and the Town of West Point.

[\[H 534\]](#)

Approved February 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established a special tax district to pay all or any portion of the County of King William (the County) expenditures for operating the County school division beginning July 1, 2014. The boundary of the tax district shall be the same as the geographical area of the county school division and shall exclude the area of the Town of West Point (the Town). The appropriation of funds for the County's share of expenditures for the County school division shall be governed by this act, and the provisions of §§ [22.1-113](#) and [22.1-114](#) of the Code of Virginia shall not be applicable. The special tax district shall remain in effect unless the Town shall cease to operate a separate school division.*

*§ 2. The King William Board of Supervisors (the Board) may levy and collect taxes upon any taxable property in such special tax district, including, but not limited to, real estate, mineral lands, tangible personal property, merchants' capital, and machinery and tools, and may appropriate to the County school division such property taxes, including any penalties and interest thereon and any fund balance from the preceding fiscal year consisting of such taxes, penalties, and interest. The Town shall pay for its share of expenditures to operate the Town school division from Town property taxes and other local, state, and federal revenues received by the Town. All taxes levied and collected by the County, other than those levied and collected for the support of the County school division in the special tax district, shall be uniform in all districts in the County, except as otherwise provided for by law.*

§ 3. The Board may also appropriate to the County school division all or any portion of the revenue derived from (i) those local or state taxes that are collected in part within the Town but are allocated between the County and the Town by state law or (ii) those non-property taxes that the County collects exclusively from sources outside the Town. Such taxes include, but shall not be limited to, (i) the local sales and use tax authorized by §§ [58.1-605](#) and [58.1-606](#) of the Code of Virginia, (ii) the motor vehicle license tax authorized by § [46.2-752](#) of the Code of Virginia, (iii) wine taxes authorized by § [4.1-235](#) of the Code of Virginia, (iv) the net profits from the Alcoholic Beverage Control system authorized by § [4.1-117](#) of the Code of Virginia, (v) communication services sales taxes authorized by § [58.1-648](#) of the Code of Virginia, (vi) manufactured home titling taxes authorized by § [58.1-2402](#) of the Code of Virginia, (vii) automobile rental taxes authorized by § [58.1-2402](#) of the Code of Virginia, (viii) rolling stock taxes authorized by § [58.1-2652](#) of the Code of Virginia, (ix) bank net capital taxes authorized by § [58.1-1210](#) of the Code of Virginia, (x) business license taxes authorized by § [58.1-3703](#) of the Code of Virginia, (xi) food and beverage taxes authorized by § [58.1-3833](#) of the Code of Virginia, and (xii) interest or other investment earnings derived from the revenues specified in § 2 and this section, which investment earnings shall be separately accounted for by the County.

§ 4. The Board may also appropriate to the County school division all or any portion of the state or local recordation taxes received by the County, as authorized by §§ [58.1-801](#) and [58.1-3800](#) of the Code of Virginia, provided that the County pays to the Town a pro rata share of such recordation taxes derived from real estate transactions that occur within the Town.

The pro rata share shall be determined by multiplying the recordation taxes collected within the Town by a fraction that equals the total recordation taxes appropriated to the County school division divided by the total recordation taxes derived by the County from real estate transactions that occur outside the Town. The Clerk of the Circuit Court for the County shall compile and furnish the necessary information to the governing body of the County to enable it to comply with this provision, and the County shall promptly provide a copy to the Town. The Board shall pay such sum to the Town no later than 45 days after receipt of such taxes by the County Treasurer from the clerk of the circuit court.

§ 5. The Board may also appropriate to the County school division all or any portion of the state payments to reimburse the County for personal property taxes pursuant to the Personal Property Tax Relief Act (§ [58.1-3523](#) et seq. of the Code of Virginia) if the County pays to the Town a pro rata share of these state payments received by the County that are attributable to qualifying vehicles assessed for taxation within the Town.

*The pro rata share shall be determined by multiplying the state reimbursement payments received by the County based on qualifying vehicles within the Town by a fraction that equals the total state reimbursement payments appropriated to the County school division divided by the total state reimbursement payments received by the County from qualifying vehicles assessed for taxation outside the Town. The Board shall pay such sum to the Town Treasurer no later than 45 days after receipt of such payments by the County Treasurer from the Commonwealth. If the Town issues tangible personal property tax bills for qualifying vehicles within the Town, in addition to any tangible personal property tax bills issued by the County for such vehicles, the amounts to be paid to the Town Treasurer shall be shown as a deduction on the face of the Town's tangible personal property tax bills for qualifying vehicles in the Town, which amounts are to be paid by the Commonwealth in accordance with state law. Nothing in this section shall be construed to alter the method or amount of the Commonwealth's obligations to King William County or the Town of West Point pursuant to the Personal Property Tax Relief Act.*

*§ 6. If the Board appropriates to the County school division any other taxes, fees, or other sources of revenues that are collected within both the County and the Town or are attributable to persons, property, transactions, or activities within both the County and the Town, the County shall pay to the Town a sum calculated as follows: the total amount of such other revenues appropriated to the County school division shall be multiplied by a fraction equal to the total taxable property assessments in the Town divided by the total taxable property assessments in the County as a whole, including the Town. The revenues subject to this requirement would include, for example, a tax or fee collected by the County in both the County and the Town, but would exclude, for example, a gift to the County or a state grant for school construction distributed to the County on the basis of school-age population in the County excluding the Town. The Board shall pay such sum to the Town no later than 45 days after such revenues have been transferred to the County school division.*

*§ 7. In the event of a dispute regarding the interpretation or application of this act, the County and the Town shall attempt to amicably resolve the dispute. The County and the Town may jointly submit to voluntary mediation. If the dispute is not resolved by agreement or mediation, the County and the Town shall submit to binding arbitration conducted in accordance with state law. The arbitration panel shall consist of three members; the Board and the Council shall each, within five business days, select an arbiter, who shall not be a member of the Board or the Council, but who shall be knowledgeable in local government matters and qualified or trained as an arbiter in accordance with state law and commonly accepted ethical standards for arbiters. The two*

*arbiters so selected shall jointly select a third arbiter within five business days of being selected; if they are unable to agree on a third arbiter, one shall be appointed by the King William Circuit Court. The County and the Town shall share equally in the costs of any mediation or arbitration. Each party shall be responsible for its own legal fees. The decision of a majority of the arbitration panel shall be binding on the County and the Town.*

*Legal action may be initiated by either party only to enforce a decision of the arbiters or to challenge a decision of the arbiters as unlawful or contrary to the law and plainly wrong. The timelines for action stated in this section may be extended by agreement of the Board and the Council.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 51 Stephen L. Thompson Memorial Highway; designating as a portion of Va. Route 24 in Town of Rustburg.**

### CHAPTER 51

An Act to designate a portion of Virginia Route 24 the "Stephen L. Thompson Memorial Highway."

[\[H 64\]](#)

Approved March 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of Virginia Route 24 in the Town of Rustburg between U.S. Route 501 and Calohan Road is hereby designated the "Stephen L. Thompson Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 82 Master Trooper Jerry L. Hines Memorial Bridge; designating as I81 bridges over Maury River.**

### CHAPTER 82

An Act to designate the Interstate Route 81 bridge over the Maury River in Rockbridge County the "Master Trooper Jerry L. Hines Memorial Bridge."

[\[H 986\]](#)

Approved March 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate Route 81 bridge over the Maury River in Rockbridge County is hereby designated the "Master Trooper Jerry L. Hines Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 100 Child pornography; modifications to discretionary sentencing guidelines for possession.**

### CHAPTER 100

An Act to delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.

[\[H 504\]](#)

Approved March 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography in violation of subsections A and B of § [18.2-374.1:1](#) of the Code of Virginia adopted by the Virginia Criminal Sentencing Commission pursuant to subdivision 1 of § [17.1-803](#) of the Code of Virginia and contained in the Commission's 2013 Annual Report pursuant to subdivision 10 of § [17.1-803](#) shall not become effective until July 1, 2016. The Virginia Criminal Sentencing Commission shall review the discretionary sentencing guidelines recommendations for convictions related to the possession of child pornography in violation of subsections A and*

*B of § [18.2-374.1:1](#) and complete its review by December 1, 2015. Any proposed modification to the discretionary sentencing guidelines for such convictions contained in the Commission's 2015 Annual Report shall supersede the proposed modifications contained in the Commission's 2013 Annual Report unless otherwise provided by law.*

## **Chapter 128 Child care; Department of Social Services to plan for national background checks for providers.**

### CHAPTER 128

An Act to require the Department of Social Services to convene a work group to develop a plan for implementation of national fingerprint-based background checks for child care providers.

[\[H 412\]](#)

Approved March 5, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall convene a work group to review current state and federal laws and regulations governing criminal history background checks for all child care providers in the Commonwealth and to develop a plan for implementation of national fingerprint-based criminal history background checks for all child care providers in the Commonwealth, including recommendations for statutory and regulatory changes and budget actions necessary to implement the plan. Such work group shall include representatives of the Department of State Police, child day programs licensed by the Department of Social Services, unlicensed child day programs, and other stakeholders. The Department shall report its findings to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 213 Commonwealth of Virginia Higher Educational Institutions Bond Act of 2014; created.**

### CHAPTER 213

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$245,020,705 plus financing costs,

to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[H 869\]](#)

Approved March 7, 2014

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2014."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$245,020,705, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of*

*such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>Christopher Newport University</i>	<i>Improvements- Residence Halls</i>	<i>\$5,000,000</i>
<i>Christopher Newport University</i>	<i>Construct Residential Housing</i>	<i>\$42,020,000</i>
<i>Christopher Newport University</i>	<i>Expand Dining Hall</i>	<i>\$9,500,000</i>
<i>James Madison University</i>	<i>Construct Dining Hall</i>	<i>\$80,736,705</i>
<i>Old Dominion University</i>	<i>Construct New Residence Halls, Phase I</i>	<i>\$76,464,000</i>
<i>The College of William and Mary in Virginia</i>	<i>Renovate Dormitories</i>	<i>\$16,000,000</i>
<i>Virginia Commonwealth University</i>	<i>Expand Ackell</i>	

University	Residence Center	\$15,300,0-
00		

Total	\$245,020,705
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**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding thirty years from their date or dates, and*

*BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and*

*remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with paragraph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company,*

*within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (b) or (c), as the case may be, of the Constitution of Virginia.*

§ 13. Severability.

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 262 DHP; use of implantable medical devices distributed by physician-owned distributorships.**

### CHAPTER 262

An Act to require the Department of Health Professions to consider issues related to use of implantable medical devices distributed by physician-owned distributorships in the Commonwealth.

[\[S 536\]](#)

Approved March 17, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health Professions shall consider any issues related to the use of implantable medical devices distributed by medical device distributors in which a physician has an ownership interest in the Commonwealth, including any existing federal or state laws or regulations and findings of the Office of the Inspector General of the U.S. Department of Health and Human Services, and actively involve and include any information provided by interested stakeholders, and shall report its findings and recommendations to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 487 Commonwealth of Virginia Higher Educational Institutions Bond Act of 2014; created.**

### CHAPTER 487

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$245,020,705 plus financing costs, to finance revenue-producing capital projects at institutions of higher learning of the Commonwealth.

[\[S 394\]](#)

Approved April 1, 2014

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Higher Educational Institutions Bond Act of 2014."*

*§ 2. Authorization of bonds and BANs.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$245,020,705, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to*

*borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>Christopher Newport University</i>	<i>Improvements- Residence Halls</i>	<i>\$5,000,-000</i>
<i>Christopher Newport University</i>	<i>Construct Residential Housing</i>	<i>\$42,020,-000</i>
<i>Christopher Newport University</i>	<i>Expand Dining Hall</i>	<i>\$9,500,-000</i>
<i>James Madison University</i>	<i>Construct Dining Hall</i>	<i>\$80,736,-705</i>
<i>Old Dominion University</i>	<i>Construct New Residence Halls, Phase I</i>	<i>\$76,464,-000</i>
<i>The College of William</i>	<i>Renovate</i>	

<i>and Mary in Virginia</i> 000	<i>Dormitories</i>	<i>\$16,000,-</i>
<i>Virginia Commonwealth</i>	<i>Expand Ackell</i>	
<i>University</i> 000	<i>Residence Center</i>	<i>\$15,300,-</i>
<i>Total</i> 705		<i>\$245,020,-</i>

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of the acquisition, construction, renovation, enlargement, improvement, and equipping of the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated, and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places*

*of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time, and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series .....".*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2 hereof or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named above is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project mentioned above or the system of which such*

*capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement which secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this paragraph may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with para-*

*graph A of this section and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to paragraph B of this section.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

§ 12. *Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act and Article X, Section 9 (b) or (c), as the case may be, of the Constitution of Virginia.*

§ 13. *Severability.*

*The provisions of this act or the application thereof to any person or circumstance which are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 709 King William County and Town of West Point; localities to govern allocation of revenues for schools.**

### CHAPTER 709

An Act to create a special school tax district in King William County and to govern allocation of tax revenue for schools in King William County and the Town of West Point.

[\[S 488\]](#)

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. There is hereby established a special tax district to pay all or any portion of the County of King William (the County) expenditures for operating the County school division beginning July 1, 2014. The boundary of the tax district shall be the same as the geographical area of the county school division and shall exclude the area of the Town of West Point (the Town). The appropriation of funds for the County's share of expenditures for the County school division shall be governed by this act, and the provisions of §§ [22.1-113](#) and [22.1-114](#) of the Code of Virginia shall not be applicable. The special tax district shall remain in effect unless the Town shall cease to operate a separate school division.*

*§ 2. The King William Board of Supervisors (the Board) may levy and collect taxes upon any taxable property in such special tax district, including, but not limited to, real estate,*

*mineral lands, tangible personal property, merchants' capital, and machinery and tools, and may appropriate to the County school division such property taxes, including any penalties and interest thereon and any fund balance from the preceding fiscal year consisting of such taxes, penalties, and interest. The Town shall pay for its share of expenditures to operate the Town school division from Town property taxes and other local, state, and federal revenues received by the Town. All taxes levied and collected by the County, other than those levied and collected for the support of the County school division in the special tax district, shall be uniform in all districts in the County, except as otherwise provided for by law.*

*§ 3. The Board may also appropriate to the County school division all or any portion of the revenue derived from (i) those local or state taxes that are collected in part within the Town but are allocated between the County and the Town by state law or (ii) those non-property taxes that the County collects exclusively from sources outside the Town. Such taxes include, but shall not be limited to, (i) the local sales and use tax authorized by §§ [58.1-605](#) and [58.1-606](#) of the Code of Virginia, (ii) the motor vehicle license tax authorized by § [46.2-752](#) of the Code of Virginia, (iii) wine taxes authorized by § [4.1-235](#) of the Code of Virginia, (iv) the net profits from the Alcoholic Beverage Control system authorized by § [4.1-117](#) of the Code of Virginia, (v) communication services sales taxes authorized by § [58.1-648](#) of the Code of Virginia, (vi) manufactured home titling taxes authorized by § [58.1-2402](#) of the Code of Virginia, (vii) automobile rental taxes authorized by § [58.1-1736](#) of the Code of Virginia, (viii) rolling stock taxes authorized by § [58.1-2652](#) of the Code of Virginia, (ix) bank net capital taxes authorized by § [58.1-1210](#) of the Code of Virginia, (x) business license taxes authorized by § [58.1-3703](#) of the Code of Virginia, (xi) food and beverage taxes authorized by § [58.1-3833](#) of the Code of Virginia, and (xii) interest or other investment earnings derived from the revenues specified in § 2 and this section, which investment earnings shall be separately accounted for by the County.*

*§ 4. The Board may also appropriate to the County school division all or any portion of the state or local recordation taxes received by the County, as authorized by §§ [58.1-801](#) and [58.1-3800](#) of the Code of Virginia, provided that the County pays to the Town a pro rata share of such recordation taxes derived from real estate transactions that occur within the Town.*

*The pro rata share shall be determined by multiplying the recordation taxes collected within the Town by a fraction that equals the total recordation taxes appropriated to the County school division divided by the total recordation taxes derived by the County from real estate transactions that occur outside the Town. The Clerk of the Circuit Court for*

*the County shall compile and furnish the necessary information to the governing body of the County to enable it to comply with this provision, and the County shall promptly provide a copy to the Town. The Board shall pay such sum to the Town no later than 45 days after receipt of such taxes by the County Treasurer from the clerk of the circuit court.*

*§ 5. The Board may also appropriate to the County school division all or any portion of the state payments to reimburse the County for personal property taxes pursuant to the Personal Property Tax Relief Act (§ [58.1-3523](#) et seq. of the Code of Virginia) if the County pays to the Town a pro rata share of these state payments received by the County that are attributable to qualifying vehicles assessed for taxation within the Town. The pro rata share shall be determined by multiplying the state reimbursement payments received by the County based on qualifying vehicles within the Town by a fraction that equals the total state reimbursement payments appropriated to the County school division divided by the total state reimbursement payments received by the County from qualifying vehicles assessed for taxation outside the Town. The Board shall pay such sum to the Town Treasurer no later than 45 days after receipt of such payments by the County Treasurer from the Commonwealth. If the Town issues tangible personal property tax bills for qualifying vehicles within the Town, in addition to any tangible personal property tax bills issued by the County for such vehicles, the amounts to be paid to the Town Treasurer shall be shown as a deduction on the face of the Town's tangible personal property tax bills for qualifying vehicles in the Town, which amounts are to be paid by the Commonwealth in accordance with state law. Nothing in this section shall be construed to alter the method or amount of the Commonwealth's obligations to King William County or the Town of West Point pursuant to the Personal Property Tax Relief Act.*

*§ 6. If the Board appropriates to the County school division any other taxes, fees, or other sources of revenues that are collected within both the County and the Town or are attributable to persons, property, transactions, or activities within both the County and the Town, the County shall pay to the Town a sum calculated as follows: the total amount of such other revenues appropriated to the County school division shall be multiplied by a fraction equal to the total taxable property assessments in the Town divided by the total taxable property assessments in the County as a whole, including the Town. The revenues subject to this requirement would include, for example, a tax or fee collected by the County in both the County and the Town, but would exclude, for example, a gift to the County or a state grant for school construction distributed to the County on the basis of school-age population in the County excluding the Town. The Board shall pay such sum to the Town no later than 45 days after such revenues have been transferred to the County school division.*

*§ 7. In the event of a dispute regarding the interpretation or application of this act, the County and the Town shall attempt to amicably resolve the dispute. The County and the Town may jointly submit to voluntary mediation. If the dispute is not resolved by agreement or mediation, the County and the Town shall submit to binding arbitration conducted in accordance with state law. The arbitration panel shall consist of three members; the Board and the Council shall each, within five business days, select an arbiter, who shall not be a member of the Board or the Council but who shall be knowledgeable in local government matters and qualified or trained as an arbiter in accordance with state law and commonly accepted ethical standards for arbiters. The two arbiters so selected shall jointly select a third arbiter within five business days of being selected; if they are unable to agree on a third arbiter, one shall be appointed by the King William Circuit Court. The County and the Town shall share equally in the costs of any mediation or arbitration. Each party shall be responsible for its own legal fees. The decision of a majority of the arbitration panel shall be binding on the County and the Town.*

*Legal action may be initiated by either party only to enforce a decision of the arbiters or to challenge a decision of the arbiters as unlawful or contrary to the law and plainly wrong. The timelines for action stated in this section may be extended by agreement of the Board and the Council.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 260 Child pornography; modifications to discretionary sentencing guidelines for possession.**

### CHAPTER 260

An Act to delay proposed modifications to the discretionary sentencing guidelines; possession of child pornography.

[\[S 433\]](#)

Approved March 17, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The proposed modifications to the discretionary sentencing guidelines for convictions related to the possession of child pornography in violation of subsections A and*

*B of § [18.2-374.1:1](#) of the Code of Virginia adopted by the Virginia Criminal Sentencing Commission pursuant to subdivision 1 of § [17.1-803](#) of the Code of Virginia and contained in the Commission's 2013 Annual Report pursuant to subdivision 10 of § [17.1-803](#) shall not become effective until July 1, 2016. The Virginia Criminal Sentencing Commission shall review the discretionary sentencing guidelines recommendations for convictions related to the possession of child pornography in violation of subsections A and B of § [18.2-374.1:1](#) and complete its review by December 1, 2015. Any proposed modification to the discretionary sentencing guidelines for such convictions contained in the Commission's 2015 Annual Report shall supersede the proposed modifications contained in the Commission's 2013 Annual Report unless otherwise provided by law.*

## **Chapter 264 Master Trooper Jerry L. Hines Memorial Bridge; designating as I81 bridges over Maury River.**

### CHAPTER 264

An Act to designate the Interstate Route 81 bridges over *Maury River* in Rockbridge County the "Master Trooper Jerry L. Hines Memorial *Bridge*."

[\[S 612\]](#)

Approved March 17, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate Route 81 bridges over the Maury River in Rockbridge County are hereby designated the "Master Trooper Jerry L. Hines Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of these bridges. This designation shall not affect any other designation heretofore or hereafter applied to these bridges.*

## **Chapter 276 Loudoun County; VDOT's duties & responsibilities to properly maintain the rural gravel road network.**

### CHAPTER 276

An Act to direct the Department of Transportation to maintain the rural road network in Loudoun County.

[\[H 416\]](#)

Approved March 24, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In recognition that Loudoun County contains one of the largest and the highest-volume network of rural gravel roads in the Commonwealth at 280 centerline miles, and in recognition of the importance of the contribution that many of these rural gravel roads make to the preservation of the unique cultural and historic heritage of the County and of the Commonwealth, the Department of Transportation shall do the following in carrying out its duties and responsibilities to properly maintain the rural gravel road network in Loudoun County:*

- 1. Coordinate with the County and with affected residents in order to better understand their specific maintenance concerns and in order to better prioritize how the Department allocates its maintenance budget to address such local concerns;*
- 2. Continue, whenever practicable, to maintain rural gravel roads in traditional alignment, surface treatment, and width and protect banks, stone walls, and roadside trees in all rural, agricultural, and historic areas;*
- 3. Apply the Department's Rural Rustic Road policies in any paving program in rural, agricultural, or historic areas, unless requested otherwise by the County, and focus limited paving resources primarily on highly traveled roads in developed areas; and*
- 4. Provide an annual report to the County detailing how the Department expended funds in the prior fiscal year for the maintenance of rural gravel roads in the County.*

## **Chapter 292 DBHDS; evaluate qualifications and training of individuals performing evaluations of individuals.**

### CHAPTER 292

An Act to require the Department of Behavioral Health and Developmental Services to review qualifications of individuals designated to perform evaluations of individuals subject to emergency custody orders; report.

[\[H 1216\]](#)

Approved March 24, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall review requirements related to qualifications, training, and oversight of individuals designated by community services boards to perform evaluations of individuals taken into custody pursuant to an emergency custody order and to make recommendations for increasing such qualifications, training, and oversight, in order to protect the safety and well-being of individuals who are subject to emergency custody orders and the public. The Department shall report its findings to the Governor and the General Assembly by December 1, 2014.*

## **Chapter 311 State Corporation Commission; eFile electronic registration system, etc.**

### CHAPTER 311

An Act relating to the duties of the clerk of the State Corporation Commission.

[\[H 168\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That from July 1, 2014, until the State Corporation Commission (Commission) has implemented a system that limits the submission of data and documents as required by § 2 of this act, the Commission shall not accept through its eFile electronic registration system (i) articles of dissolution of a business entity or (ii) data or documents that contain officer or director changes.*

*§ 2. Beginning not later than July 1, 2018, the Commission shall limit the submission of data and documents on behalf of a business entity through its eFile electronic registration system to any user (i) designated to make such submissions on behalf of the business entity and (ii) whose identity has been established satisfactorily through a verification process.*

## **Chapter 278 College campus police and security departments; DCJS to identify minimum core operational functions.**

### CHAPTER 278

An Act to require the Department of Criminal Justice Services to identify minimum core operational functions for college campus police and security departments.

[\[H 587\]](#)

Approved March 24, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Criminal Justice Services shall conduct a study to identify potential minimum core operational functions for campus police departments established pursuant to § [23-232](#) or [23-232.1](#) of the Code of Virginia and other campus security departments as may be established by public or private institutions of higher education pursuant to § [23-238](#) of the Code of Virginia. In conducting this study, the Department shall determine the existing capacity of campus police departments and other campus security departments, the costs of bringing existing departments into compliance with such minimum core operational functions, and legislative amendments needed in order to require compliance by such departments. In identifying such functions, the Department shall work with other public and private stakeholders as deemed appropriate. The Department shall report its findings to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 345 Pharmacy, Board of; automatic review of certain case decisions.**

### CHAPTER 345

An Act to require the Board of Pharmacy to provide for automatic review of certain case decisions.

[\[H 1032\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Pharmacy shall, in cases in which a monetary fine may be imposed for a violation of the provisions of Article 2 (§ [54.1-3432](#) et seq.) of the Drug Control Act relating to the practice of pharmacy and the pharmacy subject to the fine is affiliated with a free clinic that receives state or local funds, ascertain the factual basis for its decisions of such cases through informal conference or consultation proceedings in accordance with § [2.2-4019](#) of the Code of Virginia, unless the named party and the Board agree to resolve the matter through a consent order or the named party consents to waive such a conference or proceeding to go directly to a formal hearing.*

## **Chapter 349 Student-athletes; Board of Education shall amend its guidelines for policies on concussions.**

### CHAPTER 349

An Act to require the Board of Education to amend its guidelines for school division policies and procedures on concussions in student-athletes.

[\[H 1096\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall amend its guidelines for school division policies and procedures on concussions in student-athletes to include a "Return to Learn Protocol" with the following requirements:*

- 1. School personnel shall be alert to cognitive and academic issues that may be experienced by a student-athlete who has suffered a concussion or other head injury, including (i) difficulty with concentration, organization, and long-term and short-term memory; (ii) sensitivity to bright lights and sounds; and (iii) short-term problems with speech and language, reasoning, planning, and problem solving; and*
- 2. School personnel shall accommodate the gradual return to full participation in academic activities by a student-athlete who has suffered a concussion or other head injury as appropriate, based on the recommendation of the student-athlete's licensed health*

*care provider as to the appropriate amount of time that such student-athlete needs to be away from the classroom.*

## **Chapter 351 DHP; use of implantable medical devices distributed by physician-owned distributorships.**

### CHAPTER 351

An Act to require the Department of Health Professions to consider issues related to use of implantable medical devices distributed by physician-owned distributorships in the Commonwealth.

[\[H 1235\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health Professions shall consider any issues related to the use of implantable medical devices distributed by medical device distributors in which a physician has an ownership interest in the Commonwealth, including any existing federal or state laws or regulations and findings of the Office of the Inspector General of the U.S. Department of Health and Human Services, and actively involve and include any information provided by interested stakeholders, and shall report its findings and recommendations to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 364 DBHDS; qualifications of individuals performing certain evaluations.**

### CHAPTER 364

An Act to require the Department of Behavioral Health and Developmental Services to review qualifications of individuals designated to perform evaluations of individuals subject to emergency custody orders; report.

[\[S 261\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall review requirements related to qualifications, training, and oversight of individuals designated by community services boards to perform evaluations of individuals taken into custody pursuant to an emergency custody order and to make recommendations for increasing such qualifications, training, and oversight, in order to protect the safety and well-being of individuals who are subject to emergency custody orders and the public. The Department shall report its findings to the Governor and the General Assembly by December 1, 2014.*

## **Chapter 368 York River; MRC to grant an easement & rights-of-way across beds including Baylor Survey Grounds.**

### CHAPTER 368

An Act to authorize the Marine Resources Commission to grant easements and rights-of-way across and in the beds of the York River, including a portion of the Baylor Survey to Plains Marketing, LP, for expansion of the Yorktown oil facility.

[\[S 467\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission, with the approval of the Governor, is hereby authorized to grant and convey, upon such terms and conditions as the Marine Resources Commission shall deem proper, to Plains Marketing, LP, its successors and assigns, permanent easements and rights-of-way needed for the expansion, construction, updating, and maintenance of the Plains Marketing, LP, facility in the York River, beginning at a point located along the northern line of "Public Ground No. 5," said point having a coordinate value of North 3,612,505.00, East 12,083,115.69. Coordinate values based on Virginia State Plane Coordinate System, South Zone, NAD 1983, and expressed in U.S. Survey Feet. Thence from the point of beginning, along a bearing and distance of S 00° 30' 17" E, 688.96 feet to a point; thence along a bearing and distance*

*of S 85° 53' 25" W, 220.44 feet to a point; thence along a bearing and distance of N 00° 30' 17" W, 628.69 feet to a point; thence along a bearing and distance of S 74° 59' 59" W, 543.12 feet to a point; thence along a bearing and distance of N 14° 03' 07" W, 29.52 feet to a point; thence along a bearing and distance of N 75° 56' 53" E, 774.29 feet to the point of beginning; containing an area of 160,908 square feet or 3.694 acres.*

*§ 2. That the public interest of this project outweighs the public interest in maintaining the sanctity of the Baylor Survey at this location only, because of its nonproductivity for shellfish.*

*§ 3. None of the property described in § 1 that lies within the Baylor Survey shall be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth.*

*§ 4. The granting and conveying of the easements and rights-of-way shall be in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 379 Child care; Department of Social Services to plan for national background checks for providers.**

### CHAPTER 379

An Act to require the Department of Social Services to convene a work group to develop a plan for implementation of national fingerprint-based background checks for child care providers.

[\[S 639\]](#)

Approved March 27, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall convene a work group to review current state and federal laws and regulations governing criminal history background checks for all child care providers in the Commonwealth and to develop a plan for implementation of national fingerprint-based criminal history background checks for all child care providers in the Commonwealth, including recommendations for statutory and*

*regulatory changes and budget actions necessary to implement the plan. Such work group shall include representatives of the Department of State Police, child day programs licensed by the Department of Social Services, unlicensed child day programs, and other stakeholders. The Department shall report its findings to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 425 Governor's Career and Technical Education School; establishing a jointly operated high school.**

### CHAPTER 425

An Act to require the Board of Education to develop model criteria and procedures for establishing a Governor's Career and Technical Education School.

[\[H 887\]](#)

Approved March 31, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall develop model criteria and procedures for establishing a jointly operated high school with a career and technical education focus to be recommended to the Governor and the General Assembly for funding as a Governor's Career and Technical Education School.-*

## **Chapter 429 Coyotes; DGIF & VDACS to provide information & promote programs in assisting with control concerns.**

### CHAPTER 429

An Act requiring the Department of Game and Inland Fisheries and the Department of Agriculture and Consumer Services to work cooperatively in providing coyote control information.

[\[H 988\]](#)

Approved March 31, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Game and Inland Fisheries and the Department of Agriculture and Consumer Services shall work cooperatively, and with federal, state, and local agencies, as may be advisable, to provide information and promote programs that are available to landowners, livestock producers, and other individuals who are seeking assistance with coyote control concerns.*

## **Chapter 440 Public schools; textbooks approved by BOE shall note Sea of Japan is also referred to as East Sea.**

### CHAPTER 440

An Act to require approved textbooks to refer to the Sea of Japan as the East Sea.

[\[S 2\]](#)

Approved March 31, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That all textbooks approved by the Board of Education pursuant to § [22.1-238](#) of the Code of Virginia, when referring to the Sea of Japan, shall note that it is also referred to as the East Sea.*

2. That the provisions of this act shall not affect any textbook approved by the Board of Education prior to July 1, 2014.

## **Chapter 475 Probable Maximum Precipitation (PMP); DCR to utilize storm-based approach in order to derive PMP.**

### CHAPTER 475

An Act directing the Department of Conservation and Recreation to utilize a storm-based approach in updating the Probable Maximum Precipitation (PMP) for locations within or affecting the Commonwealth.

[\[H 1006\]](#)

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation, on behalf of the Virginia Soil and Water Conservation Board, shall utilize a storm-based approach in order to derive the Probable Maximum Precipitation (PMP) for locations within or affecting the Commonwealth. The PMP revisions shall be based on accepted storm evaluation techniques and take into account such factors as basin characteristics that affect the occurrence and location of storms and precipitation, regional and basin terrain influences, available atmospheric moisture, and seasonality of storm types. The results shall be considered by the Virginia Soil and Water Conservation Board in its decision to authorize the use of the updated PMP values in Probable Maximum Flood calculations, thus replacing the current PMP values. Such PMP revisions shall be adopted by the Board if it finds that the analysis is valid and reliable and will result in cost savings to owners for impounding structure spillway construction or rehabilitation efforts.*

*§ 2. The development of the methodology shall be completed by December 1, 2015.*

*§ 3. Owners of impounding structures with spillway design inadequacies who maintain coverage under a Conditional Operation and Maintenance Certificate in accordance with the Board's Impounding Structure Regulations (4VAC[50-20](#)) shall not be required to rehabilitate the spillway of their impounding structure until the analysis required under § 1 has been completed and reviewed by the Virginia Soil and Water Conservation Board. Such owners shall remain subject to all other requirements of the Dam Safety Act (§ [10.1-604](#) et seq.) and regulations.*

2. That in addition to other sums made available, the Department of Conservation and Recreation is authorized to utilize up to \$500,000 in unobligated balances in the Dam Safety, Flood Prevention and Protection Assistance Fund established pursuant to § [10.1-603.17](#) of the Code of Virginia or the Dam Safety Administrative Fund established pursuant to § [10.1-613.5](#) of the Code of Virginia to contract out for the analysis required under § 1.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 489 Probable Maximum Precipitation (PMP); DCR to utilize storm-based approach in order to derive PMP.**

CHAPTER 489

An Act directing the Department of Conservation and Recreation to utilize a storm-based approach in updating the Probable Maximum Precipitation (PMP) for locations within or affecting the Commonwealth.

[\[S 582\]](#)

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation, on behalf of the Virginia Soil and Water Conservation Board, shall utilize a storm-based approach in order to derive the Probable Maximum Precipitation (PMP) for locations within or affecting the Commonwealth. The PMP revisions shall be based on accepted storm evaluation techniques and take into account such factors as basin characteristics that affect the occurrence and location of storms and precipitation, regional and basin terrain influences, available atmospheric moisture, and seasonality of storm types. The results shall be considered by the Virginia Soil and Water Conservation Board in its decision to authorize the use of the updated PMP values in Probable Maximum Flood calculations, thus replacing the current PMP values. Such PMP revisions shall be adopted by the Board if it finds that the analysis is valid and reliable and will result in cost savings to owners for impounding structure spillway construction or rehabilitation efforts.*

*§ 2. The development of the methodology shall be completed by December 1, 2015.*

*§ 3. Owners of impounding structures with spillway design inadequacies who maintain coverage under a Conditional Operation and Maintenance Certificate in accordance with the Board's Impounding Structure Regulations (4VAC[50-20](#)) shall not be required to rehabilitate the spillway of their impounding structure until the analysis required under § 1 has been completed and reviewed by the Virginia Soil and Water Conservation Board. Such owners shall remain subject to all other requirements of the Dam Safety Act (§ [10.1-604](#) et seq.) and regulations.*

2. That in addition to other sums made available, the Department of Conservation and Recreation is authorized to utilize up to \$500,000 in unobligated balances in the Dam Safety, Flood Prevention and Protection Assistance Fund established pursuant to § [10.1-603.17](#) of the Code of Virginia or the Dam Safety Administrative Fund established

pursuant to § [10.1-613.5](#) of the Code of Virginia to contract out for the analysis required under § 1.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 480 A-to-F grading system; delays date for implementing individual school performance grading system.**

### CHAPTER 480

An Act to amend and reenact § 2 of Chapter 672 and § 2 of Chapter 692 of the Acts of Assembly of 2013, relating to a grading system for individual school performance; delay.

[\[H 1229\]](#)

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 672 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 2. The Board of Education, *by October 1, 2016*, shall report individual school performance using a grading system that ~~includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades.~~ The grading system shall be *is* based on an A-to-F grading scale. ~~The Board, by October 1, 2014, shall (i) assign a grade from A to F to each public school in the Commonwealth; (ii) make both the system and the grade assigned to each school in the Commonwealth available to the public; and (iii) report to the General Assembly a summary of the system and the assigned grades. No later than January 1, 2015, the Board shall develop and submit to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health a preliminary plan for an A-to-F school performance grading system. The Board, in developing the school performance grading system, can consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate grade for each public elementary~~

*and secondary school in the Commonwealth. As part of its preliminary plan, the Board shall also determine, in consultation with the House Committee on Education and the Senate Committee on Education and Health, whether to (a) assign a single letter grade to each school or (b) assign a series of letter grades to each school based on some or all of the factors in clauses (i) through (x) or any combination of such factors. No later than July 1, 2015, the Board shall provide notice and solicit public comment on the preliminary school performance grading system plan. No later than December 1, 2015, the Board shall finalize the school performance grading system, make a summary of the system available to the public, and submit a summary of the system to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall assign a grade or a series of grades to each public elementary and secondary school in the Commonwealth and make such grades available to the public.*

2. That § 2 of Chapter 692 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 2. The Board of Education, *by October 1, 2016*, shall report individual school performance using a grading system that ~~includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades.~~ The grading system shall be *is* based on an A-to-F grading scale. The Board, ~~by October 1, 2014~~, shall (i) ~~assign a grade from A to F to each public school in the Commonwealth;~~ (ii) ~~make both the system and the grade assigned to each school in the Commonwealth available to the public;~~ and (iii) ~~report to the General Assembly a summary of the system and the assigned grades.~~ *No later than January 1, 2015, the Board shall develop and submit to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health a preliminary plan for an A-to-F school performance grading system. The Board, in developing the school performance grading system, can consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate grade for each public elementary and secondary school in the Commonwealth. As part of its preliminary plan, the Board shall also determine, in consultation with the House Committee on Education and the Senate Committee on Education and Health, whether to (a) assign a single letter grade*

*to each school or (b) assign a series of letter grades to each school based on some or all of the factors in clauses (i) through (x) or any combination of such factors. No later than July 1, 2015, the Board shall provide notice and solicit public comment on the preliminary school performance grading system plan. No later than December 1, 2015, the Board shall finalize the school performance grading system, make a summary of the system available to the public, and submit a summary of the system to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall assign a grade or a series of grades to each public elementary and secondary school in the Commonwealth and make such grades available to the public.*

## **Chapter 493 Martinsville, City of; city reversion to town status.**

### CHAPTER 493

An Act to provide for a vote by city council relating to transition of the City of Martinsville to town status.

[\[H 210\]](#)

Approved April 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of Chapter 41 (§ [15.2-4100](#) et seq.) of Title 15.2 of the Code of Virginia, any reversion initiated by the Martinsville City Council shall require that each elected member of the city council vote, unless otherwise prohibited by law, on the motion to initiate the reversion process.*

## **Chapter 485 A-to-F grading system; delays date for implementing individual school performance grading system.**

### CHAPTER 485

An Act to amend and reenact § 2 of Chapter 672 and § 2 of Chapter 692 of the Acts of Assembly of 2013, relating to a grading system for individual school performance; delay.

[\[S 324\]](#)

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 672 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 2. The Board of Education, *by October 1, 2016*, shall report individual school performance using a grading system that ~~includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades.~~ The grading system shall be *is* based on an A-to-F grading scale. ~~The Board, by October 1, 2014, shall (i) assign a grade from A to F to each public school in the Commonwealth; (ii) make both the system and the grade assigned to each school in the Commonwealth available to the public; and (iii) report to the General Assembly a summary of the system and the assigned grades. No later than January 1, 2015, the Board shall develop and submit to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health a preliminary plan for an A-to-F school performance grading system. The Board, in developing the school performance grading system, can consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate grade for each public elementary and secondary school in the Commonwealth. As part of its preliminary plan, the Board shall also determine, in consultation with the House Committee on Education and the Senate Committee on Education and Health, whether to (a) assign a single letter grade to each school or (b) assign a series of letter grades to each school based on some or all of the factors in clauses (i) through (x) or any combination of such factors. No later than July 1, 2015, the Board shall provide notice and solicit public comment on the preliminary school performance grading system plan. No later than December 1, 2015, the Board shall finalize the school performance grading system, make a summary of the system available to the public, and submit a summary of the system to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall assign a grade or a series of grades to each public elementary and secondary school in the Commonwealth and make such grades available to the public.~~

2. That § 2 of Chapter 692 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 2. The Board of Education, *by October 1, 2016*, shall report individual school performance using a grading system that ~~includes the standards of accreditation, state and federal accountability requirements, and student growth indicators in assigning grades.~~ The grading system shall be *is* based on an A-to-F grading scale. The Board, ~~by October 1, 2014~~, shall (i) ~~assign a grade from A to F to each public school in the Commonwealth;~~ (ii) ~~make both the system and the grade assigned to each school in the Commonwealth available to the public;~~ and (iii) ~~report to the General Assembly a summary of the system and the assigned grades.~~ *No later than January 1, 2015, the Board shall develop and submit to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health a preliminary plan for an A-to-F school performance grading system. The Board, in developing the school performance grading system, can consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate grade for each public elementary and secondary school in the Commonwealth. As part of its preliminary plan, the Board shall also determine, in consultation with the House Committee on Education and the Senate Committee on Education and Health, whether to (a) assign a single letter grade to each school or (b) assign a series of letter grades to each school based on some or all of the factors in clauses (i) through (x) or any combination of such factors. No later than July 1, 2015, the Board shall provide notice and solicit public comment on the preliminary school performance grading system plan. No later than December 1, 2015, the Board shall finalize the school performance grading system, make a summary of the system available to the public, and submit a summary of the system to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall assign a grade or a series of grades to each public elementary and secondary school in the Commonwealth and make such grades available to the public.*

## **Chapter 558 Higher educational institutions, 4-year; mental health resources available to students on website.**

### CHAPTER 558

An Act to require four-year public institutions of higher education to list available mental health resources on website.

[\[H 206\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Each four-year public institution of higher education shall create and feature on its website a page with information dedicated solely to the mental health resources available to students at the institution.*

2. That the provisions of this act shall become effective on July 1, 2015.

## **Chapter 530 Kinship care; DSS shall review current policy governing placement of children to avoid foster care.**

### CHAPTER 530

An Act to require the Department of Social Services to make recommendations for regulations governing kinship care placements.

[\[S 284\]](#)

Approved April 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Social Services shall review current policies governing facilitation of placement of children in kinship care to avoid foster care placements in the Commonwealth and shall develop recommendations for regulations governing kinship care placements, which shall include recommendations related to (i) a description of the*

*rights and responsibilities of local boards, birth parents, and kinship caregivers; (ii) a process for the facilitation of placement or transfer of custody; (iii) a model disclosure letter to be provided to the parents and potential kinship caregivers, including information about the differences between kinship care and kinship foster care, the impact of transferring custody from the birth parent to the kinship caregiver, the birth parent's role following transfer, and the plan requirements for custody to be returned to the birth parent; (iv) a process for developing a safety or service plan for the family, which shall include gathering input from birth parents, potential kinship caregivers, and other community and family supports; (v) a description of funding sources available to support safety or service plans; (vi) a process for gathering and reporting data regarding the well-being and permanency of children in kinship care; and (vii) a description of the training plan for local department of social services workers. The Department shall also review the fiscal impact of proposed regulations. The Department shall report its recommendations and findings to the Governor, the General Assembly, and the Board of Social Services by January 1, 2016.*

## **Chapter 539 College campus police and security departments; DCJS to identify minimum core operational functions.**

### CHAPTER 539

An Act to require the Department of Criminal Justice Services to identify minimum core operational functions for college campus police and security departments.

[\[S 440\]](#)

Approved April 3, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Criminal Justice Services shall conduct a study to identify potential minimum core operational functions for campus police departments established pursuant to § [23-232](#) or [23-232.1](#) of the Code of Virginia and other campus security departments as may be established by public or private institutions of higher education pursuant to § [23-238](#) of the Code of Virginia. In conducting this study, the Department shall determine the existing capacity of campus police departments and other campus security departments, the costs of bringing existing departments into compliance with*

*such minimum core operational functions, and legislative amendments needed in order to require compliance by such departments. In identifying such functions, the Department shall work with other public and private stakeholders as deemed appropriate. The Department shall report its findings to the Governor and the General Assembly by November 1, 2014.*

## **Chapter 614 Electronic toll collection transponders; VDOT shall develop plan to eliminate maintenance fees.**

### CHAPTER 614

An Act to direct the Department of Transportation to develop a plan relating to electronic tolling and maintenance fees.

[\[S 156\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No later than September 1, 2014, the Department of Transportation shall develop and implement a plan to eliminate the maintenance fees associated with electronic toll collection transponders.*

2. That the Secretary of Transportation is encouraged to examine the retail distribution of electronic toll collection transponders to determine steps that can be taken to improve retail distribution.

## **Chapter 620 SOL; Board of Education to require only math and English reading assessments for third graders.**

### CHAPTER 620

An Act to require that only math and English Standards of Learning assessments be required in the third grade.

[\[S 270\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding the provisions of § [22.1-253.13:1](#) of the Code of Virginia, the Board of Education shall require Standards of Learning assessments for the third grade only in the areas of math and English reading.*

## **Chapter 642 Physical evidence recovery kits; local and state law-enforcement agencies shall report an inventory.**

### CHAPTER 642

An Act to require law-enforcement agencies to report an inventory of physical evidence recovery kits to the Department of Forensic Science.

[\[S 658\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. All local and state law-enforcement agencies shall report an inventory of all physical evidence recovery kits in their custody that may contain biological evidence that were collected but not submitted to the Department of Forensic Science for analysis prior to July 1, 2014. The Department shall establish the form of and timeline for such inventory. The Department shall receive the reports from such law-enforcement agencies and report the results of such inventory to the General Assembly on or before July 1, 2015.*

2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2014 by the General Assembly that becomes law.

## **Chapter 601 First responders; mental health education and training.**

### CHAPTER 601

An Act to require the Secretary of Public Safety and the Secretary of Health and Human Resources to encourage dissemination of information about specialized training in evidence-based strategies to prevent and minimize mental health crises.

[\[H 1222\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Public Safety and the Secretary of Health and Human Resources shall encourage the dissemination of information about specialized training in evidence-based strategies to prevent and minimize mental health crises in all jurisdictions. This information shall be disseminated to, but not limited to, law-enforcement personnel, other first responders, hospital emergency department personnel, school personnel, and other interested parties, to the extent possible. These strategies shall include (i) crisis intervention team (CIT) training for law-enforcement personnel and other first responders as designated by the community CIT task force and (ii) mental health first aid training for other first responders, hospital emergency department personnel, school personnel, and other interested parties. The Secretary of Public Safety and the Secretary of Health and Human Resources shall encourage adherence to the models of training and achievement of programmatic goals and standards. The goals for CIT training shall include (i) training participants to recognize the signs and symptoms of behavioral health disorders; (ii) teaching participants the skills necessary to de-escalate crisis situations and how to support individuals in crisis; (iii) educating participants about community-based resources available to individuals in crisis; and (iv) enhancing participants' ability to communicate with health systems about the nature of the crisis to include rules regarding confidentiality and protected health information. The goals for mental health first aid training shall be to teach the public (to include first responders, school personnel, and other interested parties) how to recognize symptoms of mental health problems, how to offer and provide initial help, and how to guide a person toward appropriate treatments and other supportive help.*

## **Chapter 639 Training center residents; DBHDS to ensure resources available prior to transfer to another center.**

### CHAPTER 639

An Act to ensure adequate resources are available and disclosed to training center residents prior to their transfer to another training center or community-based care.

[\[S 627\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall, before transferring any training center resident to another training center or to community-based care, provide written certification to such training center resident or his legally authorized representative that (i) the receiving training center or community-based option provides a quality of care that is comparable to that provided in the resident's current training center regarding medical, health, developmental, and behavioral care and safety and (ii) all permissible placement options available under the Commonwealth's August 23, 2012, settlement agreement with the U.S. Department of Justice, including the option to remain in a training center, have been disclosed to the training center resident or his legally authorized representative. A training center resident or his legally authorized representative may waive the certification requirement imposed in clause (i).*

*§ 2. That the Department of Behavioral Health and Developmental Services shall convene a work group of interested stakeholders, which shall include members of the General Assembly, to consider options for expanding the number of training centers that remain open, in whole or in part, in the Commonwealth.*

## **Chapter 690 License plates, special; issuance for supporters of pollinator conservation.**

### CHAPTER 690

An Act to authorize the issuance of special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.

[\[S 259\]](#)

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.*

**Chapter 770 Virginia Commission on Youth; shall review use of seclusion and restraint in schools.**

CHAPTER 770

An Act to direct the Virginia Commission on Youth to review and report on the use of seclusion and restraint in the public and private elementary and secondary schools of the Commonwealth.

[\[H 1106\]](#)

Approved April 7, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Commission on Youth, in consultation with the Department of Education and the Department of Behavioral Health and Developmental Services, shall review (i) statewide policies and regulations related to seclusion and restraint in public and private elementary and secondary schools and (ii) methods used in other states to reduce and eliminate the use of seclusion and restraint in public and private elementary and secondary schools. The Virginia Commission on Youth shall make recommendations for the modernization of Virginia's policies and regulations related to seclusion and restraint in schools and submit its recommendations no later than November*

30, 2014, to the General Assembly. The Virginia Commission on Youth shall report its findings to the Governor and the 2015 Regular Session of the General Assembly.

## **Chapter 643 Southwestern Virginia Mental Health Institute; DBHDS to convey certain real property.**

### CHAPTER 643

An Act to amend and reenact § 1 of Chapter 265 of the Acts of Assembly of 2013, relating to the conveyance of certain real property held in the name of the Department of Behavioral Health and Developmental Services as part of the Southwestern Virginia Mental Health Institute located in Marion in Smyth County to the Mount Rogers Community Services Board.

[\[S 667\]](#)

Approved April 4, 2014

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 265 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 1. The Department of Behavioral Health and Developmental Services, with the approval of the Governor and the Attorney General, in the manner set forth in § [2.2-1150](#) B of the Code of Virginia, is authorized to convey, without consideration, that portion of the real property located on the grounds of the Southwestern Virginia Mental Health Institute located at 340 Bagley Circle in Marion in Smyth County, ~~described in a deed recorded in the clerk's office of the Circuit Court of the County of Smyth, Virginia, at DB 16, Page 310, comprising 1.150 acres, more or less, shown as "Portion of T.M. 211-130-1 Area = 1.150 Acres" on a plat of survey entitled "Commonwealth of Virginia, Department of Mental Health, Mental Retardation and Substance Abuse Services, Portion of T.M. 211-130-1, Lot 1, Map of the Margaret E. Killinger Subdivision, Slide 295, Pg. 6, D.B. 735, Pg. 243" dated January 15, 2014, and prepared by Thompson & Litton, which property is held in the name of the Department of Behavioral Health and Developmental Services and currently leased to the Mount Rogers Community Services Board, to the Mount Rogers Community Services Board for the purpose of providing services for individuals in need of mental health, developmental, and substance abuse services.~~

## Chapter 704 Loudoun County; VDOT's duties & responsibilities to properly maintain the rural gravel road network.

### CHAPTER 704

An Act to direct the Department of Transportation to maintain the rural road network in Loudoun County.

[\[S 397\]](#)

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In recognition that Loudoun County contains one of the largest and the highest-volume network of rural gravel roads in the Commonwealth at 280 centerline miles, and in recognition of the importance of the contribution that many of these rural gravel roads make to the preservation of the unique cultural and historic heritage of the County and of the Commonwealth, the Department of Transportation shall do the following in carrying out its duties and responsibilities to properly maintain the rural gravel road network in Loudoun County:*

- 1. Coordinate with the County and with affected residents in order to better understand their specific maintenance concerns and in order to better prioritize how the Department allocates its maintenance budget to address such local concerns;*
- 2. Continue, whenever practicable, to maintain rural gravel roads in traditional alignment, surface treatment, and width and protect banks, stone walls, and roadside trees in all rural, agricultural, and historic areas;*
- 3. Apply the Department's Rural Rustic Road policies in any paving program in rural, agricultural, or historic areas, unless requested otherwise by the County, and focus limited paving resources primarily on highly traveled roads in developed areas; and*
- 4. Provide an annual report to the County detailing how the Department expended funds in the prior fiscal year for the maintenance of rural gravel roads in the County.*

# Uncodified Acts of Assembly - 2014 Special Session I

## Chapter 1 Budget Bill.

### CHAPTER 1

An Act to amend and reenact Chapter 806 of the 2013 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2013, and the thirtieth day of June, 2014.

[\[H 5001\]](#)

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

# Uncodified Acts of Assembly - 2015

## Chapter 10 Trooper Jacqueline Vernon Memorial Bridge; designating as Interstate 395 bridge over S. Glebe Road in Arlington County.

An Act to designate the Interstate 395 bridge over S. Glebe Road in Arlington County the "Trooper Jacqueline Vernon Memorial Bridge."

[\[S 703\]](#)

Approved February 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate 395 bridge over S. Glebe Road in Arlington County is hereby designated the "Trooper Jacqueline Vernon Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## Chapter 15 Trooper Andrew Fox Memorial Bridge; designating as New River Bridge on Interstate 81.

An Act to designate New River Bridge on Interstate 81 the "Trooper Andrew Fox Memorial Bridge."

[\[S 753\]](#)

Approved February 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The New River Bridge on Interstate 81 in the Counties of Montgomery and Pulaski is hereby designated the "Trooper Andrew Fox Memorial Bridge." The Department of*

*Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 16 Motor fuels; vehicles hauling certain fuels during times of necessitous circumstances, report.**

An Act to direct agencies of the Commonwealth to establish protocol, relating to hauling motor fuels during times of necessitous circumstances; report.

[\[S 778\]](#)

Approved February 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation, Department of Mines, Minerals and Energy, Department of Emergency Management, Department of Motor Vehicles, Department of State Police, and other interested stakeholders shall work to establish a protocol for submission of a declaration of a state of emergency for resource shortages, as defined in § [44-146.16](#) of the Code of Virginia, that adversely affect the delivery of motor fuels, gasoline, diesel, kerosene, number one and two heating oils, or liquid propane gas within or outside of the Commonwealth.*

2. That the Department of Emergency Management shall submit a report detailing the established protocol to the Governor and the General Assembly by January 13, 2016.

## **Chapter 35 Trooper Donald E. Lovelace Memorial Bridge; designating as Route 134 bridge over U.S. Route 17.**

An Act to designate the Route 134 bridge that crosses U.S. Route 17 in York County the "Trooper Donald E. Lovelace Memorial Bridge."

[\[S 1303\]](#)

Approved February 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Route 134 bridge that crosses U.S. Route 17 in York County is hereby designated the "Trooper Donald E. Lovelace Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 36 Trooper Garland Matthew Miller Memorial Bridge; designating as Barlow Road overpass over I 64.**

An Act to designate the Barlow Road overpass that crosses Interstate 64 in York County the "Trooper Garland Matthew Miller Memorial Bridge."

[\[S 1304\]](#)

Approved February 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Barlow Road overpass that crosses Interstate 64 in York County is hereby designated the "Trooper Garland Matthew Miller Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 38 Virginia Alcoholic Beverage Control Authority; created, report, eliminates ABC Board.**

An Act to amend and reenact §§ [1-404](#), [2.2-221](#), [2.2-507](#), [2.2-509.1](#), [2.2-1119](#), [2.2-2696](#), [2.2-2818](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3705.7](#), [2.2-3711](#), [2.2-3802](#), [2.2-4024](#), [2.2-4345](#), [3.2-1010](#), [4.1-100](#), [4.1-101](#), [4.1-103](#), [4.1-103.1](#), [4.1-119](#), [4.1-121](#), [4.1-124](#), [4.1-128](#), [4.1-209.1](#), [4.1-212.1](#), [4.1-325](#), [9.1-101](#), [9.1-102](#), [9.1-400](#), [9.1-500](#), [9.1-801](#), [15.2-2288.3](#), [15.2-2288.3:1](#), [18.2-57](#), [18.2-246.6](#), [18.2-308](#), [18.2-308.03](#), [18.2-308.012](#), [18.2-371.2](#), [19.2-81](#), [19.2-386.21](#), [19.2-389](#), [22.1-206](#), [23-7.4:1](#), [32.1-357](#), [33.2-613](#), [48-17.1](#), [51.1-212](#), [58.1-3](#), [58.1-3651](#), [59.1-148.3](#), [65.2-402](#), and [65.2-402.1](#) of the Code of Virginia; to amend and reenact the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding sections numbered [4.1-101.01](#) through

[4.1-101.011](#); and to repeal § [4.1-102](#) of the Code of Virginia, relating to alcoholic beverage control; Virginia Alcoholic Beverage Control Authority Act of 2015.

[\[S 1032\]](#)

Approved February 27, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ [1-404](#), [2.2-221](#), [2.2-507](#), [2.2-509.1](#), [2.2-1119](#), [2.2-2696](#), [2.2-2818](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3705.7](#), [2.2-3711](#), [2.2-3802](#), [2.2-4024](#), [2.2-4345](#), [3.2-1010](#), [4.1-100](#), [4.1-101](#), [4.1-103](#), [4.1-103.1](#), [4.1-119](#), [4.1-121](#), [4.1-124](#), [4.1-128](#), [4.1-209.1](#), [4.1-212.1](#), [4.1-325](#), [9.1-101](#), [9.1-102](#), [9.1-400](#), [9.1-500](#), [9.1-801](#), [15.2-2288.3](#), [15.2-2288.3:1](#), [18.2-57](#), [18.2-246.6](#), [18.2-308](#), [18.2-308.03](#), [18.2-308.012](#), [18.2-371.2](#), [19.2-81](#), [19.2-386.21](#), [19.2-389](#), [22.1-206](#), [23-7.4:1](#), [32.1-357](#), [33.2-613](#), [48-17.1](#), [51.1-212](#), [58.1-3](#), [58.1-3651](#), [59.1-148.3](#), [65.2-402](#), and [65.2-402.1](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [4.1-101.01](#) through [4.1-101.011](#) as follows:

§ [1-404](#). Licensing sale of mixed alcoholic beverages on lands ceded to or owned by United States.

The Virginia Alcoholic Beverage Control ~~Board~~ *Authority* may license the sale of mixed alcoholic beverages as defined in Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1 at places primarily engaged in the sale of meals on lands ceded by the Commonwealth to the United States or owned by the government of the United States or any agency thereof provided that such lands are used as ports of entry or egress to and from the United States, and provided that such lands lie within or partly within the boundaries of any county in this Commonwealth which permits the lawful dispensing of mixed alcoholic beverages. ~~The Board is hereby authorized to~~ *of Directors of the Authority may* adopt rules and regulations governing the sale of such spirits, and to fix the fees for such licenses, within the limits fixed by general law.

§ [2.2-221](#). Position established; agencies for which responsible; additional powers and duties.

A. The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: ~~Department of the Virginia~~ *Alcoholic Beverage Control Authority*, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services,

Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. The Secretary shall by reason of professional background have knowledge of military affairs, law enforcement, public safety, or emergency management and preparedness issues, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Work with and through others, including federal, state, and local officials as well as the private sector, to develop a seamless, coordinated security and preparedness strategy and implementation plan.
2. Serve as the point of contact with the federal Department of Homeland Security.
3. Provide oversight, coordination, and review of all disaster, emergency management, and terrorism management plans for the state and its agencies in coordination with the Virginia Department of Emergency Management and other applicable state agencies.
4. Work with federal officials to obtain additional federal resources and coordinate policy development and information exchange.
5. Work with and through appropriate members of the Governor's Cabinet to coordinate working relationships between state agencies and take all actions necessary to ensure that available federal and state resources are directed toward safeguarding Virginia and its citizens.
6. Designate a Commonwealth Interoperability Coordinator to ensure that all communications-related preparedness federal grant requests from state agencies and localities are used to enhance interoperability. The Secretary shall ensure that the annual review and update of the statewide interoperability strategic plan is conducted as required in § [2.2-222.2](#). The Commonwealth Interoperability Coordinator shall establish an advisory group consisting of representatives of state and local government and constitutional offices, broadly distributed across the Commonwealth, who are actively engaged in activities and functions related to communications interoperability.
7. Serve as one of the Governor's representatives on regional efforts to develop a coordinated security and preparedness strategy, including the National Capital Region Senior Policy Group organized as part of the federal Urban Areas Security Initiative.
8. Serve as a direct liaison between the Governor and local governments and first responders on issues of emergency prevention, preparedness, response, and recovery.

9. Educate the public on homeland security and overall preparedness issues in coordination with applicable state agencies.
10. Serve as chairman of the Secure Commonwealth Panel.
11. Encourage homeland security volunteer efforts throughout the state.
12. Coordinate the development of an allocation formula for State Homeland Security Grant Program funds to localities and state agencies in compliance with federal grant guidance and constraints. The formula shall be, to the extent permissible under federal constraints, based on actual risk, threat, and need.
13. Work with the appropriate state agencies to ensure that regional working groups are meeting regularly and focusing on regional initiatives in training, equipment, and strategy to ensure ready access to response teams in times of emergency and facilitate testing and training exercises for emergencies and mass casualty preparedness.
14. Provide oversight and review of the Virginia Department of Emergency Management's annual statewide assessment of local and regional capabilities, including equipment, training, personnel, response times, and other factors.
15. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and fix their compensation to be payable from funds made available for that purpose.
16. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, real property, or personal property for the benefit of the Commonwealth, and receive and accept from the Commonwealth or any state, any municipality, county, or other political subdivision thereof, or any other source, aid or contributions of money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made.
17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out these requirements subject to the conditions upon which the aid, grants, or contributions are made.
18. Make grants to local governments, state and federal agencies, and private entities with any funds of the Secretary available for such purpose.
19. *Provide oversight and review of the law-enforcement operations of the Alcoholic Beverage Control Authority.*
20. Take any actions necessary or convenient to the exercise of the powers granted or reasonably implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

§ [2.2-507](#). Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents, or employees of the *Virginia* Alcoholic Beverage Control ~~Board~~ Authority;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
10. Hearing officers appointed to hear a teacher's grievance pursuant to § [22.1-311](#);
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ [9.1-151](#) et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;
13. Conservation officers of the Department of Conservation and Recreation; or
14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § [8.01-225](#).

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

§ [2.2-509.1](#). Powers of investigators; enforcement of certain tobacco laws.

Investigators with the Office of the Attorney General as designated by the Attorney General shall be authorized to seize cigarettes as defined in § [3.2-4200](#), which are sold, possessed, distributed, transported, imported, or otherwise held in violation of § [3.2-4207](#) or [58.1-1037](#). In addition, such investigators shall be authorized to accompany and participate with special agents of the *Virginia Alcoholic Beverage Control Board Authority* or

other law-enforcement officials engaging in an enforcement action under § [3.2-4207](#) or [58.1-1037](#).

§ [2.2-1119](#). Cases in which purchasing through Division not mandatory.

A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies, and nonprofessional services through the Division shall not be mandatory in the following cases:

1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor and materials;
2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state funds;
3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be considered perishable within the meaning of this subdivision, unless so classified by the Division;
4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
5. Materials, equipment, and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include *Authority, including* office stationery and supplies, office equipment, *and* janitorial equipment and supplies ~~and~~; however, coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;
7. Printing of the records of the Supreme Court; and
8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

B. Telecommunications and information technology goods and services of every description shall be procured as provided by § [2.2-2012](#).

§ [2.2-2696](#). Substance Abuse Services Council.

A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental

Services on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § [37.2-100](#).

B. The Council shall consist of 29 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Operating ~~Executive~~ Officer of the ~~Department of~~ Virginia Alcoholic Beverage Control *Authority*; the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's appointments of the seven nonlegislative citizen members shall be staggered as follows: two members for a term of one year, three members for a term of two years, and two members for a term of three years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the cost of expenses shall be provided by the Department of Behavioral Health and Developmental Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services;
2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;
3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;
4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and
5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Behavioral Health and Developmental Services.

§ [2.2-2818](#). Health and related insurance for state employees.

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

- a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;
- b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and
- c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health

plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § [32.1-137.7](#), the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for

treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at

least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- a. The National Cancer Institute;
- b. An NCI cooperative group or an NCI center;
- c. The FDA in the form of an investigational new drug application;
- d. The federal Department of Veterans Affairs; or
- e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

Coverage under this subdivision shall apply only if:

- (1) There is no clearly superior, noninvestigational treatment alternative;
- (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and

(3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

17. Include coverage for biologically based mental illness.

For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for

frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § [38.2-3407.4:2](#) be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § [38.2-3407.4:2](#), either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § [32.1-64.1](#) using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

22. Notwithstanding any provision of this section to the contrary, every plan established in accordance with this section shall comply with the provisions of § [2.2-2818.2](#).

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which

payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means:

1. American Hospital Formulary Service - Drug Information;
2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or
3. Elsevier Gold Standard's Clinical Pharmacology.

"State employee" means state employee as defined in § [51.1-124.3](#); employee as defined in § [51.1-201](#); the Governor, Lieutenant Governor and Attorney General; judge as defined in § [51.1-301](#) and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; ~~and~~ interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § [23-50.16:24](#); *and employees of the Virginia Alcoholic Beverage Control Authority as provided in § [4.1-101.05](#).*

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management that utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of

Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be available in each planning district shall be a high deductible health plan that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan.

This subsection shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. Any self-insured group health insurance plan established by the Department of Human Resource Management that includes coverage for prescription drugs on an out-patient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescriber, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

Any plan established in accordance with this section shall be authorized to provide for the selection of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by mail, common carrier, or delivery service. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.

I. Any plan established in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least 30 days before such reductions become effective.

K. No contract between a provider and any plan established in accordance with this section shall include provisions that require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

The Ombudsman shall:

1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.
2. Answer inquiries from covered employees by telephone and electronic mail.
3. Provide to covered employees information concerning the state health plans.
4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.
5. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in subdivision 4 and such additional information as he deems appropriate.
6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.
7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only in accordance with the federal Health Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.
8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. The plan established in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii)

include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

R. The Department of Human Resource Management shall report annually, by November 30 of each year, on cost and utilization information for each of the mandated benefits set forth in subsection B, including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established pursuant to this section. The report shall be in the same detail and form as required of reports submitted pursuant to § [38.2-3419.1](#), with such additional information as is required to determine the financial impact, including the costs and benefits, of the particular mandated benefit.

§ [2.2-2905](#). Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the

Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;

16. Employees of the Virginia Lottery;

17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;

18. Employees of the Virginia Commonwealth University Health System Authority;

19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);

20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;

21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);

22. Officers and employees of the Virginia Port Authority;

23. Employees of the Virginia College Savings Plan;

24. Directors of state facilities operated by the Department of Behavioral Health and Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § [37.2-707](#). Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);

25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;

26. Employees of the Virginia Indigent Defense Commission; ~~and~~

27. Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § [23-232](#); and

28. *The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage Control Authority.*

§ [2.2-3705.3](#). Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the *Virginia Alcoholic Beverage Control Board Authority*, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery

and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § [2.2-1202.1](#), and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

11. Records furnished to or prepared by the Board of Education pursuant to subsection D of § [22.1-253.13:3](#) in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

13. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, com-

plainants, persons supplying information, witnesses, or other individuals involved in the investigation.

§ [2.2-3705.7](#). Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § [58.1-3](#).
2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.
4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.
5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

8. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or [15.2-2305](#). However, access to one's own information shall not be denied.

9. Records regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket,

manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of a local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or of the Virginia College Savings Plan, acting pursuant to § [23-38.77](#), relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties;

the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the

Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the record may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).

25. Records of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), of a local retirement system acting pursuant to § [51.1-803](#) (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § [23-38.77](#) relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or

termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b. Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § [53.1-233](#).

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ [2.2-4600](#) et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § [2.2-4602](#).

28. Personal information, as defined in § [2.2-3801](#), contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the record.

29. Records maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § [2.2-2716](#) to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be construed

to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. Records created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

34. *Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), of any private entity; (iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.*

*In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:*

*a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*

*b. Identifying with specificity the data or other materials for which protection is sought; and*

*c. Stating the reasons why protection is necessary.*

*The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.*

§ [2.2-3711](#). Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § [2.2-3705.1](#).

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.5](#).

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or

discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23-38.80](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#).

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § [2.2-4019](#) or [2.2-4020](#) during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected locality or public entity, as those terms are defined in § [33.2-1800](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § [2.2-3705.6](#).

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § [2.2-3705.6](#).

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § [2.2-3706](#).

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.6](#).

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#),

by the Board of the Virginia College Savings Plan acting pursuant to § [23-38.80](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § [23-38.79:1](#) of records excluded from this chapter pursuant to subdivision 25 of § [2.2-3705.7](#).

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.6](#).

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.3](#).

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.2](#).

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § [2.2-3705.7](#).

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § [2.2-3705.6](#).

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § [2.2-3705.6](#).

*46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.3](#) or subdivision 34 of § [2.2-3705.7](#).*

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ [2.2-3802](#). Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ [9.1-126](#) through [9.1-137](#) or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § [9.1-913](#);
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ [16.1-222](#) through [16.1-225](#);
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;
6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the ~~Department of Virginia~~ *Alcoholic Beverage Control Authority*;

7. Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ [23-232](#) et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;
  8. Maintained by the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#);
  9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;
  10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § [9.1-1104](#) may apply;
  11. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ [2.2-307](#) et seq.);
  12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § [15.2-2511.2](#);
  13. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and
  14. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § [63.2-1515](#).
- § [2.2-4024](#). Hearing officers.

A. In all formal hearings conducted in accordance with § [2.2-4020](#), the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § [2.2-4019](#) may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due.

If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the *Virginia Alcoholic Beverage Control Board Authority*, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ [46.2-100](#) et seq.), § 58.1-2409, or Chapter 27 (§ [58.1-2700](#) et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ [46.2-1500](#) et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § [54.1-2400](#), including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ [65.2-201](#) and [65.2-203](#) by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § [2.2-4002](#), this article shall apply to hearing officers conducting hearings of the kind described in § [2.2-4020](#) for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws. § [2.2-4345](#). Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § [32.1-325](#), provided that the Director has made a determination in advance after reasonable notice to the public and

set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ [32.1-276.2](#) et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ [30-146](#) and [30-148](#), to publish the Code of Virginia or the Virginia Administrative Code.

4. The ~~Department of~~ *Virginia Alcoholic Beverage Control Authority* for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § [46.2-1097](#); (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ [15.2-5800](#) et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ [15.2-5300](#) et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ [15.2-5200](#) et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § [63.2-100](#), community services boards as defined in § [37.2-100](#), or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth

and Families (§ [2.2-5200](#) et seq.) or the Virginia Juvenile Community Crime Control Act (§ [16.1-309.2](#) et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § [2.2-4303](#).

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § [2.2-4303](#). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ [3.2-1010](#). Enforcement of chapter; summons.

Any conservation police officer or law-enforcement officer as defined in § [9.1-101](#), excluding certain *members of the Virginia Alcoholic Beverage Control Board members Authority*, may enforce the provisions of this chapter and the regulations adopted hereunder as well as those who are so designated by the Commissioner. Those designated by the Commissioner may issue a summons to any person who violates any provision of this chapter to appear at a time and place to be specified in such summons.

§ [4.1-100](#). Definitions.

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol,

spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

*"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.*

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of

charitable gaming conducted pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes, processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied the grapes, fruits, or other agricultural products used in the production of the wine. The contract winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm winery for its services.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

"Day spa" means any commercial establishment that offers to the public both massage therapy, performed by persons certified in accordance with § [54.1-3029](#), and barbering or cosmetology services performed by persons licensed in accordance with Chapter 7 (§ [54.1-700](#) et seq.) of Title 54.1.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting

and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty items relating to history, original and handmade arts and products, collectibles, crafts, and floral arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

"Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such persons facilities for manufacturing, fermenting and bottling such wine or beer.

"Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage facilities, where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

"Government store" means a store established by the ~~Board~~ *Authority* for the sale of alcoholic beverages.

"Hotel" means any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to persons, and which has four or more bedrooms. It shall also mean the person who operates such hotel.

"Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this title.

"Internet wine retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

"Licensed" means the holding of a valid license *issued granted by the Board Authority.*

"Licensee" means any person to whom a license has been granted by the ~~Board Authority.~~

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § [4.1-124](#). In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the

annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

*"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the equity ownership of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such equity ownership. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.*

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the ~~Board~~ Authority in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private

recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. ~~The Board~~ *Authority* may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority* whom the Board has designated as a law-enforcement officer pursuant to § [4.1-105](#).

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § [4.1-236](#).

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § [4.1-210](#), or the monthly food sale requirement established by Board regulation, is met by such retail licensee.

§ [4.1-101](#). Virginia Alcoholic Beverage Control Authority created; public purpose.

*A. The General Assembly has determined that there exists in the Commonwealth a need to control the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth. Further, the General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. To achieve this objective, there is hereby created an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, or judicial branches of state government, to be known as the Virginia Alcoholic Beverage*

*Control Authority. The Authority's exercise of powers and duties conferred by this title shall be deemed the performance of an essential governmental function and a matter of public necessity for which public moneys may be spent. The Board of Directors of the Authority is vested with control of the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth, with plenary power to prescribe and enforce regulations and conditions under which alcoholic beverages are possessed, sold, transported, distributed, and delivered, so as to prevent any corrupt, incompetent, dishonest, or unprincipled practices and to promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. The exercise of the powers granted by this title shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their safety, health, welfare, and convenience. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.*

*B. ~~The Department of Virginia Alcoholic Beverage Control is created and~~ Authority shall consist of the Virginia Alcoholic Beverage Control Board of Directors, the Chief Executive Officer, and the agents and employees of the Authority. The Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board.*

*C. Nothing contained in this title shall be construed as a restriction or limitation upon any powers that the Board of Directors of the Authority might otherwise have under any other law of the Commonwealth.*

*§ [4.1-101.01](#). Board of Directors; membership; terms; compensation.*

*A. The Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#).*

*B. After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

*C. The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.*

*D. The Board shall meet at least every 60 days for the transaction of its business. Special meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.*

*E. Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth in the general appropriation act for members of the House of Delegates when the General Assembly is not in session, except that the chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of his official duties as set forth in the general appropriation act for a member of the Senate of Virginia when the General Assembly is not in session.*

*F. The provisions of the State and Local Government Conflict of Interests Act ([§ 2.2-3100](#) et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.*

*[§ 4.1-101.02](#). Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer.*

*A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the*

*General Assembly. The Chief Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree in business or a related field of study; and shall possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive such compensation as determined by the Board and approved by the Governor, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § [4.1-101.03](#). The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved by the Governor. The Chief Executive Officer may be removed from office by the Governor for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board and approved by the Governor, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

*B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.*

*C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.*

*D. The Chief Executive Officer shall:*

*1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;*

*2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;*

*3. Appoint a chief financial officer and employ or retain such agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and*

*4. Make recommendations to the Board for legislative and regulatory changes.*

*E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.*

*F. To assist the Chief Executive Officer in the performance of his duties, the Governor shall also appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.*

*§ [4.1-101.03](#). Background investigations of Board members and Chief Executive Officer.*

*All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a national criminal history records search and to the Department of State Police for a Virginia criminal history records search. The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section. No person shall be appointed to the Board or appointed by the Board who (i) has defrauded or attempted to defraud any federal, state, or local government or governmental agency or authority by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact; (ii) has willfully deceived or attempted to deceive any federal, state, or local government or governmental agency or governmental authority by making or maintaining business records required by statute or regulation that are false and fraudulent; or (iii) has been convicted of (a) a felony or a crime involving moral turpitude or (b) a violation of any law applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages within the five years immediately preceding appointment.*

*§ [4.1-101.04](#). Financial interests of Board, employees, and family members prohibited.*

*No Board member or employee of the Authority shall (i) be a principal stockholder or (ii) otherwise have any financial interest, direct or indirect, in any licensee subject to the provisions of this title or in any entity that has submitted an application for a license under Chapter 2 (§ [4.1-200](#) et seq.). No Board member and no spouse or immediate family member of a Board member shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.*

*§ [4.1-101.05](#). Employees of the Authority.*

*A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions shall be*

*based upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.*

*B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to employees of the former Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the former Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the former Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.*

*C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.*

*D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.*

*§ [4.1-101.06](#). Moneys of Authority.*

*All moneys of the Authority, from whatever source derived, shall be paid in accordance with § [4.1-116](#).*

*§ [4.1-101.07](#). Forms of accounts and records; audit; annual report.*

*The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.*

§ [4.1-101.08](#). *Leases of property.*

*The Authority shall be exempt from the provisions of § [2.2-1149](#) and from any rules, regulations, and guidelines of the Division of Engineering and Buildings in relation to leases of real property into which it enters.*

§ [4.1-101.09](#). *Exemptions from taxes or assessments.*

*The exercise of the powers granted by this title shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this title or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.*

§ [4.1-101.010](#). *Exemption of Authority from personnel and procurement procedures; information systems.*

*The provisions of the Virginia Personnel Act (§ [2.2-2900](#) et seq.) and the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 apply to the Authority in the exercise of any power conferred under this title.*

§ [4.1-101.011](#). *Reversion to the Commonwealth.*

*In the event of the dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Commonwealth.*

§ [4.1-103](#). General powers of Board.

The Board shall have the power to:

1. *Sue and be sued, implead and be impleaded, and complain and defend in all courts;*
2. *Adopt, use, and alter at will a common seal;*
3. *Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;*
4. *Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;*
5. *Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ [2.2-500](#) et seq.) of Title 2.2;*
6. *Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;*
7. *Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed;*
8. *Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;*

*9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;*

*10. Develop policies and procedures consistent with Article 4 (§ [2.2-4347](#) et seq.) of Chapter 43 of Title 2.2;*

*11. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;*

~~2-~~ *12. Buy and sell any mixers;*

~~3-~~ *13. Control the possession, sale, transportation and delivery of alcoholic beverages;*

~~4-~~ *14. Determine, subject to § [4.1-121](#), the localities within which government stores shall be established or operated and the location of such stores;*

~~5-~~ *15. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;*

~~6-Lease,~~ *16. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;*

~~7-~~ *17. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;*

~~8-~~ *18. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;*

~~9-~~ *19. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;*

~~10-~~20. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

~~11-~~21. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;

~~12-~~22. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

~~13-~~23. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and § [4.1-111](#) of this chapter;

~~14-~~24. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

~~15-~~25. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

~~16-~~26. Maintain actions to enjoin common nuisances as defined in § [4.1-317](#);

~~17-~~27. Establish minimum food sale requirements for all retail licensees; and

*28. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate;*

*29. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement activities undertaken to enforce the provisions of this title; and*

~~18-~~30. Do all acts necessary or advisable to carry out the purposes of this title.

§ [4.1-103.1](#). Criminal history records check required on certain employees; reimbursement of costs.

~~On or after July 1, 1994, all persons~~ *Persons* hired by the Board Authority whose job duties involve access to or handling of departmental ~~at~~ *the Authority's* funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

*No person who has been convicted of a felony or a crime involving moral turpitude shall be employed or appointed by the Authority.*

The Department of State Police shall be reimbursed by the ~~Board~~ *Authority* for the cost of investigations conducted pursuant to this section.

§ [4.1-119](#). Operation of government stores.

A. Subject to the requirements of §§ [4.1-121](#) and [4.1-122](#), the Board may establish, maintain and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

B. With respect to the sale of wine produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine per year.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers. *Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.*

D. Alcoholic beverages at government stores shall be sold by employees of the ~~Board~~ *Authority* who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises, provided:

1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are grown on the licensee's farm or land in Virginia leased by the licensee and no more than 25 percent of the agricultural products are grown or produced outside the

Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a lesser percentage of products grown on the licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the availability of agricultural products grown on the farm to manufacture the spirits during a given license year;

2. Such licensee is a duly organized nonprofit association holding title to real property, together with improvements thereon that are significant in American history, under a charter from the Commonwealth to preserve such property, and which association accepts no federal, state, or local funds;

3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site;

4. Such licensee is an independently certified organic distillery, with such certification by a USDA-accredited certification agency;

5. Such licensee is employing traditional distilling techniques, including the use of copper or stainless steel pot stills to blend or produce spirits in any county with a population of less than 20,000; or

6. Such licensee is employing traditional techniques, including the maceration of natural fruits, nuts, grains, beans, and spices in neutral grain spirits to extract natural flavors used to produce or blend liqueurs and spirits.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the ~~Board~~ *Authority* and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § [4.1-201](#) to be (i) additionally aged by the receiving distillery in order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § [4.1-212](#), and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § [4.1-201.1](#). No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § [4.1-304](#). The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H. With respect to purchases by licensees at government stores, the ~~Board~~ *Authority* shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the ~~Board~~ *Authority*, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the ~~Board~~ *Authority* shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

*J. Before the Authority implements any increase in the markup on distilled spirits or any change to the markup formula for distilled spirits pursuant to § [4.1-235](#) that would result in an increase in the retail price of distilled spirits sold to the public, the Authority shall (i) provide at least 45 days' public notice before such a price increase takes effect; (ii) provide the opportunity for submission of written comments regarding the proposed price increase; (iii) conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and (iv) consider any written or verbal comments before implementing such a price increase.*

§ [4.1-121](#). Referendum on establishment of government stores.

A. The qualified voters of any county, city, or town having a population of 1,000 or more may file a petition with the circuit court of the county or city, or of the county wherein the town or the greater part thereof is situated, asking that a referendum be held on the question of whether the sale by the ~~Board of Virginia Alcoholic Beverages Beverage Control Authority~~, other than beer and wine not produced by farm wineries, should be permitted

within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ~~ten~~ 10 percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale by the *Virginia Alcoholic Beverage Control Board Authority* of alcoholic beverages, other than beer and wine not produced by farm wineries, be permitted in ..... (name of county, city, or town)?"

The referendum shall be ordered and held and the results certified as provided in § [24.2-684](#). Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.

B. Once a referendum has been held, no other referendum on the same question shall be held in the county, city, or town within four years of the date of the prior referendum. However, a town shall not be prescribed from holding a referendum within such period although an election has been held in the county in which the town or a part thereof is located less than four years prior thereto.

§ [4.1-124](#). Referendum on the sale of mixed beverages.

A. The provisions of this title relating to the sale of mixed beverages shall not become effective in any town, county, or supervisor's election district of a county until a majority of the voters voting in a referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election district of a county may file a petition with the circuit court of the county asking that a referendum be held on the question of whether the sale of mixed beverages by restaurants licensed by the Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the town, county, or supervisor's election district on January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

Petition requirements for any county shall be based on the number of registered voters in the county, including the number of registered voters in any town having a population in excess of 1,000 located within such county. Upon the filing of a petition, and under no

other circumstances, the court shall order the election officials of the county to conduct a referendum on the question.

The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of general circulation in the town, county, or supervisor's election district once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale of mixed alcoholic beverages by restaurants licensed by the *Virginia* Alcoholic Beverage Control-~~Board~~ *Authority* be permitted in ..... (name of town, county, or supervisor's election district of county)?"

The referendum shall be ordered and held and the results certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2. Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the town or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of a county on or after 30 days following the entry of the order if a majority of the voters voting in the referendum have voted "Yes."

The provisions of this section shall be applicable to towns having a population in excess of 1,000 to the same extent and subject to the same conditions and limitations as are otherwise applicable to counties under this section. Such towns shall be treated as separate local option units, and only residents of any such town shall be eligible to vote in any referendum held pursuant to this section for any such town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote in any referendum held pursuant to this section for any county in which the town is located.

The provisions of this section shall not require any town created as a result of a city-to-town reversion pursuant to Chapter 41 (§ [15.2-4100](#) et seq.) of Title 15.2 to hold a referendum on the same question if a majority of the voters voting in the former city had previously approved the sale of mixed beverages by restaurants licensed by the Board in such city.

B. Once a referendum has been held, no other referendum on the same question shall be held in the town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multi-jurisdictional industrial development authority, as set forth under Chapter 49 (§ [15.2-](#)

[4900](#) et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § [4.1-122](#), the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § [4.1-210](#). However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

§ [4.1-128](#). Local ordinances or resolutions regulating or taxing alcoholic beverages.

A. No county, city, or town shall, except as provided in § [4.1-205](#) or ~~§~~ [4.1-129](#), adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the ~~Alcoholic Beverage Control~~ Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by ~~§§~~ [§58.1-605](#), [58.1-3833](#) or [§58.1-3840](#). The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were non-alcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of § [4.1-308](#) subject to the provisions of subsection B of § [4.1-308](#), or the acts described in § [4.1-309](#) and may provide a penalty for violation thereof and (ii) subject to subsection C of § [4.1-308](#), regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

§ [4.1-209.1](#). Direct shipment of wine and beer; shipper's license.

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section. Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such brands that an application has been filed for a shipper's license. The notice shall be in writing and in a form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section, including regulations that permit the holder of a shipper's license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or beer identified in such shipper's license.

B. Any applicant for a wine or beer shipper's license that does not own or have the right to control the distribution of the brands of wine, farm wine, or beer identified in such person's application may be issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its application for a shipper's license, and with any subsequent application for renewal thereof, the written consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor, that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery, or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such shipper licensee shall promptly file with the Board an amendment to its license eliminating any such withdrawn brand or brands from the shipper's license.

C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall be by approved common carrier only. The Board shall develop regulations pursuant to which common carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iii) the Board-approved common carrier to submit to the Board such information as the Board may prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee shall be liable only for their independent acts.

D. For purposes of §§ [4.1-234](#) and [4.1-236](#) and Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1, each shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in Virginia. The licensee shall collect the taxes due to the

Commonwealth and remit any excise taxes monthly to the ~~Department of Alcoholic Beverage Control~~ *Authority* and any sales taxes to the Department of Taxation.

E. Notwithstanding the provisions of § [4.1-203](#), the holder of a wine shipper license or beer shipper license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month club at in-state or out-of-state locations for which a license for on-premises consumption has been issued, other than the place where the licensee carries on the business for which the license is granted. For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month for an agreed term of months.

F. Notwithstanding the provisions of § [4.1-203](#), a wine or beer shipper licensee may ship wine or beer as authorized by this section through the use of the services of an approved fulfillment warehouse. For the purposes of this section, a "fulfillment warehouse" means a business operating a warehouse and providing storage, packaging, and shipping services to wineries or breweries. The Board shall develop regulations pursuant to which fulfillment warehouses may apply for approval to provide storage, packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved fulfillment warehouse to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this section.

G. Notwithstanding the provisions of § [4.1-203](#), a wine or beer shipper licensee may sell wine or beer as authorized by this section through the use of the services of an approved marketing portal. For the purposes of this section, a "marketing portal" means a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine or beer and accepting and processing payment of such orders as the agent of a licensed wine or beer shipper. The Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is

appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section.

[§ 4.1-212.1](#). Permits; delivery of wine and beer; regulations of Board.

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal consumption.

B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal consumption.

C. All such deliveries shall be to consumers within the Commonwealth for personal consumption only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the permittee. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold; except that the permittee may deliver more than four cases of wine or more than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

D. For purposes of §§ [4.1-234](#) and [4.1-236](#) and Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The

permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the ~~Department of Alcoholic Beverage Control~~ *Authority* and any sales taxes to the Department of Taxation.

§ [4.1-325](#). Prohibited acts by mixed beverage licensees; penalty.

A. In addition to § [4.1-324](#), no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to *subdivision B 11 of § [4.1-111](#)*~~B-11~~;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;
9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;
10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or obliterated;
11. Allow any obscene conduct, language, literature, pictures, performance or materials on the licensed premises;
12. Allow any striptease act on the licensed premises;
13. Allow persons connected with the licensed business to appear nude or partially nude;

14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of § [4.1-225](#) or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § [4.1-210](#).

The provisions of this subdivision shall not apply to the delivery of:

a. "Soju." For the purposes of this ~~clause~~ *subdivision*, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes; or

b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;

16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;

17. Conceal any sale or consumption of any alcoholic beverages;

18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;

19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus;

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event

held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection C of § [4.1-209](#); or (iv) pursuant to subdivision A 12 of § [4.1-201](#). Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

§ [9.1-101](#). Definitions.

As used in this chapter or in Chapter 23 (§ [19.2-387](#) et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any

disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ [16.1-226](#) et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ [19.2-387](#) et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ [19.2-12](#) et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ [9.1-126](#) et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ [37.2-900](#) et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § [18.2-271.2](#).

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of

crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*; (ii) police agent appointed under the provisions of § [56-353](#); (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#); (viii) animal protection police officer employed under § [15.2-632](#); or (ix) campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

§ [9.1-102](#). Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;
3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;
4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;
5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § [46.2-882](#) and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;
6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;
7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § [53.1-120](#), and to establish the time required for completion of such training;
8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § [8.01-293](#), and establish the time required for the completion of such training;
9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies, correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile correctional facility as the term is defined in § [66-25.3](#);
10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-

enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

11. Establish compulsory minimum training standards for all auxiliary police officers employed by or in any local or state government agency. Such training shall be graduated and based on the type of duties to be performed by the auxiliary police officers. Such training standards shall not apply to auxiliary police officers exempt pursuant to § [15.2-1731](#);

12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and with universities, colleges, community colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

14. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;

15. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

16. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

17. Make recommendations concerning any matter within its purview pursuant to this chapter;

18. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

20. Conduct audits as required by § [9.1-131](#);

21. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;
22. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;
23. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;
24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;
25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;
26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;
27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;
28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;
29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;
30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption,

administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

36. Certify and decertify law-enforcement officers in accordance with §§ [15.2-1706](#) and [15.2-1707](#);

37. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § [19.2-81.3](#). The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in § [9.1-](#)

[1301](#) and shall by December 1, 2009, submit a report on the status of implementation of these requirements to the chairmen of the House and Senate Courts of Justice Committees;

38. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

39. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

40. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

41. Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;

42. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

44. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School and Campus Safety pursuant to § [9.1-184](#). Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;
45. Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;
46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ [9.1-185](#) et seq.);
47. License and regulate bail enforcement agents in accordance with Article 12 (§ [9.1-186](#) et seq.);
48. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ [9.1-900](#) et seq.);
49. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The Department shall provide technical support and assistance to campus police departments and campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security

department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

50. Establish compulsory training standards and publish a model policy for law-enforcement personnel regarding death notification;

51. Assess and report, in accordance with § [9.1-190](#), the crisis intervention team programs established pursuant to § [9.1-187](#);

52. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the *Virginia* Alcoholic Beverage Control Board Authority;

53. Establish training standards and publish a model policy for law-enforcement personnel assigned to vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

54. Establish training standards and publish a model policy for law-enforcement personnel involved in criminal investigations that embody current best practices for conducting photographic and live lineups;

55. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia. The Department shall publish and disseminate a model policy or guideline for law-enforcement personnel involved in criminal investigations or assigned to vehicle or street patrol duties to ensure that law-enforcement personnel are sensitive to and aware of human trafficking offenses and the identification of victims of human trafficking offenses;

56. Register tow truck drivers in accordance with § [46.2-116](#) and carry out the provisions of § [46.2-117](#); and

57. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ [9.1-400](#). Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the

presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), and [65.2-402](#), as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board *Authority*; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also

include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

§ [9.1-500](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, the Department of Motor Vehicles, or the Department of Conservation and Recreation;

b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ~~ten~~ 10 or more law-enforcement officers; or

c. Any conservation police officer as defined in § [9.1-101](#).

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

§ [9.1-801](#). Public safety officer defined.

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a correctional officer employed at a juvenile correctional facility as the term is defined in § [66-25.3](#); a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or rescue squad that has been recognized by an ordinance or resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia Defense Force while such a member is serving in the Virginia National Guard or the Virginia

Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control ~~Board~~ *Authority*; any police agent appointed under the provisions of § [56-353](#); any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to § [29.1-200](#); any commissioned forest warden appointed pursuant to § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power to arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; any investigator who is a full-time sworn member of the security division of the Virginia Lottery; any full-time sworn member of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications, when fulfilling duties pursuant to § [46.2-217](#); any campus police officer appointed under the provisions of Chapter 17 (§ [23-232](#) et seq.) of Title 23; and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#).

§ [15.2-2288.3](#). Licensed farm wineries; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which

no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;
2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;
3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*;
4. The sale and shipment of wine to the *Virginia Alcoholic Beverage Control-Board Authority*, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*, and federal law;
5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*, and federal law; or
6. The sale of wine-related items that are incidental to the sale of wine.

§ [15.2-2288.3:1](#). Limited brewery license; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § [4.1-208](#) to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § 4.1-208:

1. The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer;
2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery;
3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*;
4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law;
5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law; or
6. The sale of beer-related items that are incidental to the sale of beer.

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § [4.1-208](#) on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

§ [18.2-57](#). Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § [53.1-1](#), a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of

Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § [65.2-102](#), or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § [18.2-308.1](#), the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § [8.01-581.1](#) who is engaged in the performance of his duties as an emergency health care provider in an emergency room of a hospital or clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. As used in this section:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § [17.1-105](#), a judge under temporary recall under § [17.1-106](#), or a judge pro tempore under § [17.1-109](#), any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#), any special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, conservation police officers appointed pursuant to § [29.1-200](#), and full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ [15.2-1731](#) and [15.2-1733](#), auxiliary deputy sheriffs appointed pursuant to § [15.2-1603](#), police officers of the Metropolitan Washington Airports Authority pursuant to § [5.1-158](#), and fire marshals appointed pursuant to § [27-30](#) when such fire marshals have police powers as set out in §§ [27-34.2](#) and [27-34.2:1](#).

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control. In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

§ [18.2-246.6](#). Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § [58.1-1011](#) or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § [58.1-1000](#), shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ [18.2-308](#). Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck,

nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;
7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*, any conservation police officer

retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he

resigned or, in the case of special agents, issued by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States, national guard, or naval militia, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;
2. Officers or guards of any state correctional institution;
3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;
4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and
5. Harbormaster of the City of Hopewell.

§ [18.2-308.03](#). Fees for concealed handgun permits.

A. The clerk shall charge a fee of \$10 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed \$35 to cover the cost of conducting an investigation pursuant to this article. The \$35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident applicant. The State Police may charge a fee not to exceed \$5 to cover its costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed \$50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application.

B. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the

*Virginia Alcoholic Beverage Control Board Authority* or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § [53.1-1](#) after completing 15 years of service.

§ [18.2-308.012](#). Prohibited conduct.

A. Any person permitted to carry a concealed handgun who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § [18.2-36.1](#), maiming in violation of § [18.2-51.4](#), driving while intoxicated in violation of § [18.2-266](#), public intoxication in violation of § [18.2-388](#), or driving while intoxicated in violation of § [46.2-341.24](#). Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

B. No person who carries a concealed handgun onto the premises of any restaurant or club as defined in § [4.1-100](#) for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the *Virginia Alcoholic Beverage Control Board Authority* under Title 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local law-enforcement officer.

§ [18.2-371.2](#). Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by minors or sale of tobacco products, nicotine vapor products, and alternative nicotine products to minors.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product.

Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine products by a person less than 18 years of age making a delivery of tobacco products, nicotine vapor products, or alternative nicotine products in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least 18 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual.

This subsection shall not apply to mail order or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine

vapor product, or alternative nicotine product verifies that the purchaser is at least 18 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the purchaser's signature before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.

D. A violation of subsection A or C by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

A violation of subsection A or C by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of § [16.1-278.8](#).

Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers

for sale any tobacco product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative nicotine products to any person under 18 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services may promulgate regulations which allow the Department to undertake the activities necessary to comply with such regulations.

3. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

F. Nothing in this section shall be construed to create a private cause of action.

G. Agents of the Virginia Alcoholic Beverage Control ~~Board~~ *Authority* designated pursuant to § [4.1-105](#) may issue a summons for any violation of this section.

H. As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar,

electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

§ [19.2-81](#). Arrest without warrant authorized in certain cases.

A. The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;
2. Sheriffs of the various counties and cities, and their deputies;
3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;
4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#);
5. Regular conservation police officers appointed pursuant to § [29.1-200](#);
6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § [29.1-205](#) to make arrests;
7. Conservation officers appointed pursuant to § [10.1-115](#);
8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#);
9. Special agents of the ~~Department of~~ *Virginia Alcoholic Beverage Control Authority*; and
10. Campus police officers appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23.

B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Such officers may arrest without a warrant any person whom the officer has probable cause to suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of § [29.1-738](#) or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in violation of an order issued pursuant to § [29.1-738.4](#) and may thereafter transfer custody of the person arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § [29.1-733.2](#) or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of § [18.2-266](#), [18.2-266.1](#), [46.2-341.24](#), or subsection B of § [29.1-738](#); or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to § [29.1-738.4](#), whether or not the offense was committed in such officer's presence.

E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § [18.2-96](#) or [18.2-103](#) or a similar local ordinance, (ii) carrying a weapon on school property in violation of § [18.2-308.1](#), (iii) assault and battery, (iv) brandishing a firearm in violation of § [18.2-282](#), or (v) destruction of property in violation of § [18.2-137](#), when such property is located on

premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ [19.2-386.21](#). Forfeiture of counterfeit and contraband cigarettes.

Counterfeit cigarettes possessed in violation of § [18.2-246.14](#) and cigarettes possessed in violation of § [58.1-1017](#) or [58.1-1017.1](#) shall be subject to seizure, forfeiture, and destruction or court-ordered assignment for use by a law-enforcement undercover operation by the Virginia Alcoholic Beverage Control Board *Authority* or any law-enforcement officer of the Commonwealth. However, any undercover operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain under the control and command of law enforcement and shall not be distributed to a member of the general public who is not the subject of a criminal investigation. All fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of § [58.1-1017](#) or [58.1-1017.1](#) shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ [19.2-386.1](#) et seq.), applied mutatis mutandis.

§ [19.2-389](#). Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § [9.1-101](#), for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § [53.1-136](#) shall include collective dissemination by electronic means every 30 days;
2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no

disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ [33.2-1900](#) et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ [63.2-901.1](#) and [63.2-1505](#), subject to the restriction that the data shall not be further

disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § [56-1](#), for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § [9.1-101](#) at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § [15.2-1713.1](#);

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § [63.2-100](#) for dissemination to the Commissioner of Social Services' representative pursuant to § [63.2-1702](#) for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day care homes or homes approved by family day care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ [63.2-1719](#), [63.2-1720](#), and [63.2-1721](#), subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § [19.2-83.1](#);

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ [58.1-4000](#) et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § [32.1-126.01](#), hospital pharmacies pursuant to § [32.1-126.02](#), and home care organizations pursuant to § [32.1-162.9:1](#), subject to the limitations set out in subsection E;
16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § [63.2-1720](#), in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day care centers pursuant to § [63.2-1720](#), subject to the limitations set out in subsection F;
17. The *Virginia Alcoholic Beverage Control Board Authority* for the conduct of investigations as set forth in § [4.1-103.1](#);
18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § [24.2-110](#) in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;
19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ [19.2-169.2](#), [19.2-169.6](#), [19.2-182.2](#), [19.2-182.3](#), [19.2-182.8](#), and [19.2-182.9](#) for the purpose of placement, evaluation, and treatment planning;
20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § [46.2-360](#), (ii) interventions with first offenders under § [18.2-251](#), or (iii) services to offenders under § [18.2-51.4](#), [18.2-266](#), or [18.2-266.1](#);
21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;
22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;
23. Pursuant to § [22.1-296.3](#), the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing

boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § [23-9.2:10](#) or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ [37.2-506](#) and [37.2-607](#);

27. Executive directors of behavioral health authorities as defined in § [37.2-600](#) for the purpose of determining an individual's fitness for employment pursuant to §§ [37.2-506](#) and [37.2-607](#);

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ [37.2-403](#) et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ [37.2-416](#), [37.2-506](#), and [37.2-607](#);

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ [46.2-2000](#) et seq.) and 21 (§ [46.2-2100](#) et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed

pursuant to § [2.2-1201.1](#). Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ [37.2-900](#) et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § [63.2-1601.1](#), subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ [6.2-1600](#) et seq.) or Chapter 19 (§ [6.2-1900](#) et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § [54.1-2106.1](#);

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ [51.5-170](#) et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § [19.2-120](#);

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § [8.01-195.12](#);

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § [15.2-1722](#).

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ [32.1-126.01](#), [32.1-126.02](#), and [32.1-162.9:1](#).

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § [63.1-189.1](#) or [63.2-1720](#).

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § [63.2-1719](#).

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ [22.1-206](#). Instruction concerning drugs, alcohol, and substance abuse.

A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed by the Board of Education.

B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking, and drunk driving shall be provided in the public schools. The ~~Department of Virginia~~ Alcoholic Beverage Control *Authority* shall provide educational materials to the Department of Education. The Department of Education shall review and shall distribute such materials as are approved to the public schools.

§ [23-7.4:1](#). Waiver of tuition and certain charges and fees for eligible children and spouses of certain military service members, eligible children and spouses of certain public safety personnel, and certain foreign students.

A. There is hereby established the Virginia Military Survivors and Dependents Education Program. Qualified survivors and dependents of military service members, who have been admitted to any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia, upon certification to the Commissioner of the Department of Veterans Services of eligibility under this subsection, shall be admitted free of tuition and all required fees.

The Virginia Military Survivors and Dependents Education Program shall be implemented pursuant to the following:

1. For the purposes of this subsection, "qualified survivors and dependents" means the spouse or a child between the ages of 16 and 29 of a military service member who, while serving as an active duty member in the United States Armed Forces, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war, or of a veteran who, due to such service, has been rated by the United States Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled, and has been discharged or released under conditions other than dishonorable. However, the Commissioner of the Department of Veterans Services may certify dependents above the age of 29 in those cases in which extenuating circumstances prevented the dependent child from using his benefits before the age of 30.

2. Such qualified survivors and dependents shall be eligible for the benefits conferred by this subsection if the military service member who was killed, is missing in action, is a

prisoner of war, or is disabled (i) was a bona fide domiciliary of Virginia at the time of entering such active military service or called to active duty as a member of the Armed Forces Reserves or Virginia National Guard Reserve; (ii) is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to, or has had a physical presence in Virginia for at least five years immediately prior to, the date on which the admission application was submitted by or on behalf of such qualified survivor or dependent for admission to such institution of higher education or other public accredited postsecondary institution; (iii) if deceased, was a bona fide domiciliary of Virginia on the date of his death and had been a bona fide domiciliary of Virginia for at least five years immediately prior to his death or had a physical presence in Virginia on the date of his death and has had a physical presence in Virginia for at least five years immediately prior to his death; (iv) in the case of a qualified child, is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to or has had a physical presence in Virginia for at least five years immediately prior to the date on which the admission application was submitted by or on behalf of such child; or (v) in the case of a qualified spouse, is deceased and the surviving spouse had been, at some time previous to marrying the deceased spouse, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years or has had a physical presence in Virginia for at least five years prior to the date on which the admission application was submitted by such qualified spouse.

3. From such funds as may be appropriated and from such gifts, bequests, and any gifts, grants, or donations from public or private sources, there is hereby established the Virginia Military Survivors and Dependents Education Fund for the sole purpose of providing financial assistance, in an amount (i) up to \$2,000 or (ii) as provided in the appropriation act, for board and room charges, books and supplies, and other expenses at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia for the use and benefit of qualified survivors and dependents.

Each year, from the funds available in the Virginia Military Survivors and Dependents Education Fund, the State Council of Higher Education for Virginia and its member institutions shall determine the amount and the manner in which financial assistance shall be made available to beneficiaries and shall make that information available to the Commissioner of the Department of Veterans Services for distribution.

The State Council of Higher Education for Virginia shall be responsible for disbursing to the institutions the funds appropriated or otherwise made available by the Commonwealth of Virginia to support the Virginia Military Survivors and Dependents Education Fund and shall report to the Commissioner of the Department of Veterans Services the beneficiaries' completion rate.

The maximum amount to be expended for each such survivor or dependent pursuant to this subsection shall not exceed, when combined with any other form of scholarship, grant, or waiver, the actual costs related to the survivor's or dependent's educational expenses allowed under this subsection.

4. The Commissioner of the Department of Veterans Services shall designate a senior-level official who shall be responsible for developing and implementing the agency's strategy for disseminating information about the Military Survivors and Dependents Education Program to those spouses and dependents who may qualify. The Department of Veterans Services shall coordinate with the United States Department of Veterans Affairs to identify veterans and qualified survivors and dependents. The Commissioner of the Department of Veterans Services shall report annually to the Governor and the General Assembly as to the agency's policies and strategies relating to dissemination of information about the Program. The report shall also include the number of current beneficiaries, the educational institutions attended by beneficiaries, and the completion rate of the beneficiaries.

B. The surviving spouse and any child between the ages of 16 and 25 whose parent or whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, including as a campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.), sworn law-enforcement officer, firefighter, special forest warden pursuant to § [10.1-1135](#), member of a rescue squad, special agent of the ~~Department of Virginia~~ *Alcoholic Beverage Control Authority*, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, or deputy sheriff, member of the Virginia National Guard while serving on official state duty or federal duty under Title 32 of the United States Code, or member of the Virginia Defense Force while serving on official state duty, and any person whose spouse was killed in the line of duty while employed or serving in any of such occupations, shall be entitled to free undergraduate tuition and the payment of required fees at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia under the following conditions:

1. ~~The chief administrative officer~~ *Chief Executive Officer* of the *Virginia Alcoholic Beverage Control Board Authority*, emergency medical services agency, law-enforcement

agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer, sworn law-enforcement officer, firefighter, special forest warden pursuant to § [10.1-1135](#), or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and

2. The child or spouse shall have been offered admission to such public institution of higher education or other public accredited postsecondary institution. Any child or spouse who believes he is eligible shall apply to the public institution of higher education or other accredited postsecondary institution to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition, institutional charges and required fees, and books and supplies for the applicants shall be waived by the institution accepting the students.

C. For the purposes of subsection B, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required educational and auxiliary fees shall be waived along with tuition.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution, provided the number of foreign students does not exceed the number of students paying full tuition and required fees to the institution under the provisions of the exchange program for a given three-year period.

E. Each public institution of higher education and other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia shall include in its catalogue or equivalent publication a statement describing the benefits provided by subsections A and B.

§ [32.1-357](#). Board of Trustees; appointment; officers; quorum; executive committee; compensation and expenses.

A. The Foundation shall be governed and administered by a Board of Trustees consisting of 23 members. Two members shall be appointed by the Speaker of the House of Delegates from among the membership of the House of Delegates, one representing rural interests and one representing urban interests; two members shall be appointed by the Senate Committee on Rules, one representing rural interests and one representing urban interests, from among the membership of the Senate; two members shall be the Commissioner of the Department of Health or his designee and the Chairman of the

*Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* or his designee; and 17 nonlegislative citizen members shall be appointed by the Governor, subject to confirmation by the General Assembly, as follows: (i) five designated representatives of public health organizations, such as the American Cancer Society, American Heart Association, Virginia Pediatric Society, Virginia Academy of Family Physicians, Virginia Dental Association, American Lung Association of Virginia, Medical Society of Virginia, Virginia Association of School Nurses, Virginia Nurses Association, and the Virginia Thoracic Society; (ii) four health professionals in the fields of oncology, cardiology, pulmonary medicine, and pediatrics; and (iii) eight citizens at large, including two youths. Of the eight citizen at large members, three adults shall be appointed by the Governor from a list of six provided by members of the General Assembly appointed to the Foundation and one member who is under the age of 18 years shall be appointed by the Governor from a list of three provided by the members of the General Assembly appointed to the Foundation.

Legislative members and the Commissioner of the Department of Health and the Chairman of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* shall serve terms coincident with their terms of office. Following the initial staggering of terms, nonlegislative citizen members shall serve four-year terms. Vacancies in the membership of the Board shall be filled by appointment for the unexpired portion of the term. Vacancies shall be filled in the same manner as the original appointments. Legislative members may be reappointed for successive terms. No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the members shall enter upon the performance of their duties.

B. The Foundation shall appoint from the membership of the Board a chairman and vice-chairman, both of whom shall serve in such capacities at the pleasure of the Foundation. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The Board shall meet annually or more frequently at the call of the chairman.

The Board may establish an executive committee composed of the chairman, vice-chairman, and three additional members elected by the Board from its membership. The chairman of the Board shall serve as the chairman of the executive committee and shall preside over its meetings. In the absence of the chairman, the vice-chairman shall

preside. The executive committee may exercise the powers and transact the business of the Board in the absence of the Board or when otherwise directed or authorized by the Board. A majority of the members of the executive committee shall constitute a quorum for the transaction of business. Any actions or business conducted by the executive committee shall be acted upon by the full board as soon as practicable.

C. Legislative members shall receive such compensation as provided in § [30-19.12](#) and nonlegislative citizen members shall receive compensation as provided in § [2.2-2813](#) for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided by §§ [2.2-2813](#) and [2.2-2825](#). Such compensation and expenses shall be paid from the Fund.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the Board or his service to the Foundation.

E. Members of the Board and employees of the Foundation shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

§ [33.2-613](#). Free use of toll facilities by certain state officers and employees; penalties.

A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of the Dulles Toll Road during rush hours by the Board; however, notwithstanding the provisions of subdivision B 1 of § [56-543](#) said vehicles shall not be permitted toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988 (§ [56-535](#) et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in the Commonwealth without the payment of toll while in the performance of their official duties:

1. The Commissioner of Highways;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. Members of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*;
7. Employees of the regulatory and hearings divisions of the ~~Department of Virginia Alcoholic Beverage Control Authority~~ and special agents of the ~~Department of Virginia Alcoholic Beverage Control Authority~~;

8. The Commissioner of the Department of Motor Vehicles;
9. Employees of the Department of Motor Vehicles;
10. Local police officers;
11. Sheriffs and their deputies;
12. Regional jail officials;
13. Animal wardens;
14. The Director and officers of the Department of Game and Inland Fisheries;
15. Persons operating firefighting equipment and ambulances owned by a political subdivision of the Commonwealth or a nonprofit association or corporation;
16. Operators of school buses being used to transport pupils to or from schools;
17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;
18. Employees of the Department of Rail and Public Transportation;
19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and
20. Law-enforcement officers of the Virginia Marine Resources Commission.

B. Notwithstanding the provision of subsection A requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department of Transportation shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.

1. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner of Highways or his designee.

2. Major incidents that may require the temporary suspension of toll collection operations shall include (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic accidents, such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

3. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed

\$2,000 for any individual incident, be paid to the Department of Transportation for deposit into the toll road fund.

C. Any tollgate keeper who refuses to permit the persons listed in subsection A to use any toll bridge, toll ferry, toll tunnel, or toll road upon presentation of such a toll pass is guilty of a misdemeanor punishable by a fine of not more than \$50 and not less than \$2.50. Any person other than those listed in subsection A who exhibits any such toll pass for the purpose of using any toll bridge, toll ferry, toll tunnel, or toll road is guilty of a Class 1 misdemeanor.

D. Any vehicle operated by the holder of a valid driver's license issued by the Commonwealth or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in the Commonwealth if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;
2. The driver of the vehicle has been certified, either by a physician licensed by the Commonwealth or any other state or by the Adjudication Office of the U.S. Department of Veterans Affairs, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that substantially impair his ability to deposit coins in toll baskets;
3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and
4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in the Commonwealth. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

E. Nothing contained in this section or in § [33.2-612](#) or [33.2-1718](#) shall operate to affect the provisions of § [22.1-187](#).

F. Notwithstanding the provisions of subsections A, B, and C, only the following persons may use the Chesapeake Bay Bridge-Tunnel, facilities of the Richmond Metropolitan Transportation Authority, or facilities of an operator authorized to operate a toll facility pursuant to the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commissioner of Highways;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;

6. The Commissioner of the Department of Motor Vehicles;
7. Employees of the Department of Motor Vehicles; and
8. Sheriffs and deputy sheriffs.

G. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in Virginia controlled by the Richmond Metropolitan Transportation Authority, pursuant to the requirements of subdivisions D 1 through 4.

§ [48-17.1](#). Temporary injunctions against alcoholic beverage sales.

A. Any locality by or through its mayor, chief executive, or attorney may petition a circuit court to temporarily enjoin the sale of alcohol at any establishment licensed by the *Virginia Alcoholic Beverage Control Board Authority*. The basis for such petition shall be the operator of the establishment has allowed it to become a meeting place for persons committing serious criminal violations of the law on or immediately adjacent to the premises so frequent and serious as to be deemed a continuing threat to public safety, as represented in an affidavit by the chief law-enforcement officer of the locality, supported by records of such criminal acts. The court shall, upon the presentation of evidence at a hearing on the matter, grant a temporary injunction, without bond, enjoining the sale of alcohol at the establishment, if it appears to the satisfaction of the court that the threat to public safety complained of exists and is likely to continue if such injunction is not granted. The court hearing on the petition shall be held within 10 days of service upon the respondent. The respondent shall be served with notice of the time and place of the hearing and copies of all documentary evidence to be relied upon by the complainant at such hearing. Any injunction issued by the court shall be dissolved in the event the court later finds that the threat to public safety that is the basis of the injunction has been abated by reason of a change of ownership, management, or business operations at the establishment, or other change in circumstance.

B. The *Virginia Alcoholic Beverage Control Board Authority* shall be given notice of any hearing under this section. In the event an injunction is granted, the *Virginia Alcoholic Beverage Control Board Authority* shall initiate an investigation into the activities at the establishment complained of and conduct an administrative hearing. After the *Virginia Alcoholic Beverage Control Board Authority* hearing and when a final determination has been issued by the *Virginia Alcoholic Beverage Control Board Authority*, regardless of disposition, any injunction issued hereunder shall be null, without further action by the complainant, respondent, or the court.

§ [51.1-212](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Employee" means any (i) member of the Capitol Police Force as described in § [30-34.2:1](#), (ii) campus police officer appointed under the provisions of Chapter 17 (§ [23-232](#) et seq.) of Title 23, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ [29.1-200](#) et seq.) of Title 29.1, (iv) special agent of the ~~Department of~~ *Virginia Alcoholic Beverage Control Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of *Title 4.1*, (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § [9.1-101](#), (vi) correctional officer as the term is defined in § [53.1-1](#), and including correctional officers employed at a juvenile correction facility as the term is defined in § [66-25.3](#), (vii) any parole officer appointed pursuant to § [53.1-143](#), and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

"Member" means any person included in the membership of the Retirement System as provided in this chapter.

"Normal retirement date" means a member's sixtieth birthday.

"Retirement System" means the Virginia Law Officers' Retirement System.

§ [58.1-3](#). Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § [58.1-512](#) or [58.1-2712.2](#), or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such

inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § [58.1-1714](#), when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § [58.1-609.11](#), when requested by the General Assembly or any duly constituted committee of the General Assembly;

7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § [3.2-4201](#) and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § [3.2-4206](#) and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § [3.2-4209](#). If the manufacturer does not receive the reports pursuant to subsection C of § [3.2-4209](#), the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the

General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § [63.2-100](#); (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the *Virginia Alcoholic Beverage Control Board Authority*, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to

facilitate the location of owners and holders of unclaimed property, as defined in § [55-210.2](#); (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ [59.1-270](#) et seq.), and the Enterprise Zone Grant Program (§ [59.1-538](#) et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § [40.1-29](#); (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § [65.2-712](#); (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; and (xix) provide to the

Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § [3.2-5130](#). The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer

or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § [58.1-512](#). This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. § [58.1-3651](#). Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003.

A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization

that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;
2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* to such organization, for use on such property;
3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;
4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;
5. Whether the organization provides services for the common good of the public;
6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;
7. The revenue impact to the locality and its taxpayers of exempting the property; and
8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall

have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ [58.1-3606](#) et seq.), 3 (§ [58.1-3609](#) et seq.) or 4 (§ [58.1-3650](#) et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ [58.1-3650](#) et seq.) of this chapter may be revoked in accordance with the provisions of § [58.1-3605](#).

§ [59.1-148.3](#). Purchase of handguns of certain officers.

A. The Department of State Police, the Department of Game and Inland Fisheries, the ~~Department of~~ *Virginia Alcoholic Beverage Control Authority*, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, and any institution of higher learning named in § [23-14](#) may allow any campus police officer appointed pursuant to Chapter 17 (§ [23-232](#) et seq.) of Title 23, retiring on or after July 1, 1991, who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously issued to him by the agency or institution at a price of \$1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia Retirement System. Other weapons issued by the Department of State Police for personal duty use of an officer, may, with approval of the Superintendent, be sold to the officer subject

to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with 5 or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of \$1.

D. The governing board of any institution of higher learning named in § [23-14](#) may allow any campus police officer appointed pursuant to Chapter 17 (§ [23-232](#) et seq.) of Title 23 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of \$1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for \$1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer currently employed by the agency to purchase his service handgun, with the approval of the chief law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the agency has purchased new service handguns for its officers, and the handgun subject to the sale is no longer used by the agency or officer in the course of duty.

§ [65.2-402](#). Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the ~~Department of Virginia~~ Alcoholic Beverage Control *Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § [65.2-305](#), officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force established and maintained by the Virginia Port Authority, and (xiv) campus police officers appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 and employed by any public institution of higher education shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed ~~twelve~~ 12 years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and com-

pensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § [10.1-1135](#) and any persons who are employed by or contract with private employers primarily to perform firefighting services.

§ [65.2-402.1](#). Presumption as to death or disability from infectious disease.

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the ~~Department of~~ *Virginia Alcoholic Beverage Control Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § [65.2-305](#), officer of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#), (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority, or (xv) any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 and employed by any public institution of higher education, who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring

prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

B. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to [§ 65.2-603](#), including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to

the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

F. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

2. That the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007 are amended and reenacted as follows:

**4. That the *Virginia Alcoholic Beverage Control Board Authority* shall assist the Commissioner of Agriculture and Consumer Services in the formation and operation of the nonprofit, nonstock corporation established pursuant to § 3.1-14.01 of this act.**

3. That § [4.1-102](#) of the Code of Virginia is repealed.

4. That the provisions of this act shall become effective on July 1, 2018, except that the provisions of the thirteenth and fourteenth enactments of this act shall become effective on July 1, 2015.

5. That the Alcoholic Beverage Control Board or its successor in interest shall continue to receive IT infrastructure and security services pursuant to Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 of the Code of Virginia until July 1, 2019, unless otherwise provided for as part of the Commonwealth's disentanglement plan pursuant to the Comprehensive Infrastructure Agreement with Northrop Grumman. However, in no event shall the Alcoholic Beverage Control Authority be disentangled prior to October 1, 2018.

6. That the initial appointments of the members of the Board of Directors of the Virginia Alcoholic Beverage Control Authority shall be staggered as follows: one member for a

term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years, and one member for a term of one year.

7. That the regulations of the Alcoholic Beverage Control Board promulgated pursuant to Title 4.1 of the Code of Virginia shall be administered by the Virginia Alcoholic Beverage Control Authority and shall remain in full force and effect until altered, amended, or rescinded by the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

8. That in the event that ex officio membership on any board, commission, council, committee, or other body is affected by the provisions of this act, the Governor shall designate an appropriate successor officer, employee, or member of a board or agency established pursuant to the provisions of this act as a replacement.

9. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

10. That the Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board to the extent this act transfers powers and duties. All right, title, and interest in and to real or tangible personal property vested in the Department of Alcoholic Beverage Control or the Alcoholic Beverage Control Board to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred and taken as standing in the name of the Virginia Alcoholic Beverage Control Authority.

11. That wherever in the Code of Virginia the term "Department of Alcoholic Beverage Control" is used, it shall be deemed to mean the Virginia Alcoholic Beverage Control Authority and wherever in the Code of Virginia the term "Alcoholic Beverage Control Board" is used, it shall mean the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

12. That any accrued sick leave or annual leave of any employee of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee.

13. That the Virginia Freedom of Information Advisory Council shall include in its study of the Virginia Freedom of Information Act in accordance with House Joint Resolution No. 96 of the Acts of Assembly of 2014 a review of the provisions of § [2.2-3705.7](#) of the

Code of Virginia as amended by this act and make any recommendations it deems necessary and appropriate.

14. That by October 15 each year, the Department of Alcoholic Beverage Control or its successor shall, for the purposes of identifying the total costs of the operation and administration of the Department or its successors to be funded from the revenues generated by such entity, submit to the General Assembly a report detailing the total percentage of gross revenues required for the operation and administration of the Department, excluding expenditures made for the purchase of distilled spirits, for the prior fiscal year, and a relative comparison to the three prior fiscal years.

15. That by January 1, 2017, the Department of Alcoholic Beverage Control shall submit to the General Assembly for its review the proposed personnel and procurement policies, including such policies to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in the Virginia Alcoholic Beverage Control Authority's procurement process, that are developed for the use of the Authority in place of Department policies currently governing personnel and procurement. The submission shall detail all instances in which the proposed policies and procedures materially differ from those governing state agencies.

## **Chapter 67 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2015; created.**

An Act to authorize the issuance of bonds, in an amount up to \$67,500,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth.

[\[H 1892\]](#)

Approved March 10, 2015

*Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and*

*Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,*

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2015."*

§ 2. *Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ...." in an aggregate principal amount not exceeding \$67,500,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>Virginia Polytechnic Institute and State University</i>	<i>Construct Upper Quad Residential Facilities</i>	<i>\$67,500,000</i>

Total

\$67,500,000

*§ 3. Application of proceeds.*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters*

*as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher education named in § 2 is hereby authorized (i) to fix, revise, charge and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required*

*by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of*

*the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth, and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (b) or (c) of the Constitution of Virginia, as the case may be.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act that can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 80 Carbon monoxide emissions; certain diesel-powered incinerators exempted from certain regulations.**

An Act to exempt certain diesel-powered incinerators from certain carbon monoxide emissions regulations.

[\[S 869\]](#)

Approved March 10, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That carbon monoxide emissions from any diesel-powered incinerator that is installed prior to July 1, 2015, owned by a locality, and used exclusively for the incineration of animal carcasses collected from the public rights-of-way shall be exempt from the State Air Pollution Control Board's air permitting minor new source review regulation requiring Best Available Control Technology for carbon monoxide emissions, including the emission limitations for carbon monoxide established as Best Available Control Technology.*

2. That the provisions of this act shall expire on July 1, 2019.

## **Chapter 730 Virginia Alcoholic Beverage Control Authority; created, report, eliminates ABC Board.**

An Act to amend and reenact §§ [1-404](#), [2.2-221](#), [2.2-507](#), [2.2-509.1](#), [2.2-1119](#), [2.2-2696](#), [2.2-2818](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3705.7](#), [2.2-3711](#), [2.2-3802](#), [2.2-4024](#), [2.2-4345](#), [3.2-1010](#), [4.1-100](#), [4.1-101](#), [4.1-103](#), [4.1-103.1](#), [4.1-119](#), [4.1-121](#), [4.1-124](#), [4.1-128](#), [4.1-209.1](#), [4.1-212.1](#), [4.1-325](#), [9.1-101](#), [9.1-102](#), [9.1-400](#), [9.1-500](#), [9.1-801](#), [15.2-2288.3](#), [15.2-2288.3:1](#), [18.2-57](#), [18.2-246.6](#), [18.2-308](#), [18.2-308.03](#), [18.2-308.012](#), [18.2-371.2](#), [19.2-81](#), [19.2-386.21](#), [19.2-389](#), [22.1-206](#), [23-7.4:1](#), [32.1-357](#), [33.2-613](#), [48-17.1](#), [51.1-212](#), [58.1-](#)

[3](#), [58.1-3651](#), [59.1-148.3](#), [65.2-402](#), and [65.2-402.1](#) of the Code of Virginia; to amend and reenact the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007; to amend the Code of Virginia by adding sections numbered [4.1-101.01](#) through [4.1-101.011](#); and to repeal § [4.1-102](#) of the Code of Virginia, relating to alcoholic beverage control; Virginia Alcoholic Beverage Control Authority Act of 2015.

[\[H 1776\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ [1-404](#), [2.2-221](#), [2.2-507](#), [2.2-509.1](#), [2.2-1119](#), [2.2-2696](#), [2.2-2818](#), [2.2-2905](#), [2.2-3705.3](#), [2.2-3705.7](#), [2.2-3711](#), [2.2-3802](#), [2.2-4024](#), [2.2-4345](#), [3.2-1010](#), [4.1-100](#), [4.1-101](#), [4.1-103](#), [4.1-103.1](#), [4.1-119](#), [4.1-121](#), [4.1-124](#), [4.1-128](#), [4.1-209.1](#), [4.1-212.1](#), [4.1-325](#), [9.1-101](#), [9.1-102](#), [9.1-400](#), [9.1-500](#), [9.1-801](#), [15.2-2288.3](#), [15.2-2288.3:1](#), [18.2-57](#), [18.2-246.6](#), [18.2-308](#), [18.2-308.03](#), [18.2-308.012](#), [18.2-371.2](#), [19.2-81](#), [19.2-386.21](#), [19.2-389](#), [22.1-206](#), [23-7.4:1](#), [32.1-357](#), [33.2-613](#), [48-17.1](#), [51.1-212](#), [58.1-3](#), [58.1-3651](#), [59.1-148.3](#), [65.2-402](#), and [65.2-402.1](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [4.1-101.01](#) through [4.1-101.011](#) as follows:

§ [1-404](#). Licensing sale of mixed alcoholic beverages on lands ceded to or owned by United States.

The Virginia Alcoholic Beverage Control ~~Board~~ *Authority* may license the sale of mixed alcoholic beverages as defined in Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1 at places primarily engaged in the sale of meals on lands ceded by the Commonwealth to the United States or owned by the government of the United States or any agency thereof provided that such lands are used as ports of entry or egress to and from the United States, and provided that such lands lie within or partly within the boundaries of any county in this Commonwealth which permits the lawful dispensing of mixed alcoholic beverages. ~~The Board is hereby authorized to~~ *of Directors of the Authority may* adopt rules and regulations governing the sale of such spirits, and to fix the fees for such licenses, within the limits fixed by general law.

§ [2.2-221](#). Position established; agencies for which responsible; additional powers and duties.

A. The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies:- ~~Department of the Virginia~~ Alcoholic Beverage Control Authority, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. The Secretary shall by reason of professional background have knowledge of military affairs, law enforcement, public safety, or emergency management and preparedness issues, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Work with and through others, including federal, state, and local officials as well as the private sector, to develop a seamless, coordinated security and preparedness strategy and implementation plan.
2. Serve as the point of contact with the federal Department of Homeland Security.
3. Provide oversight, coordination, and review of all disaster, emergency management, and terrorism management plans for the state and its agencies in coordination with the Virginia Department of Emergency Management and other applicable state agencies.
4. Work with federal officials to obtain additional federal resources and coordinate policy development and information exchange.
5. Work with and through appropriate members of the Governor's Cabinet to coordinate working relationships between state agencies and take all actions necessary to ensure that available federal and state resources are directed toward safeguarding Virginia and its citizens.
6. Designate a Commonwealth Interoperability Coordinator to ensure that all communications-related preparedness federal grant requests from state agencies and localities are used to enhance interoperability. The Secretary shall ensure that the annual review and update of the statewide interoperability strategic plan is conducted as required in § [2.2-222.2](#). The Commonwealth Interoperability Coordinator shall establish an advisory group consisting of representatives of state and local government and constitutional offices, broadly distributed across the Commonwealth, who are actively engaged in activities and functions related to communications interoperability.

7. Serve as one of the Governor's representatives on regional efforts to develop a coordinated security and preparedness strategy, including the National Capital Region Senior Policy Group organized as part of the federal Urban Areas Security Initiative.
8. Serve as a direct liaison between the Governor and local governments and first responders on issues of emergency prevention, preparedness, response, and recovery.
9. Educate the public on homeland security and overall preparedness issues in coordination with applicable state agencies.
10. Serve as chairman of the Secure Commonwealth Panel.
11. Encourage homeland security volunteer efforts throughout the state.
12. Coordinate the development of an allocation formula for State Homeland Security Grant Program funds to localities and state agencies in compliance with federal grant guidance and constraints. The formula shall be, to the extent permissible under federal constraints, based on actual risk, threat, and need.
13. Work with the appropriate state agencies to ensure that regional working groups are meeting regularly and focusing on regional initiatives in training, equipment, and strategy to ensure ready access to response teams in times of emergency and facilitate testing and training exercises for emergencies and mass casualty preparedness.
14. Provide oversight and review of the Virginia Department of Emergency Management's annual statewide assessment of local and regional capabilities, including equipment, training, personnel, response times, and other factors.
15. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and fix their compensation to be payable from funds made available for that purpose.
16. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, real property, or personal property for the benefit of the Commonwealth, and receive and accept from the Commonwealth or any state, any municipality, county, or other political subdivision thereof, or any other source, aid or contributions of money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made.
17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out these requirements subject to the conditions upon which the aid, grants, or contributions are made.
18. Make grants to local governments, state and federal agencies, and private entities with any funds of the Secretary available for such purpose.

19. *Provide oversight and review of the law-enforcement operations of the Alcoholic Beverage Control Authority.*

20. Take any actions necessary or convenient to the exercise of the powers granted or reasonably implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

§ [2.2-507](#). Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents, or employees of the *Virginia* Alcoholic Beverage Control ~~Board~~ Authority;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile

Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;

5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;

6. Persons employed by the Commissioner of Motor Vehicles;

7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;

9. Conservation police officers appointed by the Department of Game and Inland Fisheries;

10. Hearing officers appointed to hear a teacher's grievance pursuant to § [22.1-311](#);

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ [9.1-151](#) et seq.) of Chapter 1 of Title 9.1;

12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;

13. Conservation officers of the Department of Conservation and Recreation; or

14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § [8.01-225](#).

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

§ [2.2-509.1](#). Powers of investigators; enforcement of certain tobacco laws.

Investigators with the Office of the Attorney General as designated by the Attorney General shall be authorized to seize cigarettes as defined in § [3.2-4200](#), which are sold, possessed, distributed, transported, imported, or otherwise held in violation of § [3.2-4207](#) or [58.1-1037](#). In addition, such investigators shall be authorized to accompany and participate with special agents of the *Virginia Alcoholic Beverage Control Board Authority* or other law-enforcement officials engaging in an enforcement action under § [3.2-4207](#) or [58.1-1037](#).

§ [2.2-1119](#). Cases in which purchasing through Division not mandatory.

A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies, and nonprofessional services through the Division shall not be mandatory in the following cases:

1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor and materials;
2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state funds;
3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be considered perishable within the meaning of this subdivision, unless so classified by the Division;
4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
5. Materials, equipment, and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include *Authority, including* office stationery and supplies, office equipment, *and* janitorial equipment and supplies ~~and~~; however, coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;
6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;
7. Printing of the records of the Supreme Court; and
8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

B. Telecommunications and information technology goods and services of every description shall be procured as provided by § [2.2-2012](#).

§ [2.2-2696](#). Substance Abuse Services Council.

A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § [37.2-100](#).

B. The Council shall consist of 29 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Operating ~~Executive~~ Officer of the ~~Department of~~ Virginia Alcoholic Beverage Control *Authority*; the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's appointments of the seven nonlegislative citizen members shall be staggered as follows: two members for a term of one year, three members for a term of two years, and two members for a term of three years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#). Funding for the cost of expenses shall be provided by the Department of Behavioral Health and Developmental Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services;
2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;
3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;
4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and
5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Behavioral Health and Developmental Services.

§ [2.2-2818](#). Health and related insurance for state employees.

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may

purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of \$50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

- a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;
  - b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and
  - c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.
2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § [32.1-137.7](#), the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary

early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide

written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

- a. The National Cancer Institute;
- b. An NCI cooperative group or an NCI center;
- c. The FDA in the form of an investigational new drug application;
- d. The federal Department of Veterans Affairs; or
- e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

Coverage under this subdivision shall apply only if:

- (1) There is no clearly superior, noninvestigational treatment alternative;
- (2) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and
- (3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

17. Include coverage for biologically based mental illness.

For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance

factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § [38.2-3407.4:2](#) be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § [38.2-3407.4:2](#), either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § [32.1-64.1](#) using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

22. Notwithstanding any provision of this section to the contrary, every plan established in accordance with this section shall comply with the provisions of § [2.2-2818.2](#).

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means:

1. American Hospital Formulary Service - Drug Information;
2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or
3. Elsevier Gold Standard's Clinical Pharmacology.

"State employee" means state employee as defined in § [51.1-124.3](#); employee as defined in § [51.1-201](#); the Governor, Lieutenant Governor and Attorney General; judge as defined in § [51.1-301](#) and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; ~~and~~ interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § [23-50.16:24](#); *and employees of the Virginia Alcoholic Beverage Control Authority as provided in § [4.1-101.05](#).*

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management that utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to be available in each planning district shall be a high deductible health plan that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan.

This subsection shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. Any self-insured group health insurance plan established by the Department of Human Resource Management that includes coverage for prescription drugs on an out-patient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescriber, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

Any plan established in accordance with this section shall be authorized to provide for the selection of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by mail, common

carrier, or delivery service. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.

I. Any plan established in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least 30 days before such reductions become effective.

K. No contract between a provider and any plan established in accordance with this section shall include provisions that require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

The Ombudsman shall:

1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.
2. Answer inquiries from covered employees by telephone and electronic mail.
3. Provide to covered employees information concerning the state health plans.
4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.
5. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in subdivision 4 and such additional information as he deems appropriate.
6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.
7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only in accordance with the federal Health Insurance Portability and Accountability

Act privacy rules. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. The plan established in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services

received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

R. The Department of Human Resource Management shall report annually, by November 30 of each year, on cost and utilization information for each of the mandated benefits set forth in subsection B, including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established pursuant to this section. The report shall be in the same detail and form as required of reports submitted pursuant to § [38.2-3419.1](#), with such additional information as is required to determine the financial impact, including the costs and benefits, of the particular mandated benefit.

§ [2.2-2905](#). Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;
12. County, city, town, and district officers, deputies, assistants, and employees;
13. The employees of the Virginia Workers' Compensation Commission;

14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;
16. Employees of the Virginia Lottery;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
18. Employees of the Virginia Commonwealth University Health System Authority;
19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
22. Officers and employees of the Virginia Port Authority;
23. Employees of the Virginia College Savings Plan;
24. Directors of state facilities operated by the Department of Behavioral Health and Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § [37.2-707](#). Such employees shall remain subject to the provisions of the State Grievance Procedure (§ [2.2-3000](#) et seq.);
25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;
26. Employees of the Virginia Indigent Defense Commission; ~~and~~

27. Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § [23-232](#); and  
28. *The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage Control Authority.*

§ [2.2-3705.3](#). Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the *Virginia Alcoholic Beverage Control Board Authority*, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ [32.1-323](#) et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ [2.2-3900](#) et seq.) or under any local ordinance adopted in accordance with the authority specified in § [2.2-524](#), or adopted pursuant to § [15.2-965](#), or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ [58.1-4014](#) through [58.1-4018](#), (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § [2.2-3010](#) with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ [2.2-3009](#) et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ [2.2-307](#) et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § [15.2-825](#); or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § [2.2-1202.1](#), and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ [36-97](#) et seq.) or the Statewide Fire Prevention Code (§ [27-94](#) et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ [9.1-138](#) et seq.), Article 4.1 (§ [9.1-150.1](#) et seq.), Article 11 (§ [9.1-185](#) et seq.), and Article 12 (§ [9.1-186](#) et seq.) of Chapter 1 of Title 9.1.

11. Records furnished to or prepared by the Board of Education pursuant to subsection D of § [22.1-253.13:3](#) in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

13. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ [3.2-4200](#) et seq.) or Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of Title 3.2, Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 or Chapter 13 (§ [18.2-512](#) et seq.) of Title 18.2, or Article 1 (§ [58.1-1000](#)) of Chapter 10 of

Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

§ [2.2-3705.7](#). Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § [58.1-3](#).
2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § [2.2-104](#).

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.
4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § [30-110](#) or of formulating advisory opinions to members on standards of conduct, or both.
7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.
8. Personal information, as defined in § [2.2-3801](#), (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § [36-4](#) or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § [15.2-2304](#) or [15.2-2305](#). However, access to one's own information shall not be denied.
9. Records regarding the siting of hazardous waste facilities, except as provided in § [10.1-1441](#), if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.
10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of a local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or of the Virginia College Savings Plan, acting pursuant to § [23-38.77](#), relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ [51.5-53](#) et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost

estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ [55-210.1](#) et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the record may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § [17.1-913](#).

25. Records of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), of a local retirement system acting pursuant to § [51.1-803](#) (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § [23-38.77](#) relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b. Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § [53.1-233](#).

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ [2.2-4600](#) et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § [2.2-4602](#).

28. Personal information, as defined in § [2.2-3801](#), contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the record.

29. Records maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § [2.2-2716](#) to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. Records created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § [17.1-100](#).

34. *Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), of any private*

*entity; (iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.*

*In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:*

*a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;*

*b. Identifying with specificity the data or other materials for which protection is sought; and*

*c. Stating the reasons why protection is necessary.*

*The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.*

§ [2.2-3711](#). Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents,

or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the

laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § [2.2-3705.1](#).

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.5](#).

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § [58.1-4007](#) regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § [2.2-3705.3](#) and subdivision 11 of § [2.2-3705.7](#).

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of

another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § [51.1-124.30](#), or of any local retirement system, acting pursuant to § [51.1-803](#), or of the Rector and Visitors of the University of Virginia, acting pursuant to § [23-76.1](#), or by the Board of the Virginia College Savings Plan, acting pursuant to § [23-38.80](#), regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § [32.1-283.1](#), and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § [32.1-283.2](#), and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § [32.1-283.3](#).

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern

Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § [2.2-3801](#), which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ [23-38.75](#) et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § [56-484.15](#), of trade secrets, as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.), submitted by CMRS providers as defined in § [56-484.12](#), related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § [2.2-4019](#) or [2.2-4020](#) during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § [2.2-3705.6](#) by a responsible public entity or an affected locality or public entity, as those terms are defined in § [33.2-1800](#), or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § [2.2-3705.6](#) by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § [2.2-3705.2](#) relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ [37.2-900](#) et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § [2.2-3705.6](#).

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ [15.2-5431.1](#) et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § [2.2-3705.6](#).

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § [24.2-625.1](#).

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ [9.1-1109](#) et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § [2.2-3706](#).

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.4](#), and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.6](#).

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § [51.1-124.30](#), by the Investment Advisory Committee appointed pursuant to § [51.1-124.26](#), by any local retirement system, acting pursuant to § [51.1-803](#), by the Board of the Virginia College Savings Plan acting pursuant to § [23-38.80](#), or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § [23-38.79:1](#) of records excluded from this chapter pursuant to subdivision 25 of § [2.2-3705.7](#).

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § [2.2-3705.6](#).

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.3](#).

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § [2.2-3705.2](#).

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § [2.2-3705.7](#).

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § [2.2-3705.6](#).

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § [2.2-3705.6](#).

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § [2.2-3705.3](#) or subdivision 34 of § [2.2-3705.7](#).

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such

resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ [15.2-4900](#) et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ [2.2-3802](#). Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ [9.1-126](#) through [9.1-137](#) or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ [9.1-900](#) et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § [9.1-913](#);
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ [16.1-222](#) through [16.1-225](#);
5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to avail-

able professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the ~~Department of~~ *Virginia Alcoholic Beverage Control Authority*;

7. Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ [23-232](#) et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § [62.1-132.4](#) or [62.1-134.1](#);

9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § [9.1-1104](#) may apply;

11. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ [2.2-307](#) et seq.);

12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § [15.2-2511.2](#);

13. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

14. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for

information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § [63.2-1515](#).

§ [2.2-4024](#). Hearing officers.

A. In all formal hearings conducted in accordance with § [2.2-4020](#), the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § [2.2-4019](#) may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the *Virginia Alcoholic Beverage Control Board Authority*, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ [46.2-100](#) et seq.), § 58.1-2409, or Chapter 27 (§ [58.1-2700](#) et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ [46.2-1500](#) et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § [54.1-2400](#), including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ [65.2-201](#) and [65.2-203](#) by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § [2.2-4002](#), this article shall apply to hearing officers conducting hearings of the kind described in § [2.2-4020](#) for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

§ [2.2-4345](#). Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § [32.1-325](#), provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.
2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ [32.1-276.2](#) et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.
3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ [30-146](#) and [30-148](#), to publish the Code of Virginia or the Virginia Administrative Code.
4. The Department of *Virginia Alcoholic Beverage Control Authority* for the purchase of alcoholic beverages.
5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.
6. The Department of Health for (a) child restraint devices, pursuant to § [46.2-1097](#); (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with

laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ [15.2-5800](#) et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ [15.2-5300](#) et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ [15.2-5200](#) et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with

similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § [63.2-100](#), community services boards as defined in § [37.2-100](#), or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ [2.2-5200](#) et seq.) or the Virginia Juvenile Community Crime Control Act (§ [16.1-309.2](#) et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § [2.2-4303](#).

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § [2.2-4303](#). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ [3.2-1010](#). Enforcement of chapter; summons.

Any conservation police officer or law-enforcement officer as defined in § [9.1-101](#), excluding certain *members of the Virginia Alcoholic Beverage Control Board members Authority*, may enforce the provisions of this chapter and the regulations adopted hereunder as well as those who are so designated by the Commissioner. Those designated by the Commissioner may issue a summons to any person who violates any provision of this chapter to appear at a time and place to be specified in such summons.

§ [4.1-100](#). Definitions.

As used in this title unless the context requires a different meaning:

"Alcohol" means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol

completely denatured in accordance with formulas approved by the government of the United States.

"Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

"Alcoholic beverages" includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

"Arts venue" means a commercial or nonprofit establishment that is open to the public and in which works of art are sold or displayed.

*"Authority" means the Virginia Alcoholic Beverage Control Authority created pursuant to this title.*

"Barrel" means any container or vessel having a capacity of more than 43 ounces.

"Bed and breakfast establishment" means any establishment (i) having no more than 15 bedrooms; (ii) offering to the public, for compensation, transitory lodging or sleeping accommodations; and (iii) offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

"Beer" means any alcoholic beverage obtained by the fermentation of an infusion or decoction of barley, malt, and hops or of any similar products in drinkable water and containing one-half of one percent or more of alcohol by volume.

"Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

"Bottle" means any vessel intended to contain liquids and having a capacity of not more than 43 ounces.

"Canal boat operator" means any nonprofit organization that operates tourism-oriented canal boats for recreational purposes on waterways declared nonnavigable by the United States Congress pursuant to 33 U.S.C. § 59ii.

"Club" means any private nonprofit corporation or association which is the owner, lessee, or occupant of an establishment operated solely for a national, social, patriotic, political, athletic, or other like purpose, but not for pecuniary gain, the advantages of which belong to all of the members. It also means the establishment so operated. A corporation or association shall not lose its status as a club because of the conduct of charitable gaming conducted pursuant to Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2 in which nonmembers participate frequently or in large numbers, provided that no alcoholic beverages are served or consumed in the room where such charitable gaming is being conducted while such gaming is being conducted and that no alcoholic beverages are made available upon the premises to any person who is neither a member nor a bona fide guest of a member.

Any such corporation or association which has been declared exempt from federal and state income taxes as one which is not organized and operated for pecuniary gain or profit shall be deemed a nonprofit corporation or association.

"Container" means any barrel, bottle, carton, keg, vessel or other receptacle used for holding alcoholic beverages.

"Contract winemaking facility" means the premises of a licensed winery or farm winery that obtains grapes, fruits, and other agricultural products from a person holding a farm winery license and crushes, processes, ferments, bottles, or provides any combination of such services pursuant to an agreement with the farm winery licensee. For all purposes of this title, wine produced by a contract winemaking facility for a farm winery shall be considered to be wine owned and produced by the farm winery that supplied the grapes, fruits, or other agricultural products used in the production of the wine. The contract winemaking facility shall have no right to sell the wine so produced, unless the terms of payment have not been fulfilled in accordance with the contract. The contract winemaking facility may charge the farm winery for its services.

"Convenience grocery store" means an establishment which (i) has an enclosed room in a permanent structure where stock is displayed and offered for sale and (ii) maintains an inventory of edible items intended for human consumption consisting of a variety of such items of the types normally sold in grocery stores.

"Day spa" means any commercial establishment that offers to the public both massage therapy, performed by persons certified in accordance with § [54.1-3029](#), and barbering

or cosmetology services performed by persons licensed in accordance with Chapter 7 (§ [54.1-700](#) et seq.) of Title 54.1.

"Designated area" means a room or area approved by the Board for on-premises licensees.

"Dining area" means a public room or area in which meals are regularly served.

"Establishment" means any place where alcoholic beverages of one or more varieties are lawfully manufactured, sold, or used.

"Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume or (ii) located in the Commonwealth with a producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume. As used in this definition, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth.

"Gift shop" means any bona fide retail store selling, predominantly, gifts, books, souvenirs, specialty items relating to history, original and handmade arts and products, collectibles, crafts, and floral arrangements, which is open to the public on a regular basis. Such shop shall be a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer. Such shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum. The Board shall consider the purpose, characteristics, nature, and operation of the shop in determining whether it shall be considered a gift shop.

"Gourmet brewing shop" means an establishment which sells to persons to whom wine or beer may lawfully be sold, ingredients for making wine or brewing beer, including packaging, and rents to such persons facilities for manufacturing, fermenting and bottling such wine or beer.

"Gourmet shop" means an establishment provided with adequate inventory, shelving, and storage facilities, where, in consideration of payment, substantial amounts of

domestic and imported wines and beers of various types and sizes and related products such as cheeses and gourmet foods are habitually furnished to persons.

"Government store" means a store established by the ~~Board~~ *Authority* for the sale of alcoholic beverages.

"Hotel" means any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to persons, and which has four or more bedrooms. It shall also mean the person who operates such hotel.

"Interdicted person" means a person to whom the sale of alcoholic beverages is prohibited by order pursuant to this title.

"Internet wine retailer" means a person who owns or operates an establishment with adequate inventory, shelving, and storage facilities, where, in consideration of payment, internet or telephone orders are taken and shipped directly to consumers and which establishment is not a retail store open to the public.

"Intoxicated" means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.

"Licensed" means the holding of a valid license ~~issued~~ *granted* by the ~~Board~~ *Authority*.

"Licensee" means any person to whom a license has been granted by the ~~Board~~ *Authority*.

"Liqueur" means any of a class of highly flavored alcoholic beverages that do not exceed an alcohol content of 25 percent by volume.

"Low alcohol beverage cooler" means a drink containing one-half of one percent or more of alcohol by volume, but not more than seven and one-half percent alcohol by volume, and consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials; it may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives or other similar products manufactured by fermenting fruit or fruit juices. Low alcohol beverage coolers shall be treated as wine for all purposes of this title; except that low alcohol beverage coolers shall not be sold in localities that have not approved the sale of mixed beverages pursuant to § [4.1-124](#). In addition, low alcohol beverage coolers shall not be sold for on-premises consumption other than by mixed beverage licensees.

"Meal-assembly kitchen" means any commercial establishment that offers its customers, for off-premises consumption, ingredients for the preparation of meals and entrees in professional kitchen facilities located at the establishment.

"Meals" means, for a mixed beverage license, an assortment of foods commonly ordered in bona fide, full-service restaurants as principal meals of the day. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

"Member of a club" means (i) a person who maintains his membership in the club by the payment of monthly, quarterly, or annual dues in the manner established by the rules and regulations thereof or (ii) a person who is a member of a bona fide auxiliary, local chapter, or squadron composed of direct lineal descendants of a bona fide member, whether alive or deceased, of a national or international organization to which an individual lodge holding a club license is an authorized member in the same locality. It shall also mean a lifetime member whose financial contribution is not less than 10 times the annual dues of resident members of the club, the full amount of such contribution being paid in advance in a lump sum.

"Mixed beverage" or "mixed alcoholic beverage" means a drink composed in whole or in part of spirits.

"Mixer" means any prepackaged ingredients containing beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives which are not commonly consumed unless combined with alcoholic beverages, whether or not such ingredients contain alcohol. Such specialty beverage product shall be manufactured or distributed by a Virginia corporation.

"Place or premises" means the real estate, together with any buildings or other improvements thereon, designated in the application for a license as the place at which the manufacture, bottling, distribution, use or sale of alcoholic beverages shall be performed, except that portion of any such building or other improvement actually and exclusively used as a private residence.

*"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members beneficially owns or controls, directly or indirectly, five percent or more of the equity ownership of any person that is a licensee of the Authority, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of five percent or more of any such equity ownership. "Principal stockholder" does not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, that holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Authority.*

"Public place" means any place, building, or conveyance to which the public has, or is permitted to have, access, including restaurants, soda fountains, hotel dining areas, lobbies and corridors of hotels, and any park, place of public resort or amusement, highway, street, lane, or sidewalk adjoining any highway, street, or lane.

The term shall not include (i) hotel or restaurant dining areas or ballrooms while in use for private meetings or private parties limited in attendance to members and guests of a particular group, association or organization; (ii) restaurants licensed by the ~~Board Authority~~ in office buildings or industrial or similar facilities while such restaurant is closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; (iii) offices, office buildings or industrial facilities while closed to the public and in use for private meetings or parties limited in attendance to employees and nonpaying guests of the owner or a lessee of all or part of such building or facility; or (iv) private recreational or chartered boats which are not licensed by the Board and on which alcoholic beverages are not sold.

"Residence" means any building or part of a building or structure where a person resides, but does not include any part of a building which is not actually and exclusively used as a private residence, nor any part of a hotel or club other than a private guest room thereof.

"Resort complex" means a facility (i) with a hotel owning year-round sports and recreational facilities located contiguously on the same property or (ii) owned by a nonstock, nonprofit, taxable corporation with voluntary membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public. The hotel or corporation shall have a minimum of 140 private guest rooms or dwelling units contained on not less than 50 acres. The ~~Board Authority~~ may consider the purpose, characteristics, and operation of the applicant establishment in determining whether it shall be considered as a resort complex. All other pertinent qualifications established by the Board for a hotel operation shall be observed by such licensee.

"Restaurant" means, for a beer, or wine and beer license or a limited mixed beverage restaurant license, any establishment provided with special space and accommodation, where, in consideration of payment, meals or other foods prepared on the premises are regularly sold.

"Restaurant" means, for a mixed beverage license other than a limited mixed beverage restaurant license, an established place of business (i) where meals with substantial entrees are regularly sold and (ii) which has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises, and includes establishments specializing in full course meals with a single substantial entree.

"Sale" and "sell" includes soliciting or receiving an order for; keeping, offering or exposing for sale; peddling, exchanging or bartering; or delivering otherwise than gratuitously, by any means, alcoholic beverages.

"Sangria" means a drink consisting of red or white wine mixed with some combination of sweeteners, fruit, fruit juice, soda, or soda water that may also be mixed with brandy, triple sec, or other similar spirits.

"Special agent" means an employee of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority* whom the Board has designated as a law-enforcement officer pursuant to § [4.1-105](#).

"Special event" means an event sponsored by a duly organized nonprofit corporation or association and conducted for an athletic, charitable, civic, educational, political, or religious purpose.

"Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances, in solution, and includes, among other things, brandy, rum, whiskey, and gin, or any one or more of the last four named ingredients; but shall not include any such liquors completely denatured in accordance with formulas approved by the United States government.

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of 21 percent by volume.

"Wine cooler" means a drink containing one-half of one percent or more of alcohol by volume, and not more than three and two-tenths percent of alcohol by weight or four percent by volume consisting of wine mixed with nonalcoholic beverages or flavoring or coloring materials, and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives and shall include other similar products manufactured by fermenting fruit or fruit juices. Wine coolers and similar fermented fruit juice beverages shall be treated as wine for all purposes except for taxation under § [4.1-236](#).

"With or without meals" means the selling and serving of alcoholic beverages by retail licensees for on-premises consumption whether or not accompanied by food so long as the total food-beverage ratio required by § [4.1-210](#), or the monthly food sale requirement established by Board regulation, is met by such retail licensee.

§ [4.1-101](#). Virginia Alcoholic Beverage Control Authority created; public purpose.

*A. The General Assembly has determined that there exists in the Commonwealth a need to control the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth. Further, the General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. To achieve this objective, there is hereby created an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, or judicial branches of state government, to be known as the Virginia Alcoholic Beverage Control Authority. The Authority's exercise of powers and duties conferred by this title shall be deemed the performance of an essential governmental function and a matter of public necessity for which public moneys may be spent. The Board of Directors of the Authority is vested with control of the possession, sale, transportation, distribution, and delivery of alcoholic beverages in the Commonwealth, with plenary power to prescribe and enforce regulations and conditions under which alcoholic beverages are possessed, sold, transported, distributed, and delivered, so as to prevent any corrupt, incompetent, dishonest, or unprincipled practices and to promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth. The exercise of the powers granted by this title shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their safety, health, welfare, and convenience. No part of the assets or net earnings of the Authority shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for the Authority affecting one or more of its purposes, and benefits may be conferred that are in conformity with said purposes, and no private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Authority.*

*B. ~~The Department of Virginia Alcoholic Beverage Control is created and~~ Authority shall consist of the Virginia Alcoholic Beverage Control Board of Directors, the Chief Executive Officer, and the agents and employees of the Authority. The Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board.*

*C. Nothing contained in this title shall be construed as a restriction or limitation upon any powers that the Board of Directors of the Authority might otherwise have under any other law of the Commonwealth.*

*§ [4.1-101.01](#). Board of Directors; membership; terms; compensation.*

*A. The Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#).*

*B. After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

*C. The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.*

*D. The Board shall meet at least every 60 days for the transaction of its business. Special meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.*

*E. Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth in the general appropriation act for members of the House of Delegates when the General Assembly is not in session, except that the chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of his*

*official duties as set forth in the general appropriation act for a member of the Senate of Virginia when the General Assembly is not in session.*

*F. The provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.*

*§ [4.1-101.02](#). Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer.*

*A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree in business or a related field of study; and shall possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive such compensation as determined by the Board and approved by the Governor, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § [4.1-101.03](#). The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved by the Governor. The Chief Executive Officer may be removed from office by the Governor for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board and approved by the Governor, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

*B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.*

*C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.*

*D. The Chief Executive Officer shall:*

- 1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;*
- 2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;*

3. *Appoint a chief financial officer and employ or retain such agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and*

4. *Make recommendations to the Board for legislative and regulatory changes.*

E. *Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.*

F. *To assist the Chief Executive Officer in the performance of his duties, the Governor shall also appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.*

§ [4.1-101.03](#). *Background investigations of Board members and Chief Executive Officer.*

*All members of the Board and the Chief Executive Officer shall be fingerprinted before, and as a condition of, appointment. These fingerprints shall be submitted to the Federal Bureau of Investigation for a national criminal history records search and to the Department of State Police for a Virginia criminal history records search. The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section. No person shall be appointed to the Board or appointed by the Board who (i) has defrauded or attempted to defraud any federal, state, or local government or governmental agency or authority by making or filing any report, document, or tax return required by statute or regulation that is fraudulent or contains a false representation of a material fact; (ii) has willfully deceived or attempted to deceive any federal, state, or local government or governmental agency or governmental authority by making or maintaining business records required by statute or regulation that are false and fraudulent; or (iii) has been convicted of (a) a felony or a crime involving moral turpitude or (b) a violation of any law applicable to the manufacture, transportation, possession, use, or sale of alcoholic beverages within the five years immediately preceding appointment.*

§ [4.1-101.04](#). *Financial interests of Board, employees, and family members prohibited.*

*No Board member or employee of the Authority shall (i) be a principal stockholder or (ii) otherwise have any financial interest, direct or indirect, in any licensee subject to the provisions of this title or in any entity that has submitted an application for a license under Chapter 2 (§ [4.1-200](#) et seq.). No Board member and no spouse or immediate family member of a Board member shall make any contribution to a candidate for office or*

*officeholder at the local or state level or cause such a contribution to be made on his behalf.*

*§ [4.1-101.05](#). Employees of the Authority.*

*A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.*

*B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to employees of the former Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the former Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the former Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.*

*C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.*

*D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.*

*§ [4.1-101.06](#). Moneys of Authority.*

*All moneys of the Authority, from whatever source derived, shall be paid in accordance with § [4.1-116](#).*

*§ [4.1-101.07](#). Forms of accounts and records; audit; annual report.*

*The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.*

*§ [4.1-101.08](#). Leases of property.*

*The Authority shall be exempt from the provisions of § [2.2-1149](#) and from any rules, regulations, and guidelines of the Division of Engineering and Buildings in relation to leases of real property into which it enters.*

*§ [4.1-101.09](#). Exemptions from taxes or assessments.*

*The exercise of the powers granted by this title shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this title or upon the income therefrom, including sales and use taxes on the tangible personal*

*property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.*

*§ [4.1-101.010](#). Exemption of Authority from personnel and procurement procedures; information systems.*

*The provisions of the Virginia Personnel Act (§ [2.2-2900](#) et seq.) and the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 apply to the Authority in the exercise of any power conferred under this title.*

*§ [4.1-101.011](#). Reversion to the Commonwealth.*

*In the event of the dissolution of the Authority, all assets of the Authority, after satisfaction of creditors, shall revert to the Commonwealth.*

*§ [4.1-103](#). General powers of Board.*

The Board shall have the power to:

- 1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;*
- 2. Adopt, use, and alter at will a common seal;*
- 3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;*
- 4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;*
- 5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ [2.2-500](#) et seq.) of Title 2.2;*
- 6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and*

*applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;*

*7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed;*

*8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;*

*9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;*

*10. Develop policies and procedures consistent with Article 4 (§ [2.2-4347](#) et seq.) of Chapter 43 of Title 2.2;*

*11. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;*

~~2-~~ *12. Buy and sell any mixers;*

~~3-~~ *13. Control the possession, sale, transportation and delivery of alcoholic beverages;*

~~4-~~ *14. Determine, subject to § [4.1-121](#), the localities within which government stores shall be established or operated and the location of such stores;*

~~5-~~ *15. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;*

~~6-Lease-~~ *16. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;*

- ~~7-~~ 17. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;
- ~~8-~~ 18. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;
- ~~9-~~ 19. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon;
- ~~10-~~ 20. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;
- ~~11-~~ 21. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder. The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and make summary decisions, subject to final decision by the Board, on application of any party aggrieved;
- ~~12-~~ 22. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;
- ~~13-~~ 23. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and § [4.1-111](#) of this chapter;
- ~~14-~~ 24. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;
- ~~15-~~ 25. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;
- ~~16-~~ 26. Maintain actions to enjoin common nuisances as defined in § [4.1-317](#);
- ~~17-~~ 27. Establish minimum food sale requirements for all retail licensees; and
28. *Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate;*

*29. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement activities undertaken to enforce the provisions of this title; and*

~~18-~~30. Do all acts necessary or advisable to carry out the purposes of this title.

§ [4.1-103.1](#). Criminal history records check required on certain employees; reimbursement of costs.

~~On or after July 1, 1994, all~~ All persons hired by the ~~Board~~ Authority whose job duties involve access to or handling of ~~departmental~~ the Authority's funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment. *No person who has been convicted of a felony or a crime involving moral turpitude shall be employed or appointed by the Authority.*

The Department of State Police shall be reimbursed by the ~~Board~~ Authority for the cost of investigations conducted pursuant to this section.

§ [4.1-119](#). Operation of government stores.

A. Subject to the requirements of §§ [4.1-121](#) and [4.1-122](#), the Board may establish, maintain and operate government stores for the sale of alcoholic beverages, other than beer and wine not produced by farm wineries, vermouth, mixers, and products used in connection with distilled spirits, including any garnish or garnishment applied to the rim of a glass of distilled spirits, as may be approved by the Board from time to time, in such counties, cities, and towns considered advisable by the Board. The Board may discontinue any such store.

B. With respect to the sale of wine produced by farm wineries, the Board may give preference to farm wineries that produce 2,500 cases or less of wine per year.

C. The Board shall fix the wholesale and retail prices at which the various classes, varieties and brands of alcoholic beverages and other Board-approved products that are sold in government stores. Differences in the cost of operating stores, and market competition and conditions may be reflected in the sale price of alcoholic beverages sold at government stores. The Board may sell alcoholic beverages to federal instrumentalities (i) authorized and operating under the laws of the United States and regulations of the United States Department of Defense and (ii) located within the boundaries of federal enclaves or reservations over which the United States has acquired jurisdiction, at prices which may be greater or less than the wholesale price charged other authorized purchasers. *Nothing in this subsection shall be construed to limit the authority of the Board to fix the retail price of alcoholic beverages sold at government stores, which retail price may include promotional, volume, or other discounts deemed appropriate by the Board.*

D. Alcoholic beverages at government stores shall be sold by employees of the ~~Board Authority~~ who shall carry out the provisions of this title and Board regulations governing the operation of government stores and the sale of alcoholic beverages, except that the Board may appoint the holder of a distiller's license or its officers and employees as agents of the Board for the sale of spirits, manufactured by or for, or blended by such licensee on the licensed premises, at government stores established by the Board on the distiller's licensed premises, provided:

1. At least 51 percent of the agricultural products used by such licensee to manufacture the spirits are grown on the licensee's farm or land in Virginia leased by the licensee and no more than 25 percent of the agricultural products are grown or produced outside the Commonwealth. However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use of a lesser percentage of products grown on the licensee's farm if unusually severe weather or disease conditions cause a significant reduction in the availability of agricultural products grown on the farm to manufacture the spirits during a given license year;
2. Such licensee is a duly organized nonprofit association holding title to real property, together with improvements thereon that are significant in American history, under a charter from the Commonwealth to preserve such property, and which association accepts no federal, state, or local funds;
3. Such licensee operates a museum whose licensed premises is located on the grounds of a local historic building or site;
4. Such licensee is an independently certified organic distillery, with such certification by a USDA-accredited certification agency;
5. Such licensee is employing traditional distilling techniques, including the use of copper or stainless steel pot stills to blend or produce spirits in any county with a population of less than 20,000; or
6. Such licensee is employing traditional techniques, including the maceration of natural fruits, nuts, grains, beans, and spices in neutral grain spirits to extract natural flavors used to produce or blend liqueurs and spirits.

Such agents shall sell the spirits in accordance with the provisions of this title, Board regulations, and the terms of the agency agreement between the ~~Board Authority~~ and the licensed distiller.

For the purposes of this subsection, "blended" means the receipt by a licensed distiller of deliveries and shipments of alcoholic beverages, other than wine and beer, in accordance with subdivision 6 § [4.1-201](#) to be (i) additionally aged by the receiving distillery in

order to increase the quality and flavor of such alcoholic beverages and (ii) bottled by the receiving distillery.

E. No Class 1 neutral grain spirit or alcohol, as defined by federal regulations, that is without distinctive character, aroma, taste or color shall be sold in government stores at a proof greater than 101 except upon permits issued by the Board for industrial, commercial, culinary, or medical use.

F. All alcoholic beverages sold in government stores, except for tasting samples pursuant to subsection G sold in government stores established by the Board on a distiller's licensed premises, shall be in closed containers, sealed and affixed with labels prescribed by the Board.

G. No alcoholic beverages shall be consumed in a government store by any person unless it is part of an organized tasting event conducted by (i) an employee of a manufacturer of distilled spirits or farm winery or (ii) an authorized representative of a manufacturer of distilled spirits or farm winery with a permit issued by the Board pursuant to subdivision A 15 of § [4.1-212](#), and the samples of alcoholic beverages provided to any consumer do not exceed the limits for spirits or wine set forth in subdivision A 5 of § [4.1-201.1](#). No sample may be consumed by any individual to whom alcoholic beverages may not lawfully be sold pursuant to § [4.1-304](#). The Board shall establish guidelines governing tasting events conducted pursuant to this subsection.

H. With respect to purchases by licensees at government stores, the ~~Board~~ *Authority* shall (i) accept in payment for any purchase or series of purchases cash, electronic fund transfer, credit or debit card, or check payable to the ~~Board~~ *Authority*, in the exact amount of any such purchase or series of purchases and (ii) provide notice to licensees on Board policies relating to the assignment of government stores from which licensees may purchase products and any procedure for the licensee to elect to make purchases from an alternative government store.

I. With respect to purchases by consumers at government stores, the ~~Board~~ *Authority* shall accept cash in payment for any purchase or series of purchases. The Board may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties and service charges for the use of a credit card or debit card by any consumer.

*J. Before the Authority implements any increase in the markup on distilled spirits or any change to the markup formula for distilled spirits pursuant to § [4.1-235](#) that would result in an increase in the retail price of distilled spirits sold to the public, the Authority shall (i) provide at least 45 days' public notice before such a price increase takes effect; (ii) provide the opportunity for submission of written comments regarding the proposed price*

*increase; (iii) conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and (iv) consider any written or verbal comments before implementing such a price increase.*

§ [4.1-121](#). Referendum on establishment of government stores.

A. The qualified voters of any county, city, or town having a population of 1,000 or more may file a petition with the circuit court of the county or city, or of the county wherein the town or the greater part thereof is situated, asking that a referendum be held on the question of whether the sale by the ~~Board of~~ *Virginia Alcoholic Beverages Beverage Control Authority*, other than beer and wine not produced by farm wineries, should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least ~~ten~~ 10 percent of the number registered in the jurisdiction on January 1 preceding its filing or by at least 100 qualified voters, whichever is greater. Upon the filing of a petition, the court shall order the election officials of the county, city, or town, on the date fixed in the order, to conduct a referendum on the question. The clerk of the circuit court shall publish notice of the referendum in a newspaper of general circulation in the county, city, or town once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale by the *Virginia Alcoholic Beverage Control Board Authority* of alcoholic beverages, other than beer and wine not produced by farm wineries, be permitted in ..... (name of county, city, or town)?"

The referendum shall be ordered and held and the results certified as provided in § [24.2-684](#). Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the county, city, or town.

B. Once a referendum has been held, no other referendum on the same question shall be held in the county, city, or town within four years of the date of the prior referendum. However, a town shall not be prescribed from holding a referendum within such period although an election has been held in the county in which the town or a part thereof is located less than four years prior thereto.

§ [4.1-124](#). Referendum on the sale of mixed beverages.

A. The provisions of this title relating to the sale of mixed beverages shall not become effective in any town, county, or supervisor's election district of a county until a majority of the voters voting in a referendum vote affirmatively on the question of whether mixed alcoholic beverages should be sold by restaurants licensed under this title. The qualified voters of a town, county, or supervisor's election district of a county may file a petition with the circuit court of the county asking that a referendum be held on the question of

whether the sale of mixed beverages by restaurants licensed by the Board should be permitted within that jurisdiction. The petition shall be signed by qualified voters equal in number to at least 10 percent of the number registered in the town, county, or supervisor's election district on January 1 preceding its filing or at least 100 qualified voters, whichever is greater.

Petition requirements for any county shall be based on the number of registered voters in the county, including the number of registered voters in any town having a population in excess of 1,000 located within such county. Upon the filing of a petition, and under no other circumstances, the court shall order the election officials of the county to conduct a referendum on the question.

The clerk of the circuit court of the county shall publish notice of the referendum in a newspaper of general circulation in the town, county, or supervisor's election district once a week for three consecutive weeks prior to the referendum.

The question on the ballot shall be:

"Shall the sale of mixed alcoholic beverages by restaurants licensed by the *Virginia* Alcoholic Beverage Control-~~Board~~ *Authority* be permitted in ..... (name of town, county, or supervisor's election district of county)?"

The referendum shall be ordered and held and the results certified as provided in Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2. Thereupon the court shall enter of record an order certified by the clerk of the court to be transmitted to the Board and to the governing body of the town or county. Mixed beverages permitted to be sold by such referendum may in accordance with this title be sold by restaurants licensed by the Board within the town, county, or supervisor's election district of a county on or after 30 days following the entry of the order if a majority of the voters voting in the referendum have voted "Yes."

The provisions of this section shall be applicable to towns having a population in excess of 1,000 to the same extent and subject to the same conditions and limitations as are otherwise applicable to counties under this section. Such towns shall be treated as separate local option units, and only residents of any such town shall be eligible to vote in any referendum held pursuant to this section for any such town. Residents of towns having a population in excess of 1,000, however, shall also be eligible to vote in any referendum held pursuant to this section for any county in which the town is located.

The provisions of this section shall not require any town created as a result of a city-to-town reversion pursuant to Chapter 41 (§ [15.2-4100](#) et seq.) of Title 15.2 to hold a referendum on the same question if a majority of the voters voting in the former city had pre-

viously approved the sale of mixed beverages by restaurants licensed by the Board in such city.

B. Once a referendum has been held, no other referendum on the same question shall be held in the town, county, or supervisor's election district of a county for a period of 23 months.

C. Notwithstanding the provisions of subsection A, the sale of mixed beverages shall be allowed on property dedicated for industrial or commercial development and controlled through the provision of public utilities and covenanting of the land by any multijurisdictional industrial development authority, as set forth under Chapter 49 (§ [15.2-4900](#) et seq.) of Title 15.2, provided that (i) such authority operates under a partnership agreement between three or more counties, cities, or towns and such jurisdictions participate administratively and financially in the authority and (ii) the sale of mixed beverages is permitted in one of the member counties, cities, towns, or a supervisor's election district of one of the counties and that the governing board of the authority authorizes an establishment located within the confines of such property to apply to the Board for such license. The appropriate license fees shall be paid for this privilege.

D. Notwithstanding the provisions of subsection A of this section and subsection C of § [4.1-122](#), the sale of mixed beverages by licensees, and the sale of alcoholic beverages other than beer and wine not produced by farm wineries by the Board, shall be allowed in any city in the Commonwealth.

E. Notwithstanding the provisions of subsection A, the Board may grant a mixed beverage restaurant license to a restaurant located on the premises of and operated by a private club exclusively for its members and their guests, subject to the qualifications and restrictions on the issuance of such license imposed by § [4.1-210](#). However, no license authorized by this subsection shall be granted if the private club restricts its membership on the basis of race, color, creed, national origin or sex.

§ [4.1-128](#). Local ordinances or resolutions regulating or taxing alcoholic beverages.

A. No county, city, or town shall, except as provided in § [4.1-205](#) or ~~§~~ [4.1-129](#), adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the ~~Alcoholic Beverage Control~~ Board, and federal law at a licensed farm winery.

No provision of law, general or special, shall be construed to authorize any county, city or town to adopt any ordinance or resolution that imposes a sales or excise tax on alcoholic beverages, other than the taxes authorized by ~~§§~~ [§58.1-605](#), [58.1-3833](#) or [§58.1-3840](#). The foregoing limitation shall not affect the authority of any county, city or town to impose a license or privilege tax or fee on a business engaged in whole or in part in the sale of alcoholic beverages if the license or privilege tax or fee (i) is based on an annual or per event flat fee specifically authorized by general law or (ii) is an annual license or privilege tax specifically authorized by general law, which includes alcoholic beverages in its taxable measure and treats alcoholic beverages the same as if they were non-alcoholic beverages.

B. However, the governing body of any county, city, or town may adopt an ordinance which (i) prohibits the acts described in subsection A of [§ 4.1-308](#) subject to the provisions of subsection B of [§ 4.1-308](#), or the acts described in [§ 4.1-309](#) and may provide a penalty for violation thereof and (ii) subject to subsection C of [§ 4.1-308](#), regulates or prohibits the possession of opened alcoholic beverage containers in its local public parks, playgrounds, public streets, and any sidewalk adjoining any public street.

C. Except as provided in this section, all local acts, including charter provisions and ordinances of cities and towns, inconsistent with any of the provisions of this title, are repealed to the extent of such inconsistency.

[§ 4.1-209.1](#). Direct shipment of wine and beer; shipper's license.

A. Holders of wine shippers' licenses and beer shippers' licenses issued pursuant to this section may sell and ship not more than two cases of wine per month nor more than two cases of beer per month to any person in Virginia to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale. A case of wine shall mean any combination of packages containing not more than nine liters of wine. A case of beer shall mean any combination of packages containing not more than 288 ounces of beer. Any winery or farm winery located within or outside the Commonwealth may apply to the Board for issuance of a wine shipper's license that shall authorize the shipment of brands of wine and farm wine identified in such application. Any brewery located within or outside the Commonwealth may apply to the Board for issuance of a beer shipper's license that shall authorize the shipment of brands of beer identified in such application. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail in their state of domicile and who is not a winery, farm winery, or brewery may nevertheless apply for a wine or beer shipper's license, or both, if such person satisfies the requirements of this section.

Any brewery, winery, or farm winery that applies for a shipper's license or authorizes any other person, other than a retail off-premises licensee, to apply for a license to ship such brewery's, winery's or farm winery's brands of wine or beer shall notify any wholesale licensees that have been authorized to distribute such brands that an application has been filed for a shipper's license. The notice shall be in writing and in a form prescribed by the Board. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section, including regulations that permit the holder of a shipper's license to amend the same by, among other things, adding or deleting any brands of wine, farm wine, or beer identified in such shipper's license.

B. Any applicant for a wine or beer shipper's license that does not own or have the right to control the distribution of the brands of wine, farm wine, or beer identified in such person's application may be issued a shipper's license for wine or beer or both, if the applicant has obtained and filed with its application for a shipper's license, and with any subsequent application for renewal thereof, the written consent of either (i) the winery, farm winery, or brewery whose brands of wine, farm wine, or beer are identified therein or (ii) any wholesale distributor authorized to distribute the wine or beer produced by the winery, farm winery or brewery. Any winery, farm winery, or brewery, or its wholesale distributor, that has provided written authorization to a shipper licensed pursuant to this section to sell and ship its brand or brands of wine, farm wine, or beer shall not be restricted by any provision of this section from withdrawing such authorization at any time. If such authorization is withdrawn, the winery, farm winery, or brewery shall promptly notify such shipper licensee and the Board in writing of its decision to withdraw from such shipper licensee the authority to sell and ship any of its brands, whereupon such shipper licensee shall promptly file with the Board an amendment to its license eliminating any such withdrawn brand or brands from the shipper's license.

C. The direct shipment of beer and wine by holders of licenses issued pursuant to this section shall be by approved common carrier only. The Board shall develop regulations pursuant to which common carriers may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board; and (iii) the Board-approved common carrier to submit to the Board such information as the Board may prescribe. The Board-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a

conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the shipper licensee shall be liable only for their independent acts.

D. For purposes of §§ [4.1-234](#) and [4.1-236](#) and Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1, each shipment of wine or beer by a wine shipper licensee or a beer shipper licensee shall constitute a sale in Virginia. The licensee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the ~~Department of Alcoholic Beverage Control~~ *Authority* and any sales taxes to the Department of Taxation.

E. Notwithstanding the provisions of § [4.1-203](#), the holder of a wine shipper license or beer shipper license may solicit and receive applications for subscription to a wine-of-the-month or beer-of-the-month club at in-state or out-of-state locations for which a license for on-premises consumption has been issued, other than the place where the licensee carries on the business for which the license is granted. For the purposes of this subsection, "wine-of-the-month club" or "beer-of-the-month club" shall mean an agreement between an in-state or out-of-state holder of a wine shipper license or beer shipper license and a consumer in Virginia to whom alcoholic beverages may be lawfully sold that the shipper will sell and ship to the consumer and the consumer will purchase a lawful amount of wine or beer each month for an agreed term of months.

F. Notwithstanding the provisions of § [4.1-203](#), a wine or beer shipper licensee may ship wine or beer as authorized by this section through the use of the services of an approved fulfillment warehouse. For the purposes of this section, a "fulfillment warehouse" means a business operating a warehouse and providing storage, packaging, and shipping services to wineries or breweries. The Board shall develop regulations pursuant to which fulfillment warehouses may apply for approval to provide storage, packaging, and shipping services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the fulfillment warehouse to demonstrate that it is appropriately licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved fulfillment warehouse to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the fulfillment warehouse and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the fulfillment warehouse as the agent of the shipper for purposes of complying with the provisions of this section.

G. Notwithstanding the provisions of § [4.1-203](#), a wine or beer shipper licensee may sell wine or beer as authorized by this section through the use of the services of an approved marketing portal. For the purposes of this section, a "marketing portal" means a business organized as an agricultural cooperative association under the laws of a state, soliciting and receiving orders for wine or beer and accepting and processing payment of such orders as the agent of a licensed wine or beer shipper. The Board shall develop regulations pursuant to which marketing portals may apply for approval to provide marketing services to holders of licenses issued pursuant to this section. Such regulations shall include provisions that require (i) the marketing portal to demonstrate that it is appropriately organized as an agricultural cooperative association and licensed for the services to be provided by the state in which its place of business is located, (ii) the Board-approved marketing portal to maintain such records and to submit to the Board such information as the Board may prescribe, and (iii) the marketing portal and each wine or beer shipper licensed under this section to whom services are provided to enter into a contract designating the marketing portal as the agent of the shipper for purposes of complying with the provisions of this section.

§ [4.1-212.1](#). Permits; delivery of wine and beer; regulations of Board.

A. Any brewery, winery, or farm winery located within or outside the Commonwealth that is authorized to engage in the retail sale of wine or beer for off-premises consumption may apply to the Board for issuance of a delivery permit that shall authorize the delivery of the brands of beer, wine, and farm wine produced by the same brewery, winery, or farm winery in closed containers to consumers within the Commonwealth for personal consumption.

B. Any person located within or outside the Commonwealth who is authorized to sell wine or beer at retail for off-premises consumption in their state of domicile, and who is not a brewery, winery, or farm winery, may apply for a delivery permit that shall authorize the delivery of any brands of beer, wine, and farm wine it is authorized to sell in its state of domicile, in closed containers, to consumers within the Commonwealth for personal consumption.

C. All such deliveries shall be to consumers within the Commonwealth for personal consumption only, and not for resale. All such deliveries of beer, wine, or farm wine shall be performed by the owner or any agent, officer, director, shareholder or employee of the permittee. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person in Virginia to whom alcoholic beverages may be lawfully sold; except that the permittee may deliver more than four cases of wine or more

than four cases of beer if he notifies the Department in writing at least one business day in advance of any such delivery, which notice contains the name and address of the intended recipient. The Board may adopt such regulations as it reasonably deems necessary to implement the provisions of this section. Such regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he is at least 21 years of age; and (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the Board.

D. For purposes of §§ [4.1-234](#) and [4.1-236](#) and Chapter 6 (§ [58.1-600](#) et seq.) of Title 58.1, each delivery of wine or beer by a permittee shall constitute a sale in Virginia. The permittee shall collect the taxes due to the Commonwealth and remit any excise taxes monthly to the ~~Department of Alcoholic Beverage Control~~ *Authority* and any sales taxes to the Department of Taxation.

§ [4.1-325](#). Prohibited acts by mixed beverage licensees; penalty.

A. In addition to § [4.1-324](#), no mixed beverage licensee nor any agent or employee of such licensee shall:

1. Sell or serve any alcoholic beverage other than as authorized by law;
2. Sell any authorized alcoholic beverage to any person or at any place except as authorized by law;
3. Allow at the place described in his license the consumption of alcoholic beverages in violation of this title;
4. Keep at the place described in his license any alcoholic beverage other than that which he is licensed to sell;
5. Misrepresent the brand of any alcoholic beverage sold or offered for sale;
6. Keep any alcoholic beverage other than in the bottle or container in which it was purchased by him except (i) for a frozen alcoholic beverage, which may include alcoholic beverages in a frozen drink dispenser of a type approved by the Board; (ii) in the case of wine, in containers of a type approved by the Board pending automatic dispensing and sale of such wine; and (iii) as otherwise provided by Board regulation. Neither this subdivision nor any Board regulation shall prohibit any mixed beverage licensee from pre-mixing containers of sangria to be served and sold for consumption on the licensed premises;
7. Refill or partly refill any bottle or container of alcoholic beverage or dilute or otherwise tamper with the contents of any bottle or container of alcoholic beverage, except as provided by Board regulation adopted pursuant to *subdivision B 11 of § [4.1-111](#)* ~~B-11~~;
8. Sell or serve any brand of alcoholic beverage which is not the same as that ordered by the purchaser without first advising such purchaser of the difference;

9. Remove or obliterate any label, mark or stamp affixed to any container of alcoholic beverages offered for sale;
10. Deliver or sell the contents of any container if the label, mark or stamp has been removed or obliterated;
11. Allow any obscene conduct, language, literature, pictures, performance or materials on the licensed premises;
12. Allow any striptease act on the licensed premises;
13. Allow persons connected with the licensed business to appear nude or partially nude;
14. Consume or allow the consumption by an employee of any alcoholic beverages while on duty and in a position that is involved in the selling or serving of alcoholic beverages to customers.

The provisions of this subdivision shall not prohibit any retail licensee or his designated employee from (i) consuming product samples or sample servings of (a) beer or wine provided by a representative of a licensed beer or wine wholesaler or manufacturer or (b) a distilled spirit provided by a permittee of the Board who represents a distiller, if such samples are provided in accordance with Board regulations and the retail licensee or his designated employee does not violate the provisions of subdivision 1 f of § [4.1-225](#) or (ii) tasting an alcoholic beverage that has been or will be delivered to a customer for quality control purposes;

15. Deliver to a consumer an original bottle of an alcoholic beverage purchased under such license whether the closure is broken or unbroken except in accordance with § [4.1-210](#).

The provisions of this subdivision shall not apply to the delivery of:

- a. "Soju." For the purposes of this ~~clause~~ *subdivision*, "soju" means a traditional Korean alcoholic beverage distilled from rice, barley or sweet potatoes; or
  - b. Spirits, provided (i) the original container is no larger than 375 milliliters, (ii) the alcohol content is no greater than 15 percent by volume, and (iii) the contents of the container are carbonated and perishable;
16. Be intoxicated while on duty or employ an intoxicated person on the licensed premises;
  17. Conceal any sale or consumption of any alcoholic beverages;
  18. Fail or refuse to make samples of any alcoholic beverages available to the Board upon request or obstruct special agents of the Board in the discharge of their duties;
  19. Store alcoholic beverages purchased under the license in any unauthorized place or remove any such alcoholic beverages from the premises;

20. Knowingly employ in the licensed business any person who has the general reputation as a prostitute, panderer, habitual law violator, person of ill repute, user or peddler of narcotics, or person who drinks to excess or engages in illegal gambling;

21. Keep on the licensed premises a slot machine or any prohibited gambling or gaming device, machine or apparatus;

22. Make any gift of an alcoholic beverage, other than as a gift made (i) to a personal friend, as a matter of normal social intercourse, so long as the gift is in no way a shift or device to evade the restriction set forth in this subdivision; (ii) to a person responsible for the planning, preparation or conduct on any conference, convention, trade show or event held or to be held on the premises of the licensee, when such gift is made in the course of usual and customary business entertainment and is in no way a shift or device to evade the restriction set forth in this subdivision; (iii) pursuant to subsection C of § [4.1-209](#); or (iv) pursuant to subdivision A 12 of § [4.1-201](#). Any gift permitted by this subdivision shall be subject to the taxes imposed by this title on sales of alcoholic beverages. The licensee shall keep complete and accurate records of gifts given in accordance with this subdivision; or

23. Establish any normal or customary pricing of its alcoholic beverages that is intended as a shift or device to evade any "happy hour" regulations adopted by the Board; however, a licensee may increase the volume of an alcoholic beverage sold to a customer if there is a commensurate increase in the normal or customary price charged for the same alcoholic beverage.

B. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

C. The provisions of subdivisions A 12 and A 13 shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.

§ [9.1-101](#). Definitions.

As used in this chapter or in Chapter 23 (§ [19.2-387](#) et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ [16.1-226](#) et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ [19.2-387](#) et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ [19.2-12](#) et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ [9.1-126](#) et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ [37.2-900](#) et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § [18.2-271.2](#).

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*; (ii) police agent appointed under the provisions of § [56-353](#); (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#); (viii) animal protection police officer employed under § [15.2-632](#); or (ix) campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

§ [9.1-102](#). Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), for the administration of this chapter including the authority to require the submission of

reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;
3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;
4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;
5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § [46.2-882](#) and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;
6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;
7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § [53.1-120](#), and to establish the time required for completion of such training;
8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § [8.01-293](#), and establish the time required for the completion of such training;
9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies, correctional officers

employed by the Department of Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile correctional facility as the term is defined in § [66-25.3](#);

10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

11. Establish compulsory minimum training standards for all auxiliary police officers employed by or in any local or state government agency. Such training shall be graduated and based on the type of duties to be performed by the auxiliary police officers. Such training standards shall not apply to auxiliary police officers exempt pursuant to § [15.2-1731](#);

12. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and with universities, colleges, community colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

13. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

14. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;

15. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

16. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

17. Make recommendations concerning any matter within its purview pursuant to this chapter;

18. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

19. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to

its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

20. Conduct audits as required by § [9.1-131](#);

21. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

22. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

23. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

24. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

25. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

26. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

27. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

28. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

29. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

30. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

31. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

32. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

33. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

34. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

35. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

36. Certify and decertify law-enforcement officers in accordance with §§ [15.2-1706](#) and [15.2-1707](#);
37. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § [19.2-81.3](#). The Department shall provide technical support and assistance to law-enforcement agencies in carrying out the requirements set forth in § [9.1-1301](#) and shall by December 1, 2009, submit a report on the status of implementation of these requirements to the chairmen of the House and Senate Courts of Justice Committees;
38. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;
39. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;
40. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;
41. Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;
42. Establish a Virginia Law-Enforcement Accreditation Center. The Center may, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;
43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific

community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

44. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School and Campus Safety pursuant to § [9.1-184](#). Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;

45. Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;

46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ [9.1-185](#) et seq.);

47. License and regulate bail enforcement agents in accordance with Article 12 (§ [9.1-186](#) et seq.);

48. In conjunction with the Virginia State Police and the State Compensation Board, advise criminal justice agencies regarding the investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry Act (§ [9.1-900](#) et seq.);

49. Establish minimum standards for (i) employment, (ii) job-entry and in-service training curricula, and (iii) certification requirements for campus security officers. Such training standards shall include, but not be limited to, the role and responsibility of campus security officers, relevant state and federal laws, school and personal liability issues, security awareness in the campus environment, and disaster and emergency response. The Department shall provide technical support and assistance to campus police departments and campus security departments on the establishment and implementation of policies and procedures, including but not limited to: the management of such

departments, investigatory procedures, judicial referrals, the establishment and management of databases for campus safety and security information sharing, and development of uniform record keeping for disciplinary records and statistics, such as campus crime logs, judicial referrals and Clery Act statistics. The Department shall establish an advisory committee consisting of college administrators, college police chiefs, college security department chiefs, and local law-enforcement officials to assist in the development of the standards and certification requirements and training pursuant to this subdivision;

50. Establish compulsory training standards and publish a model policy for law-enforcement personnel regarding death notification;

51. Assess and report, in accordance with § [9.1-190](#), the crisis intervention team programs established pursuant to § [9.1-187](#);

52. Establish, publish, and disseminate a model policy or guideline for law-enforcement personnel for questioning individuals suspected of driving while intoxicated concerning the physical location of that individual's last consumption of an alcoholic beverage and for communicating that information to the *Virginia* Alcoholic Beverage Control Board Authority;

53. Establish training standards and publish a model policy for law-enforcement personnel assigned to vehicle patrol duties that embody current best practices for pursuits and for responding to emergency calls;

54. Establish training standards and publish a model policy for law-enforcement personnel involved in criminal investigations that embody current best practices for conducting photographic and live lineups;

55. In conjunction with the Office of the Attorney General, advise law-enforcement agencies and attorneys for the Commonwealth regarding the identification, investigation, and prosecution of human trafficking offenses using the common law and existing criminal statutes in the Code of Virginia. The Department shall publish and disseminate a model policy or guideline for law-enforcement personnel involved in criminal investigations or assigned to vehicle or street patrol duties to ensure that law-enforcement personnel are sensitive to and aware of human trafficking offenses and the identification of victims of human trafficking offenses;

56. Register tow truck drivers in accordance with § [46.2-116](#) and carry out the provisions of § [46.2-117](#); and

57. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ [9.1-400](#). Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

B. As used in this chapter, unless the context requires a different meaning:

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ [27-40.1](#), [27-40.2](#), [51.1-813](#), and [65.2-402](#), as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a police chaplain; a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of any fire company providing fire protection services for facilities of the Virginia National Guard; a member of the Virginia National Guard or the Virginia Defense Force while such member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board *Authority*; any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § [29.1-200](#); any commissioned forest warden appointed under the provisions of § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any other employee of the Department of Emergency Management who is performing official duties of the agency, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#); any employee of any county, city, or town performing official emergency management or emergency services duties in cooperation with the Department of Emergency Management, when those duties are related to a major disaster or emergency, as defined in § [44-146.16](#), that has been or is later declared to exist under the authority of the Governor in accordance with § [44-146.28](#) or a local emergency, as defined in § [44-146.16](#), declared by a local governing body; any nonfirefighter regional hazardous materials emergency response team member; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#); or any full-time

sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#).

"Disabled person" means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent. The term shall also include any state employee included in the definition of a deceased person who was disabled on or after January 1, 1966.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law. § [9.1-500](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, the Department of Conservation and Recreation, or the Department of Motor Vehicles; or the political subdivision or the campus police department of any public institution of higher education of the Commonwealth employing the law-enforcement officer.

"Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) a nonprobationary officer of one of the following agencies:

- a. The Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, the Department of Motor Vehicles, or the Department of Conservation and Recreation;
- b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau or force has ~~ten~~ 10 or more law-enforcement officers; or
- c. Any conservation police officer as defined in § [9.1-101](#).

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

§ [9.1-801](#). Public safety officer defined.

As used in this chapter, the term "public safety officer" includes a law-enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § [53.1-1](#); a correctional officer employed at a juvenile correctional facility as the term is

defined in § [66-25.3](#); a jail officer; a regional jail or jail farm superintendent; a member of any fire company or department or rescue squad that has been recognized by an ordinance or resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; an arson investigator; a member of the Virginia National Guard or the Virginia Defense Force while such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control ~~Board~~ *Authority*; any police agent appointed under the provisions of § [56-353](#); any regular or special conservation police officer who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to § [29.1-200](#); any commissioned forest warden appointed pursuant to § [10.1-1135](#); any member or employee of the Virginia Marine Resources Commission granted the power to arrest pursuant to § [28.2-900](#); any Department of Emergency Management hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; any investigator who is a full-time sworn member of the security division of the Virginia Lottery; any full-time sworn member of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications, when fulfilling duties pursuant to § [46.2-217](#); any campus police officer appointed under the provisions of Chapter 17 (§ [23-232](#) et seq.) of Title 23; and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#).

§ [15.2-2288.3](#). Licensed farm wineries; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a

farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;
2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;
3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*;
4. The sale and shipment of wine to the *Virginia Alcoholic Beverage Control-Board Authority*, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*, and federal law;
5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the *Board of Directors of the Virginia Alcoholic Beverage Control-Board Authority*, and federal law; or
6. The sale of wine-related items that are incidental to the sale of wine.

§ [15.2-2288.3:1](#). Limited brewery license; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § [4.1-208](#) to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or

welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § 4.1-208:

1. The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer;
2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery;
3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*;
4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law;
5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the *Board of Directors of the Alcoholic Beverage Control Board Authority*, and federal law; or
6. The sale of beer-related items that are incidental to the sale of beer.

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § [4.1-208](#) on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

§ [18.2-57](#). Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as

defined in § [53.1-1](#), a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other individual who provides control, care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § [65.2-102](#), or a volunteer firefighter or any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or emergency medical services personnel as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § [18.2-308.1](#), the person shall serve a mandatory minimum sentence of confinement of six months.

E. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § [8.01-581.1](#) who is engaged in the performance of his duties as an emergency health care provider in an emergency room of a hospital or clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. As used in this section:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge designated under § [17.1-105](#), a judge under temporary recall under § [17.1-106](#), or a judge pro tempore under § [17.1-109](#), any member of the State Corporation Commission, or of the Virginia Workers' Compensation Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district court.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#), any special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*, conservation police officers appointed pursuant to § [29.1-200](#), and full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ [15.2-1731](#) and [15.2-1733](#), auxiliary deputy sheriffs appointed pursuant to § [15.2-1603](#), police officers of the Metropolitan Washington Airports Authority pursuant to § [5.1-158](#), and fire marshals appointed pursuant to § [27-30](#) when such fire marshals have police powers as set out in §§ [27-34.2](#) and [27-34.2:1](#).

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to

obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control. In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

§ [18.2-246.6](#). Definitions.

For purposes of this article:

"Adult" means a person who is at least the legal minimum purchasing age.

"Board" means the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*.

"Consumer" means an individual who is not permitted as a wholesaler pursuant to § [58.1-1011](#) or who is not a retailer.

"Delivery sale" means any sale of cigarettes to a consumer in the Commonwealth regardless of whether the seller is located in the Commonwealth where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or retail dealer, as such terms are defined in § [58.1-1000](#), shall not be a delivery sale. A delivery of cigarettes, not through the mail or by a common carrier, to a consumer performed by the owner, employee or other individual acting on behalf of a retailer authorized to sell such cigarettes shall not be a delivery sale.

"Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

"Legal minimum purchasing age" is the minimum age at which an individual may legally purchase cigarettes in the Commonwealth.

"Mails" or "mailing" means the shipment of cigarettes through the United States Postal Service.

"Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

§ [18.2-308](#). Carrying concealed weapons; exceptions; penalty.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he is guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature. It shall be an affirmative defense to a violation of clause (i) regarding a handgun, that a person had been issued, at the time of the offense, a valid concealed handgun permit.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

C. Except as provided in subsection A of § [18.2-308.012](#), this section shall not apply to:

1. Any person while in his own place of business;
2. Any law-enforcement officer, wherever such law-enforcement officer may travel in the Commonwealth;
3. Any person who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions, provided that possession of a handgun while

engaged in lawful hunting shall not be construed as hunting with a handgun if the person hunting is carrying a valid concealed handgun permit;

7. Any State Police officer retired from the Department of State Police, any officer retired from the Division of Capitol Police, any local law-enforcement officer, auxiliary police officer or animal control officer retired from a police department or sheriff's office within the Commonwealth, any special agent retired from the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*, any conservation police officer retired from the Department of Game and Inland Fisheries, any Virginia Marine Police officer retired from the Law Enforcement Division of the Virginia Marine Resources Commission, any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 retired from a campus police department, any retired member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#), and any retired investigator of the security division of the Virginia Lottery, other than an officer or agent terminated for cause, (i) with a service-related disability; (ii) following at least 15 years of service with any such law-enforcement agency, board or any combination thereof; (iii) who has reached 55 years of age; or (iv) who is on long-term leave from such law-enforcement agency or board due to a service-related injury, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or the agency that employs the officer or, in the case of special agents, issued by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section. An officer set forth in clause (iv) who receives written proof of consultation to carry a concealed handgun shall surrender such proof of consultation upon return to work or upon termination of employment with the law-enforcement agency. Notice of the surrender shall be forwarded to the Department of State Police for entry into the Virginia Criminal Information Network. However, if such officer retires on disability because of the service-related injury, and would be eligible under clause (i) for written proof of consultation to carry a concealed handgun, he may retain the previously issued written proof of consultation. A retired law-enforcement officer who receives proof of consultation and favorable review pursuant to this subdivision is authorized to carry a concealed handgun in the same manner as a

law-enforcement officer authorized to carry a concealed handgun pursuant to subdivision 2;

7a. Any person who is eligible for retirement with at least 20 years of service with a law-enforcement agency or board mentioned in subdivision 7 who has resigned in good standing from such law-enforcement agency or board to accept a position covered by a retirement system that is authorized under Title 51.1, provided such person carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the agency from which he resigned or, in the case of special agents, issued by the State Corporation Commission or the *Virginia Alcoholic Beverage Control Board Authority*. A copy of the proof of consultation and favorable review shall be forwarded by the chief, Board or Commission to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to subdivision 7 or this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

For purposes of complying with the federal Law Enforcement Officers Safety Act of 2004, a retired or resigned law-enforcement officer who receives proof of consultation and review pursuant to subdivision 7 or this subdivision shall have the opportunity to annually participate, at the retired or resigned law-enforcement officer's expense, in the same training and testing to carry firearms as is required of active law-enforcement officers in the Commonwealth. If such retired or resigned law-enforcement officer meets the training and qualification standards, the chief law-enforcement officer shall issue the retired or resigned officer certification, valid one year from the date of issuance, indicating that the retired or resigned officer has met the standards of the agency to carry a firearm;

8. Any State Police officer who is a member of the organized reserve forces of any of the armed services of the United States, national guard, or naval militia, while such officer is called to active military duty, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the Superintendent of State Police. The proof of consultation and favorable review shall be valid as long as the officer is on active military duty and shall expire when the officer returns to active law-enforcement duty. The issuance of the proof of consultation and favorable review shall be entered into the Virginia Criminal Information Network. The Superintendent of State Police shall not without cause withhold such written proof if the

officer is in good standing and is qualified to carry a weapon while on active law-enforcement duty.

For purposes of applying the reciprocity provisions of § [18.2-308.014](#), any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit;

9. Any attorney for the Commonwealth or assistant attorney for the Commonwealth, wherever such attorney may travel in the Commonwealth;

10. Any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel; and

11. Any enrolled participant of a firearms training course who is at, or going to or from, a training location, provided that the weapons are unloaded and securely wrapped while being transported.

D. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;

2. Officers or guards of any state correctional institution;

3. Conservators of the peace, except that an attorney for the Commonwealth or assistant attorney for the Commonwealth may carry a concealed handgun pursuant to subdivision C 9. However, the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in this article: (i) notaries public; (ii) registrars; (iii) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (iv) commissioners in chancery;

4. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to § [53.1-29](#); and

5. Harbormaster of the City of Hopewell.

§ [18.2-308.03](#). Fees for concealed handgun permits.

A. The clerk shall charge a fee of \$10 for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed \$35 to cover the cost of conducting an investigation pursuant to this article. The \$35 fee shall include any amount assessed by the U.S. Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the U.S. Federal Bureau of Investigation to the State Police with the fingerprints taken from any nonresident

applicant. The State Police may charge a fee not to exceed \$5 to cover its costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed \$50, with such fees to be paid in one sum to the person who receives the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is received by the court as a complete application.

B. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a special agent with the *Virginia Alcoholic Beverage Control Board Authority* or as a law-enforcement officer with the Department of State Police, the Department of Game and Inland Fisheries, or a sheriff or police department, bureau, or force of any political subdivision of the Commonwealth, after completing 15 years of service or after reaching age 55; (iii) as a law-enforcement officer with the U.S. Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, United States Citizenship and Immigration Services, U.S. Customs and Border Protection, Department of State Diplomatic Security Service, U.S. Marshals Service, or Naval Criminal Investigative Service, after completing 15 years of service or after reaching age 55; (iv) as a law-enforcement officer with any police or sheriff's department within the United States, the District of Columbia, or any of the territories of the United States, after completing 15 years of service; (v) as a law-enforcement officer with any combination of the agencies listed in clauses (ii) through (iv), after completing 15 years of service; (vi) as a designated boarding team member or boarding officer of the United States Coast Guard, after completing 15 years of service or after reaching age 55; or (vii) as a correctional officer as defined in § [53.1-1](#) after completing 15 years of service.

§ [18.2-308.012](#). Prohibited conduct.

A. Any person permitted to carry a concealed handgun who is under the influence of alcohol or illegal drugs while carrying such handgun in a public place is guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of § [18.2-36.1](#), maiming in violation of § [18.2-51.4](#), driving while intoxicated in violation of § [18.2-266](#), public intoxication in violation of § [18.2-388](#), or driving while intoxicated in violation of § [46.2-341.24](#). Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

B. No person who carries a concealed handgun onto the premises of any restaurant or club as defined in § [4.1-100](#) for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board Authority under Title 4.1 may consume an alcoholic beverage while on the premises. A person who carries a concealed handgun onto the premises of such a restaurant or club and consumes alcoholic beverages is guilty of a Class 2 misdemeanor. However, nothing in this subsection shall apply to a federal, state, or local law-enforcement officer.

§ [18.2-371.2](#). Prohibiting purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products by minors or sale of tobacco products, nicotine vapor products, and alternative nicotine products to minors.

A. No person shall sell to, distribute to, purchase for, or knowingly permit the purchase by any person less than 18 years of age, knowing or having reason to believe that such person is less than 18 years of age, any tobacco product, nicotine vapor product, or alternative nicotine product.

Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than 18 years of age shall attempt to purchase, purchase, or possess any tobacco product, nicotine vapor product, or alternative nicotine product. The provisions of this subsection shall not be applicable to the possession of tobacco products, nicotine vapor products, or alternative nicotine products by a person less than 18 years of age making a delivery of tobacco products, nicotine vapor products, or alternative nicotine products in pursuance of his employment. This subsection shall not apply to purchase, attempt to purchase, or possession by a law-enforcement officer or his agent when the same is necessary in the performance of his duties.

C. No person shall sell a tobacco product, nicotine vapor product, or alternative nicotine product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least 18 years of age. Such identification is not required from an individual whom the person has reason to believe is at least 18 years of age or who the person knows is at least 18 years of age. Proof that the person demanded, was shown, and reasonably relied upon

a photo identification stating that the individual was at least 18 years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least 18 years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior, and manner of the individual.

This subsection shall not apply to mail order or Internet sales, provided that the person offering the tobacco product, nicotine vapor product, or alternative nicotine product for sale through mail order or the Internet (i) prior to the sale of the tobacco product, nicotine vapor product, or alternative nicotine product verifies that the purchaser is at least 18 years of age through a commercially available database that is regularly used by businesses or governmental entities for the purpose of age and identity verification and (ii) uses a method of mailing, shipping, or delivery that requires the purchaser's signature before the tobacco product, nicotine vapor product, or alternative nicotine product will be released to the purchaser.

D. A violation of subsection A or C by an individual or by a separate retail establishment that involves a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi is punishable by a civil penalty not to exceed \$100 for a first violation, a civil penalty not to exceed \$200 for a second violation, and a civil penalty not to exceed \$500 for a third or subsequent violation.

A violation of subsection A or C by an individual or by a separate retail establishment that involves the sale, distribution, or purchase of a bidi is punishable by a civil penalty in the amount of \$500 for a first violation, a civil penalty in the amount of \$1,000 for a second violation, and a civil penalty in the amount of \$2,500 for a third or subsequent violation. Where a defendant retail establishment offers proof that it has trained its employees concerning the requirements of this section, the court shall suspend all of the penalties imposed hereunder. However, where the court finds that a retail establishment has failed to so train its employees, the court may impose a civil penalty not to exceed \$1,000 in lieu of any penalties imposed hereunder for a violation of subsection A or C involving a nicotine vapor product, alternative nicotine product, or tobacco product other than a bidi.

A violation of subsection B is punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$250 for a second or subsequent violation. A court may, as an alternative to the civil penalty, and upon motion of the defendant, prescribe the performance of up to 20 hours of community service for a first violation of subsection B and up to 40 hours of community service for a second or subsequent violation. If the defendant fails or refuses to complete the community service as prescribed, the

court may impose the civil penalty. Upon a violation of subsection B, the judge may enter an order pursuant to subdivision A 9 of § [16.1-278.8](#).

Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment that offers for sale any tobacco product, nicotine vapor product, or alternative nicotine product shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products, nicotine vapor products, or alternative nicotine products to any person under 18 years of age is prohibited by law. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$50. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services may promulgate regulations which allow the Department to undertake the activities necessary to comply with such regulations.

3. Any attorney for the county, city, or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city, or town which instituted the action.

F. Nothing in this section shall be construed to create a private cause of action.

G. Agents of the Virginia Alcoholic Beverage Control ~~Board~~ *Authority* designated pursuant to § [4.1-105](#) may issue a summons for any violation of this section.

H. As used in this section:

"Alternative nicotine product" means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product, tobacco product, or product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Bidi" means a product containing tobacco that is wrapped in temburni leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as a bidi or beedie.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Tobacco product" means any product made of tobacco and includes cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings. "Tobacco product" does not include any nicotine vapor product, alternative nicotine product, or product that is regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Wrappings" includes papers made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar.

§ [19.2-81](#). Arrest without warrant authorized in certain cases.

A. The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;
  2. Sheriffs of the various counties and cities, and their deputies;
  3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;
  4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § [28.2-900](#);
  5. Regular conservation police officers appointed pursuant to § [29.1-200](#);
  6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § [29.1-205](#) to make arrests;
  7. Conservation officers appointed pursuant to § [10.1-115](#);
  8. Full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § [46.2-217](#);
  9. Special agents of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority*;
- and

10. Campus police officers appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23.

B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Such officers may arrest without a warrant any person whom the officer has probable cause to suspect of operating any watercraft or motorboat while (i) intoxicated in violation of subsection B of § [29.1-738](#) or a substantially similar ordinance of any county, city, or town in the Commonwealth or (ii) in violation of an order issued pursuant to § [29.1-738.4](#) and may thereafter transfer custody of the person arrested to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § [29.1-733.2](#) or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.

D. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of § [18.2-266](#), [18.2-266.1](#), [46.2-341.24](#), or subsection B of § [29.1-738](#); or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to § [29.1-738.4](#), whether or not the offense was committed in such officer's presence.

E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, tele-

phone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § [18.2-96](#) or [18.2-103](#) or a similar local ordinance, (ii) carrying a weapon on school property in violation of § [18.2-308.1](#), (iii) assault and battery, (iv) brandishing a firearm in violation of § [18.2-282](#), or (v) destruction of property in violation of § [18.2-137](#), when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ [19.2-386.21](#). Forfeiture of counterfeit and contraband cigarettes.

Counterfeit cigarettes possessed in violation of § [18.2-246.14](#) and cigarettes possessed in violation of § [58.1-1017](#) or [58.1-1017.1](#) shall be subject to seizure, forfeiture, and destruction or court-ordered assignment for use by a law-enforcement undercover operation by the Virginia Alcoholic Beverage Control Board *Authority* or any law-enforcement officer of the Commonwealth. However, any undercover operation that makes use of counterfeit cigarettes shall ensure that the counterfeit cigarettes remain under the control and command of law enforcement and shall not be distributed to a member of the general public who is not the subject of a criminal investigation. All fixtures, equipment, materials, and personal property used in substantial connection with (i) the sale or possession of counterfeit cigarettes in a knowing and intentional violation of Article 10 (§ [18.2-246.6](#) et seq.) of Chapter 6 of Title 18.2 or (ii) the sale or possession of cigarettes in a knowing and intentional violation of § [58.1-1017](#) or [58.1-1017.1](#) shall be subject to seizure and forfeiture according to the procedures contained in Chapter 22.1 (§ [19.2-386.1](#) et seq.), applied mutatis mutandis.

§ [19.2-389](#). Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § [9.1-101](#), for purposes of the administration of criminal justice and the screening of an employment

application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § [53.1-136](#) shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ [33.2-1900](#) et seq.) of Title 33.2 and their contractors, for the conduct of investigations of

individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ [63.2-901.1](#) and [63.2-1505](#), subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § [56-1](#), for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § [9.1-101](#) at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § [15.2-1713.1](#);

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § [63.2-100](#) for dissemination to the Commissioner of Social Services' representative pursuant to § [63.2-1702](#) for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day care homes or homes approved by family day care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ [63.2-1719](#), [63.2-1720](#), and [63.2-1721](#), subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state

authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § [19.2-83.1](#);

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ [58.1-4000](#) et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § [32.1-126.01](#), hospital pharmacies pursuant to § [32.1-126.02](#), and home care organizations pursuant to § [32.1-162.9:1](#), subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § [63.2-1720](#), in licensed district homes for adults pursuant to § [63.1-189.1](#), and in licensed adult day care centers pursuant to § [63.2-1720](#), subject to the limitations set out in subsection F;

17. The *Virginia Alcoholic Beverage Control Board Authority* for the conduct of investigations as set forth in § [4.1-103.1](#);

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § [24.2-110](#) in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ [19.2-169.2](#), [19.2-169.6](#), [19.2-182.2](#), [19.2-182.3](#), [19.2-182.8](#), and [19.2-182.9](#) for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § [46.2-360](#), (ii) interventions with first offenders under § [18.2-251](#), or (iii) services to offenders under § [18.2-51.4](#), [18.2-266](#), or [18.2-266.1](#);

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and

Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § [22.1-296.3](#), the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § [23-9.2:10](#) or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall disclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ [37.2-506](#) and [37.2-607](#);

27. Executive directors of behavioral health authorities as defined in § [37.2-600](#) for the purpose of determining an individual's fitness for employment pursuant to §§ [37.2-506](#) and [37.2-607](#);

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ [37.2-403](#) et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ [37.2-416](#), [37.2-506](#), and [37.2-607](#);

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ [46.2-2000](#) et seq.) and 21 (§ [46.2-2100](#) et seq.) of Title 46.2;
31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;
32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § [2.2-1201.1](#). Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;
33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ [37.2-900](#) et seq.);
34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;
35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;
36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § [63.2-1601.1](#), subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;
37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ [6.2-1600](#) et seq.) or Chapter 19 (§ [6.2-1900](#) et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § [54.1-2106.1](#);

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ [51.5-170](#) et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § [19.2-120](#);

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § [8.01-195.12](#);

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further

disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § [15.2-1722](#).

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ [32.1-126.01](#), [32.1-126.02](#), and [32.1-162.9:1](#).

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § [63.1-189.1](#) or [63.2-1720](#).

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § [63.2-1719](#).

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective

employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ [22.1-206](#). Instruction concerning drugs, alcohol, and substance abuse.

A. Instruction concerning drugs and drug abuse shall be provided by the public schools as prescribed by the Board of Education.

B. Instruction concerning the public safety hazards and dangers of alcohol abuse, underage drinking, and drunk driving shall be provided in the public schools. ~~The Department of Virginia~~ Alcoholic Beverage Control *Authority* shall provide educational materials to the Department of Education. The Department of Education shall review and shall distribute such materials as are approved to the public schools.

§ [23-7.4:1](#). Waiver of tuition and certain charges and fees for eligible children and spouses of certain military service members, eligible children and spouses of certain public safety personnel, and certain foreign students.

A. There is hereby established the Virginia Military Survivors and Dependents Education Program. Qualified survivors and dependents of military service members, who have been admitted to any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia, upon certification to the Commissioner of the Department of Veterans Services of eligibility under this subsection, shall be admitted free of tuition and all required fees.

The Virginia Military Survivors and Dependents Education Program shall be implemented pursuant to the following:

1. For the purposes of this subsection, "qualified survivors and dependents" means the spouse or a child between the ages of 16 and 29 of a military service member who, while serving as an active duty member in the United States Armed Forces, United States Armed Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a prisoner of war, or of a veteran who, due to such service, has been rated by the United States Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled, and has been discharged or released

under conditions other than dishonorable. However, the Commissioner of the Department of Veterans Services may certify dependents above the age of 29 in those cases in which extenuating circumstances prevented the dependent child from using his benefits before the age of 30.

2. Such qualified survivors and dependents shall be eligible for the benefits conferred by this subsection if the military service member who was killed, is missing in action, is a prisoner of war, or is disabled (i) was a bona fide domiciliary of Virginia at the time of entering such active military service or called to active duty as a member of the Armed Forces Reserves or Virginia National Guard Reserve; (ii) is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to, or has had a physical presence in Virginia for at least five years immediately prior to, the date on which the admission application was submitted by or on behalf of such qualified survivor or dependent for admission to such institution of higher education or other public accredited postsecondary institution; (iii) if deceased, was a bona fide domiciliary of Virginia on the date of his death and had been a bona fide domiciliary of Virginia for at least five years immediately prior to his death or had a physical presence in Virginia on the date of his death and has had a physical presence in Virginia for at least five years immediately prior to his death; (iv) in the case of a qualified child, is deceased and the surviving parent had been, at some time previous to marrying the deceased parent, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years immediately prior to or has had a physical presence in Virginia for at least five years immediately prior to the date on which the admission application was submitted by or on behalf of such child; or (v) in the case of a qualified spouse, is deceased and the surviving spouse had been, at some time previous to marrying the deceased spouse, a bona fide domiciliary of Virginia for at least five years or is and has been a bona fide domiciliary of Virginia for at least five years or has had a physical presence in Virginia for at least five years prior to the date on which the admission application was submitted by such qualified spouse.

3. From such funds as may be appropriated and from such gifts, bequests, and any gifts, grants, or donations from public or private sources, there is hereby established the Virginia Military Survivors and Dependents Education Fund for the sole purpose of providing financial assistance, in an amount (i) up to \$2,000 or (ii) as provided in the appropriation act, for board and room charges, books and supplies, and other expenses at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of Virginia for the use and benefit of qualified survivors and dependents.

Each year, from the funds available in the Virginia Military Survivors and Dependents Education Fund, the State Council of Higher Education for Virginia and its member institutions shall determine the amount and the manner in which financial assistance shall be made available to beneficiaries and shall make that information available to the Commissioner of the Department of Veterans Services for distribution.

The State Council of Higher Education for Virginia shall be responsible for disbursing to the institutions the funds appropriated or otherwise made available by the Commonwealth of Virginia to support the Virginia Military Survivors and Dependents Education Fund and shall report to the Commissioner of the Department of Veterans Services the beneficiaries' completion rate.

The maximum amount to be expended for each such survivor or dependent pursuant to this subsection shall not exceed, when combined with any other form of scholarship, grant, or waiver, the actual costs related to the survivor's or dependent's educational expenses allowed under this subsection.

4. The Commissioner of the Department of Veterans Services shall designate a senior-level official who shall be responsible for developing and implementing the agency's strategy for disseminating information about the Military Survivors and Dependents Education Program to those spouses and dependents who may qualify. The Department of Veterans Services shall coordinate with the United States Department of Veterans Affairs to identify veterans and qualified survivors and dependents. The Commissioner of the Department of Veterans Services shall report annually to the Governor and the General Assembly as to the agency's policies and strategies relating to dissemination of information about the Program. The report shall also include the number of current beneficiaries, the educational institutions attended by beneficiaries, and the completion rate of the beneficiaries.

B. The surviving spouse and any child between the ages of 16 and 25 whose parent or whose spouse has been killed in the line of duty while employed or serving as a law-enforcement officer, including as a campus police officer appointed under Chapter 17 ([§ 23-232](#) et seq.), sworn law-enforcement officer, firefighter, special forest warden pursuant to [§ 10.1-1135](#), member of a rescue squad, special agent of the ~~Department of Virginia~~ *Alcoholic Beverage Control Authority*, state correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, or deputy sheriff, member of the Virginia National Guard while serving on official state duty or federal duty under Title 32 of the United States Code, or member of the Virginia Defense Force while serving on official state duty, and any person whose spouse was killed in the line of duty while employed or serving in any of such occupations, shall be entitled to free undergraduate

tuition and the payment of required fees at any public institution of higher education or other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia under the following conditions:

1. ~~The chief administrative officer~~ *Chief Executive Officer* of the *Virginia Alcoholic Beverage Control Board Authority*, emergency medical services agency, law-enforcement agency, or other appropriate agency or the Superintendent of State Police certifies that the deceased parent or spouse was employed or serving as a law-enforcement officer, sworn law-enforcement officer, firefighter, special forest warden pursuant to § [10.1-1135](#), or member of a rescue squad or in any other capacity as specified in this section and was killed in the line of duty while serving or living in the Commonwealth; and
2. The child or spouse shall have been offered admission to such public institution of higher education or other public accredited postsecondary institution. Any child or spouse who believes he is eligible shall apply to the public institution of higher education or other accredited postsecondary institution to which he has been admitted for the benefits provided by this subsection. The institution shall determine the eligibility of the applicant for these benefits and shall also ascertain that the recipients are in attendance and are making satisfactory progress. The amounts payable for tuition, institutional charges and required fees, and books and supplies for the applicants shall be waived by the institution accepting the students.

C. For the purposes of subsection B, user fees, such as room and board charges, shall not be included in this authorization to waive tuition and fees. However, all required educational and auxiliary fees shall be waived along with tuition.

D. Tuition and required fees may be waived for a student from a foreign country enrolled in a public institution of higher education through a student exchange program approved by such institution, provided the number of foreign students does not exceed the number of students paying full tuition and required fees to the institution under the provisions of the exchange program for a given three-year period.

E. Each public institution of higher education and other public accredited postsecondary institution granting a degree, diploma, or certificate in Virginia shall include in its catalogue or equivalent publication a statement describing the benefits provided by subsections A and B.

§ [32.1-357](#). Board of Trustees; appointment; officers; quorum; executive committee; compensation and expenses.

A. The Foundation shall be governed and administered by a Board of Trustees consisting of 23 members. Two members shall be appointed by the Speaker of the House of

Delegates from among the membership of the House of Delegates, one representing rural interests and one representing urban interests; two members shall be appointed by the Senate Committee on Rules, one representing rural interests and one representing urban interests, from among the membership of the Senate; two members shall be the Commissioner of the Department of Health or his designee and the Chairman of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* or his designee; and 17 nonlegislative citizen members shall be appointed by the Governor, subject to confirmation by the General Assembly, as follows: (i) five designated representatives of public health organizations, such as the American Cancer Society, American Heart Association, Virginia Pediatric Society, Virginia Academy of Family Physicians, Virginia Dental Association, American Lung Association of Virginia, Medical Society of Virginia, Virginia Association of School Nurses, Virginia Nurses Association, and the Virginia Thoracic Society; (ii) four health professionals in the fields of oncology, cardiology, pulmonary medicine, and pediatrics; and (iii) eight citizens at large, including two youths. Of the eight citizen at large members, three adults shall be appointed by the Governor from a list of six provided by members of the General Assembly appointed to the Foundation and one member who is under the age of 18 years shall be appointed by the Governor from a list of three provided by the members of the General Assembly appointed to the Foundation.

Legislative members and the Commissioner of the Department of Health and the Chairman of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* shall serve terms coincident with their terms of office. Following the initial staggering of terms, nonlegislative citizen members shall serve four-year terms. Vacancies in the membership of the Board shall be filled by appointment for the unexpired portion of the term. Vacancies shall be filled in the same manner as the original appointments. Legislative members may be reappointed for successive terms. No nonlegislative citizen member shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the members shall enter upon the performance of their duties.

B. The Foundation shall appoint from the membership of the Board a chairman and vice-chairman, both of whom shall serve in such capacities at the pleasure of the Foundation. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. A majority of the members of the Board serving at any one time shall constitute a

quorum for the transaction of business. The Board shall meet annually or more frequently at the call of the chairman.

The Board may establish an executive committee composed of the chairman, vice-chairman, and three additional members elected by the Board from its membership. The chairman of the Board shall serve as the chairman of the executive committee and shall preside over its meetings. In the absence of the chairman, the vice-chairman shall preside. The executive committee may exercise the powers and transact the business of the Board in the absence of the Board or when otherwise directed or authorized by the Board. A majority of the members of the executive committee shall constitute a quorum for the transaction of business. Any actions or business conducted by the executive committee shall be acted upon by the full board as soon as practicable.

C. Legislative members shall receive such compensation as provided in § [30-19.12](#) and nonlegislative citizen members shall receive compensation as provided in § [2.2-2813](#) for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided by §§ [2.2-2813](#) and [2.2-2825](#). Such compensation and expenses shall be paid from the Fund.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the Board or his service to the Foundation.

E. Members of the Board and employees of the Foundation shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

§ [33.2-613](#). Free use of toll facilities by certain state officers and employees; penalties.

A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of the Dulles Toll Road during rush hours by the Board; however, notwithstanding the provisions of subdivision B 1 of § [56-543](#) said vehicles shall not be permitted toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988 (§ [56-535](#) et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in the Commonwealth without the payment of toll while in the performance of their official duties:

1. The Commissioner of Highways;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;

5. Officers and employees of the Department of State Police;
  6. Members of the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority*;
  7. Employees of the regulatory and hearings divisions of the ~~Department of Virginia Alcoholic Beverage Control Authority~~ and special agents of the ~~Department of Virginia Alcoholic Beverage Control Authority~~;
  8. The Commissioner of the Department of Motor Vehicles;
  9. Employees of the Department of Motor Vehicles;
  10. Local police officers;
  11. Sheriffs and their deputies;
  12. Regional jail officials;
  13. Animal wardens;
  14. The Director and officers of the Department of Game and Inland Fisheries;
  15. Persons operating firefighting equipment and ambulances owned by a political subdivision of the Commonwealth or a nonprofit association or corporation;
  16. Operators of school buses being used to transport pupils to or from schools;
  17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;
  18. Employees of the Department of Rail and Public Transportation;
  19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and
  20. Law-enforcement officers of the Virginia Marine Resources Commission.
- B. Notwithstanding the provision of subsection A requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department of Transportation shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.
1. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner of Highways or his designee.
  2. Major incidents that may require the temporary suspension of toll collection operations shall include (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic acci-

dents, such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

3. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed \$2,000 for any individual incident, be paid to the Department of Transportation for deposit into the toll road fund.

C. Any tollgate keeper who refuses to permit the persons listed in subsection A to use any toll bridge, toll ferry, toll tunnel, or toll road upon presentation of such a toll pass is guilty of a misdemeanor punishable by a fine of not more than \$50 and not less than \$2.50. Any person other than those listed in subsection A who exhibits any such toll pass for the purpose of using any toll bridge, toll ferry, toll tunnel, or toll road is guilty of a Class 1 misdemeanor.

D. Any vehicle operated by the holder of a valid driver's license issued by the Commonwealth or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in the Commonwealth if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;
2. The driver of the vehicle has been certified, either by a physician licensed by the Commonwealth or any other state or by the Adjudication Office of the U.S. Department of Veterans Affairs, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments that substantially impair his ability to deposit coins in toll baskets;
3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and
4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in the Commonwealth. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

E. Nothing contained in this section or in § [33.2-612](#) or [33.2-1718](#) shall operate to affect the provisions of § [22.1-187](#).

F. Notwithstanding the provisions of subsections A, B, and C, only the following persons may use the Chesapeake Bay Bridge-Tunnel, facilities of the Richmond Metropolitan Transportation Authority, or facilities of an operator authorized to operate a toll facility pur-

suant to the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commissioner of Highways;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. The Commissioner of the Department of Motor Vehicles;
7. Employees of the Department of Motor Vehicles; and
8. Sheriffs and deputy sheriffs.

G. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in Virginia controlled by the Richmond Metropolitan Transportation Authority, pursuant to the requirements of subdivisions D 1 through 4.

§ [48-17.1](#). Temporary injunctions against alcoholic beverage sales.

A. Any locality by or through its mayor, chief executive, or attorney may petition a circuit court to temporarily enjoin the sale of alcohol at any establishment licensed by the *Virginia Alcoholic Beverage Control Board Authority*. The basis for such petition shall be the operator of the establishment has allowed it to become a meeting place for persons committing serious criminal violations of the law on or immediately adjacent to the premises so frequent and serious as to be deemed a continuing threat to public safety, as represented in an affidavit by the chief law-enforcement officer of the locality, supported by records of such criminal acts. The court shall, upon the presentation of evidence at a hearing on the matter, grant a temporary injunction, without bond, enjoining the sale of alcohol at the establishment, if it appears to the satisfaction of the court that the threat to public safety complained of exists and is likely to continue if such injunction is not granted. The court hearing on the petition shall be held within 10 days of service upon the respondent. The respondent shall be served with notice of the time and place of the hearing and copies of all documentary evidence to be relied upon by the complainant at such hearing. Any injunction issued by the court shall be dissolved in the event the court later finds that the threat to public safety that is the basis of the injunction has been abated by reason of a change of ownership, management, or business operations at the establishment, or other change in circumstance.

B. The *Virginia Alcoholic Beverage Control Board Authority* shall be given notice of any hearing under this section. In the event an injunction is granted, the *Virginia Alcoholic Beverage Control Board Authority* shall initiate an investigation into the activities at the establishment complained of and conduct an administrative hearing. After the *Virginia*

Alcoholic Beverage Control ~~Board~~ *Authority* hearing and when a final determination has been issued by the *Virginia* Alcoholic Beverage Control ~~Board~~ *Authority*, regardless of disposition, any injunction issued hereunder shall be null, without further action by the complainant, respondent, or the court.

§ [51.1-212](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Employee" means any (i) member of the Capitol Police Force as described in § [30-34.2:1](#), (ii) campus police officer appointed under the provisions of Chapter 17 (§ [23-232](#) et seq.) of Title 23, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ [29.1-200](#) et seq.) of Title 29.1, (iv) special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of *Title 4.1*, (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § [9.1-101](#), (vi) correctional officer as the term is defined in § [53.1-1](#), and including correctional officers employed at a juvenile correction facility as the term is defined in § [66-25.3](#), (vii) any parole officer appointed pursuant to § [53.1-143](#), and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

"Member" means any person included in the membership of the Retirement System as provided in this chapter.

"Normal retirement date" means a member's sixtieth birthday.

"Retirement System" means the Virginia Law Officers' Retirement System.

§ [58.1-3](#). Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § [58.1-512](#) or [58.1-2712.2](#), or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. This prohibition shall apply to any reports, returns, financial documents or other information filed with the Attorney General pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.) of Chapter 42 of

Title 3.2. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken, published, or shared with another agency or subdivision of the Commonwealth in the line of duty under state law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;
5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § [58.1-1714](#), when requested by a beneficiary of the estate or an heir at law of the decedent;
6. Information regarding nonprofit entities exempt from sales and use tax under § [58.1-609.11](#), when requested by the General Assembly or any duly constituted committee of the General Assembly;
7. Reports or information filed with the Attorney General by a Stamping Agent pursuant to the provisions of Article 3 (§ [3.2-4204](#) et seq.), when such reports or information are provided by the Attorney General to a tobacco products manufacturer who is required to establish a qualified escrow fund pursuant to § [3.2-4201](#) and are limited to the brand families of that manufacturer as listed in the Tobacco Directory established pursuant to § [3.2-4206](#) and are limited to the current or previous two calendar years or in any year in which the Attorney General receives Stamping Agent information that potentially alters the required escrow deposit of the manufacturer. The information shall only be provided in the following manner: the manufacturer may make a written request, on a quarterly or yearly basis or when the manufacturer is notified by the Attorney General of a potential change in the amount of a required escrow deposit, to the Attorney General for a list of the Stamping Agents who reported stamping or selling its products and the amount reported. The Attorney General shall provide the list within 15 days of receipt of the request. If the manufacturer wishes to obtain actual copies of the reports the Stamping Agents filed with the Attorney General, it must first request them from the Stamping Agents pursuant to subsection C of § [3.2-4209](#). If the manufacturer does not receive the reports pursuant to subsection C of § [3.2-4209](#), the manufacturer may make a written request to the Attorney General, including a copy of the prior written request to the Stamping Agent and any

response received, for copies of any reports not received. The Attorney General shall provide copies of the reports within 45 days of receipt of the request.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. Notwithstanding any other provision of this section or other law, the Department, upon request by the General Assembly or any duly constituted committee of the General Assembly, shall disclose the total aggregate amount of an income tax deduction or credit taken by all taxpayers, regardless of (i) how few taxpayers took the deduction or credit or (ii) any other circumstances. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income, filing status, number and type of dependents, and whether a federal earned income tax credit has been claimed as reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § [63.2-100](#); (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after

entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the *Virginia Alcoholic Beverage Control Board Authority*, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the Virginia Lottery such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § [55-210.2](#); (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Commissioner of the Department of Agriculture and Consumer Services such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ [59.1-270](#) et seq.), and the Enterprise Zone Grant Program (§ [59.1-538](#) et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § [40.1-29](#); (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity

benefits who have failed to report earnings as required by § [65.2-712](#); (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of all dealers registered for such tax; (xviii) provide to the Executive Director of the Northern Virginia Transportation Commission for his confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; and (xix) provide to the Commissioner of Agriculture and Consumer Services the name and address of the taxpayer businesses licensed by the Commonwealth that identify themselves as subject to regulation by the Board of Agriculture and Consumer Services pursuant to § [3.2-5130](#). The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall

be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official by § [58.1-512](#). This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection is guilty of a Class 1 misdemeanor. § [58.1-3651](#). Property exempt from taxation by classification or designation by ordinance adopted by local governing body on or after January 1, 2003.

A. Pursuant to subsection 6 (a) (6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. No exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

B. Any ordinance exempting property by designation pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town where the real property is located. The notice shall include the assessed value of the real and tangible personal property for which an exemption is requested as well as the property taxes assessed against such property. The public hearing shall not be held until at least five days after the notice is published in the newspaper. The local governing body shall collect the cost of publication from the organization requesting the property tax exemption. Before adopting any such ordinance the governing body shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code of 1954;
2. Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the *Board of Directors of the Virginia Alcoholic Beverage Control Board Authority* to such organization, for use on such property;
3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;
4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;
5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such ordinance.

C. Any ordinance exempting property by classification pursuant to subsection A shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The local governing body shall publish notice of the hearing once in a newspaper of general circulation in the county, city, or town. The public hearing shall not be held until at least five days after the notice is published in the newspaper.

D. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, Section 6 (f) of the Constitution of Virginia.

E. Nothing in this section or in any ordinance adopted pursuant to this section shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly prior to January 1, 2003, pursuant to Article 2 (§ [58.1-3606](#) et seq.), 3 (§ [58.1-3609](#) et seq.) or 4 (§ [58.1-3650](#) et seq.) of this chapter. An exemption granted pursuant to Article 4 (§ [58.1-3650](#) et seq.) of this chapter may be revoked in accordance with the provisions of § [58.1-3605](#).

§ [59.1-148.3](#). Purchase of handguns of certain officers.

A. The Department of State Police, the Department of Game and Inland Fisheries, the Department of *Virginia* Alcoholic Beverage Control *Authority*, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, and any institution of higher learning named in § [23-14](#) may allow any campus police officer appointed pursuant to Chapter 17 (§ [23-232](#) et seq.) of Title 23, retiring on or after July 1, 1991, who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously

issued to him by the agency or institution at a price of \$1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia Retirement System. Other weapons issued by the Department of State Police for personal duty use of an officer, may, with approval of the Superintendent, be sold to the officer subject to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with 5 or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of \$1.

D. The governing board of any institution of higher learning named in § [23-14](#) may allow any campus police officer appointed pursuant to Chapter 17 (§ [23-232](#) et seq.) of Title 23 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his

service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of \$1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for \$1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer currently employed by the agency to purchase his service handgun, with the approval of the chief law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the agency has purchased new service handguns for its officers, and the handgun subject to the sale is no longer used by the agency or officer in the course of duty.

§ [65.2-402](#). Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.

A. Respiratory diseases that cause (i) the death of volunteer or salaried firefighters or Department of Emergency Management hazardous materials officers or (ii) any health condition or impairment of such firefighters or Department of Emergency Management hazardous materials officers resulting in total or partial disability shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

B. Hypertension or heart disease causing the death of, or any health condition or impairment resulting in total or partial disability of (i) salaried or volunteer firefighters, (ii) members of the State Police Officers' Retirement System, (iii) members of county, city or town police departments, (iv) sheriffs and deputy sheriffs, (v) Department of Emergency Management hazardous materials officers, (vi) city sergeants or deputy city sergeants of the City of Richmond, (vii) Virginia Marine Police officers, (viii) conservation police officers who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officers, (x) special agents of the ~~Department of Virginia~~ Alcoholic Beverage Control *Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington

Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § [65.2-305](#), officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officers of the police force established and maintained by the Norfolk Airport Authority, (xiii) sworn officers of the police force established and maintained by the Virginia Port Authority, and (xiv) campus police officers appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 and employed by any public institution of higher education shall be presumed to be occupational diseases, suffered in the line of duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary.

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed ~~twelve~~ 12 years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.

D. The presumptions described in subsections A, B, and C shall only apply if persons entitled to invoke them have, if requested by the private employer, appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the private employer, appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the private employer, appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of respiratory diseases, hypertension, cancer or heart disease at the time of such examinations.

E. Persons making claims under this title who rely on such presumptions shall, upon the request of private employers, appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such employers, authorities, bodies or their representatives and (ii) consisting of such tests

and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

F. Whenever a claim for death benefits is made under this title and the presumptions of this section are invoked, any person entitled to make such claim shall, upon the request of the appropriate private employer, appointing authority or governing body that had employed the deceased, submit the body of the deceased to a postmortem examination as may be directed by the Commission. A qualified physician, selected and compensated by the person entitled to make the claim, may, at the election of such claimant, be present at such postmortem examination.

G. Volunteer lifesaving and rescue squad members, volunteer law-enforcement chaplains, auxiliary and reserve deputy sheriffs, and auxiliary and reserve police are not included within the coverage of this section.

H. For purposes of this section, the term "firefighter" shall include special forest wardens designated pursuant to § [10.1-1135](#) and any persons who are employed by or contract with private employers primarily to perform firefighting services.

§ [65.2-402.1](#). Presumption as to death or disability from infectious disease.

A. Hepatitis, meningococcal meningitis, tuberculosis or HIV causing the death of, or any health condition or impairment resulting in total or partial disability of, any (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the ~~Department of~~ *Virginia* Alcoholic Beverage Control *Authority* appointed under the provisions of Chapter 1 (§ [4.1-100](#) et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § [65.2-305](#), officer of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) officer of the police force established and maintained by the Norfolk Airport Authority, (xiii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § [10.1-115](#), (xiv) sworn officer of the police force established and maintained by the Virginia Port Authority, or (xv) any campus police officer appointed under Chapter 17 (§ [23-232](#) et seq.) of Title 23 and employed by any public

institution of higher education, who has a documented occupational exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer.

B. As used in this section:

"Blood or body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of hepatitis, meningococcal meningitis, tuberculosis, or HIV the term "blood or body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, saliva, mucous, and any other fluid through which infectious airborne or blood-borne organisms can be transmitted between persons.

"Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C or any other strain of hepatitis generally recognized by the medical community.

"HIV" means the medically recognized retrovirus known as human immunodeficiency virus, type I or type II, causing immunodeficiency syndrome.

"Occupational exposure," in the case of hepatitis, meningococcal meningitis, tuberculosis or HIV, means an exposure that occurs during the performance of job duties that places a covered employee at risk of infection.

C. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to [§ 65.2-603](#), including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise.

D. Whenever any standard, medically-recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is established under this section, if medically indicated by the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the United States Public Health Service, a person subject to the provisions of this section may be required by such person's employer to undergo the immunization or prophylaxis unless the person's physician determines in writing that

the immunization or prophylaxis would pose a significant risk to the person's health. Absent such written declaration, failure or refusal by a person subject to the provisions of this section to undergo such immunization or prophylaxis shall disqualify the person from any presumption established by this section.

E. The presumptions described in subsection A shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone preemployment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumptions, (ii) were performed by physicians whose qualifications are as prescribed by the appointing authority or governing body employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities or governing bodies may have prescribed, and (iv) found such persons free of hepatitis, meningococcal meningitis, tuberculosis or HIV at the time of such examinations. The presumptions described in subsection A shall not be effective until six months following such examinations, unless such persons entitled to invoke such presumption can demonstrate a documented exposure during the six-month period.

F. Persons making claims under this title who rely on such presumption shall, upon the request of appointing authorities or governing bodies employing such persons, submit to physical examinations (i) conducted by physicians selected by such appointing authorities or governing bodies or their representatives and (ii) consisting of such tests and studies as may reasonably be required by such physicians. However, a qualified physician, selected and compensated by the claimant, may, at the election of such claimant, be present at such examination.

2. That the fourth enactments of Chapters 870 and 932 of the Acts of Assembly of 2007 are amended and reenacted as follows:

**4. That the *Virginia Alcoholic Beverage Control Board Authority* shall assist the Commissioner of Agriculture and Consumer Services in the formation and operation of the nonprofit, nonstock corporation established pursuant to § 3.1-14.01 of this act.**

3. That § [4.1-102](#) of the Code of Virginia is repealed.

4. That the provisions of this act shall become effective on July 1, 2018, except that the provisions of the thirteenth, fourteenth, and fifteenth enactments of this act shall become effective on July 1, 2015.

5. That the Alcoholic Beverage Control Board or its successor in interest shall continue to receive IT infrastructure and security services pursuant to Chapter 20.1 (§ [2.2-2005](#) et

seq.) of Title 2.2 of the Code of Virginia until July 1, 2019, unless otherwise provided for as part of the Commonwealth's disentanglement plan pursuant to the Comprehensive Infrastructure Agreement with Northrop Grumman. However, in no event shall the Virginia Alcoholic Beverage Control Authority be disentangled prior to October 1, 2018.

6. That the initial appointments of the members of the Board of Directors of the Virginia Alcoholic Beverage Control Authority shall be staggered as follows: one member for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years, and one member for a term of one year.

7. That the regulations of the Alcoholic Beverage Control Board promulgated pursuant to Title 4.1 of the Code of Virginia shall be administered by the Virginia Alcoholic Beverage Control Authority and shall remain in full force and effect until altered, amended, or rescinded by the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

8. That in the event that ex officio membership on any board, commission, council, committee, or other body is affected by the provisions of this act, the Governor shall designate an appropriate successor officer, employee, or member of a board or agency established pursuant to the provisions of this act as a replacement.

9. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

10. That the Virginia Alcoholic Beverage Control Authority shall be deemed successor in interest to the Department of Alcoholic Beverage Control and the Alcoholic Beverage Control Board to the extent this act transfers powers and duties. All right, title, and interest in and to real or tangible personal property vested in the Department of Alcoholic Beverage Control or the Alcoholic Beverage Control Board to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred and taken as standing in the name of the Virginia Alcoholic Beverage Control Authority.

11. That wherever in the Code of Virginia the term "Department of Alcoholic Beverage Control" is used, it shall be deemed to mean the Virginia Alcoholic Beverage Control Authority and wherever in the Code of Virginia the term "Alcoholic Beverage Control Board" is used, it shall mean the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

12. That any accrued sick leave or annual leave of any employee of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee.

13. That the Virginia Freedom of Information Advisory Council shall include in its study of the Virginia Freedom of Information Act in accordance with House Joint Resolution No. 96 of the Acts of Assembly of 2014 a review of the provisions of § [2.2-3705.7](#) of the Code of Virginia as amended by this act and make any recommendations it deems necessary and appropriate.

14. That by October 15 each year, the Department of Alcoholic Beverage Control or its successor shall, for the purposes of identifying the total costs of the operation and administration of the Department or its successors to be funded from the revenues generated by such entity, submit to the General Assembly a report detailing the total percentage of gross revenues required for the operation and administration of the Department, excluding expenditures made for the purchase of distilled spirits, for the prior fiscal year, and a relative comparison to the three prior fiscal years.

15. That by January 1, 2017, the Department of Alcoholic Beverage Control shall submit to the General Assembly for its review the proposed personnel and procurement policies, including such policies to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in the Virginia Alcoholic Beverage Control Authority's procurement process, that are developed for the use of the Authority in place of Department policies currently governing personnel and procurement. The submission shall detail all instances in which the proposed policies and procedures materially differ from those governing state agencies.

## **Chapter 113 Hospitals; patients who are deaf or hard-of-hearing.**

An Act to require the Department of Health to work with stakeholders to develop guidelines for hospitals to ensure patients and family members with sensory disabilities are able to communicate with health care providers.

[\[H 1956\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health shall (i) work with stakeholders to develop guidelines for hospitals to ensure that hospitals are complying with requirements of the Americans with Disabilities Act and that patients and family members with sensory disabilities are able to communicate effectively with health care providers and (ii) report on its progress in developing such guidelines to the General Assembly no later than December 1, 2015.*

## **Chapter 135 Virginia-recognized Indian tribes; enforcement of Uniform Statewide Building Code.**

An Act to authorize certain state-recognized Indian tribes to enforce the Uniform Statewide Building Code.

[\[H 2283\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, recognizing the unique relationship between the Commonwealth and certain of its state-recognized Indian tribes, and notwithstanding any other provision of law, neither the Commonwealth nor any locality therein is responsible for the enforcement of the provisions of the Uniform Statewide Building Code (§ [36-97](#) et seq.) on any Indian reservation recognized by the Commonwealth whereupon a state-recognized Indian tribe has, by duly enacted tribal ordinance, adopted the Uniform Statewide Building Code and (i) assumed sole responsibility for existing buildings and new construction on the reservation and (ii) for purposes of enforcing the ordinance, retained firms or individuals to function as the building official on such reservation.*

2. That nothing in this act shall be construed to confer or infer responsibility or liability on any party for any action undertaken prior to the effective date of this act.

## **Chapter 144 Standards of Learning; eligibility for retake of test, exception.**

An Act to create uniform student eligibility for an expedited retake of a Standards of Learning test.

[\[H 1490\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall promulgate regulations to provide the same criteria for eligibility for an expedited retake of any Standards of Learning test, with the exception of the writing Standards of Learning tests, to each student regardless of grade level or course.*

**Chapter 148 Standards of Learning; eligibility for retake of test, exception.**

An Act to create uniform student eligibility for an expedited retake of a Standards of Learning test.

[\[S 874\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Education shall promulgate regulations to provide the same criteria for eligibility for an expedited retake of any Standards of Learning test, with the exception of the writing Standards of Learning tests, to each student regardless of grade level or course.*

**Chapter 163 Trooper Jacqueline Vernon Memorial Bridge; designating as Interstate 395 bridge over S. Glebe Road in Arlington County.**

An Act to designate the Interstate 395 bridge over S. Glebe Road in Arlington County the "Trooper Jacqueline Vernon Memorial Bridge."

[\[H 1401\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate 395 bridge over S. Glebe Road in Arlington County is hereby designated the "Trooper Jacqueline Vernon Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

### **Chapter 178 Peter Saunders Veterans' Memorial Bridge; designating as U.S. Route 220 Business bridge.**

An Act to designate the U.S. Route 220 Business bridge in the Town of Rocky Mount the "Peter Saunders Veterans' Memorial Bridge."

[\[H 2279\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The U.S. Route 220 Business bridge in the Town of Rocky Mount is hereby designated the "Peter Saunders Veterans' Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

### **Chapter 184 Chesapeake Bay Watershed Implementation Plan; Little Creek watershed removed from James River Basin.**

An Act to remove the Little Creek watershed from the James River Basin for purposes of the Chesapeake Bay Watershed Implementation Plan.

[\[S 1203\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That no state agency shall consider or include the Little Creek watershed as part of the James River Basin when developing or implementing the Chesapeake Bay Watershed Implementation Plan.*

## **Chapter 213 Lynchburg, City of; establishment of an airport police department at Lynchburg Regional Airport.**

An Act to allow the City of Lynchburg to establish an airport police department at the Lynchburg Regional Airport.

[\[H 2035\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The City of Lynchburg may by ordinance establish an airport police department at the Lynchburg Regional Airport. The authority of the airport police department shall be limited to real property owned, leased, or controlled by the Airport. Such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office, including as provided in §§ [15.2-1609](#) and [15.2-1704](#) of the Code of Virginia. The airport police department and airport police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ [9.1-600](#), [15.2-1705](#) through [15.2-1708](#), [15.2-1719](#), [15.2-1721](#), and [15.2-1722](#) of the Code of Virginia; and any regulations adopted by the Criminal Justice Services Board that the Department of Criminal Justice Services designates as applicable to private police departments. Any person employed as an airport police officer pursuant to this act shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to Chapter 1 (§ [9.1-100](#) et seq.) of Title 9.1 of the Code of Virginia. An airport police officer is not entitled to benefits under the Line of Duty Act (§ [9.1-400](#) et seq.) or under the Virginia Retirement System, is not a "qualified law-enforcement officer" or "qualified retired law-enforcement officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be*

*deemed an employee of the Commonwealth. The airport police department may use the word "police" to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ [15.2-1747](#) et seq.) of Chapter 17 of Title 15.2 of the Code of Virginia.*

## **Chapter 241 Chemical storage in the Commonwealth; protection of human health and the environment.**

An Act to examine approaches to ensure that chemical storage is conducted in a manner that protects human health and the environment.

[\[S 811\]](#)

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management shall evaluate existing statutory and regulatory tools for ensuring that chemical storage in the Commonwealth is conducted in a manner that is protective of human health, public safety, drinking water resources, and the environment of the Commonwealth. This evaluation may include (i) an examination of Virginia's existing programs to protect drinking water resources from contamination from chemical storage; (ii) identification of any existing gaps or inadequacy in drinking water protections related to chemical storage; (iii) identification of any existing gaps or inadequacy in chemical storage standards; (iv) any recommendations on chemical storage in the Commonwealth to address protection of human health, public safety, drinking water resources, the environment, and the economy of the Commonwealth; and (v) other policies and procedures that the Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management determine may enhance the protection of Virginia's drinking water resources and the safe storage of chemicals in Virginia.*

*The Director of the Department of Environmental Quality, the State Health Commissioner, and the State Coordinator of Emergency Management shall report the findings of the evaluation to the State Water Commission, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, and the Chairman of*

*the House Committee on Agriculture, Chesapeake and Natural Resources no later than December 1, 2016.*

*For purposes of this section, "chemical storage" means those chemicals identified by the Superfund Amendments and Reauthorization Act (SARA) and the Emergency Planning and Community Right-To-Know Act (EPCRA) that provides for hazardous chemical storage reporting requirements in Section 312 of the SARA and are stored in excess of 10,000 gallons.*

2. That the provisions of this act shall expire on January 1, 2017.

## **Chapter 242 License plates, special; issuance of those bearing legend NEWPORT NEWS SHIPBUILDING.**

An Act to authorize the issuance of special license plates for supporters of Newport News Shipbuilding bearing the legend NEWPORT NEWS SHIPBUILDING.

[\[S 839\]](#)

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of Newport News Shipbuilding bearing the legend Newport News Shipbuilding.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of Newport News Shipbuilding bearing the legend NEWPORT NEWS SHIPBUILDING.*

## **Chapter 219 Claims; Jonathan Christopher Montgomery.**

An Act for the relief of Jonathan Christopher Montgomery.

[\[S 843\]](#)

Approved March 16, 2015

Whereas, on June 23, 2008, Jonathan Christopher Montgomery (Mr. Montgomery) was convicted of forcible sodomy, aggravated sexual battery, and animate object sexual

penetration against Elizabeth P. Coast (Ms. Coast) and was sentenced on April 10, 2009, to 45 years in prison with 37 years and 6 months suspended; and  
Whereas, on October 30, 2012, Ms. Coast voluntarily recanted and stated to her friend and colleague Hampton Police Officer Jim Auer that she had falsely testified against Mr. Montgomery, and on November 1, 2012, Ms. Coast voluntarily made a videotaped statement recounting her false testimony; and  
Whereas, Governor Robert McDonnell granted a conditional pardon to Mr. Montgomery on November 20, 2012; and  
Whereas, on May 21, 2013, Ms. Coast pled guilty to perjury, and on August 19, 2013, she was sentenced to five years in prison and ordered to pay \$90,000 in restitution; and  
Whereas, Mr. Montgomery served in a state or regional correctional facility in Virginia from December 2, 2008, until November 20, 2012; Mr. Montgomery's convictions were vacated and he received a writ of actual innocence on December 20, 2013; and  
Whereas, Mr. Montgomery has no other means to obtain adequate relief except by action of this body; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$175,440 for the relief of Mr. Montgomery, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Montgomery may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (i) an initial lump sum of \$35,088 to be paid to Mr. Montgomery by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (ii) the sum of \$140,352 to purchase an annuity no later than September 30, 2015, for the primary benefit of Mr. Montgomery, the terms of such annuity structured in Mr. Montgomery's best interests based on consultation among Mr. Montgomery or his representatives, the State Treasurer, and other necessary parties. In the event of Mr. Montgomery's death, such compensation shall be paid to the estate of Mr. Montgomery upon execution of a release by the personal representative of Mr. Montgomery's estate from any present or future claims the estate may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision thereof. In the event that Mr. Montgomery receives the restitution due to him by Ms. Coast, the amounts remaining and not yet paid from his annuity shall*

*be reduced by the amount of restitution he receives. If the amount of restitution exceeds the amounts not yet paid from his annuity, the annuity shall cease.*

*§ 2. That Mr. Montgomery shall be entitled to receive reimbursement for career and technical training within the Virginia Community College System free of tuition charged, up to a maximum of \$10,000, pursuant to subsection C of § [8.01-195.11](#). Such career and technical training may include online courses. The cost of the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2020.*

## **Chapter 283 Chaplains of the Virginia National Guard and Virginia Defense Force; sermons.**

An Act to prohibit censorship of sermons made by chaplains of the Virginia National Guard and Virginia Defense Force.

[\[S 690\]](#)

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any contrary provisions of law, the religious content of sermons, homilies, preaching, religious messages, or other speeches within religious services made by chaplains of the Virginia National Guard while in Title 32 or State Active Duty status or of the Virginia Defense Force shall not be censored or restricted by any state government official or agency, so long as (i) the religious content offered is not in any way a precursor of, introduction to, or part of any official ceremony, gathering, or formation that is not part of the religious service; (ii) the content does not urge disobedience of lawful orders; and (iii) members of the National Guard or Defense Force are not required to attend the service or event where such content is delivered.*

## **Chapter 338 Motor fuels; vehicles hauling certain fuels during times of necessitous circumstances, report.**

An Act to direct agencies of the Commonwealth to establish protocol relating to hauling motor fuels during times of necessitous circumstances; report.

[\[H 1522\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation, Department of Mines, Minerals and Energy, Department of Emergency Management, Department of Motor Vehicles, Department of State Police, and other interested stakeholders shall work to establish a protocol for submission of a declaration of a state of emergency for resource shortages, as defined in § [44-146.16](#) of the Code of Virginia, that adversely affect the delivery of motor fuels, gasoline, diesel, kerosene, number one and two heating oils, or liquid propane gas within or outside of the Commonwealth.*

2. That the Department of Emergency Management shall submit a report detailing the established protocol to the Governor and the General Assembly by January 13, 2016.

## **Chapter 225 Affordable housing in the City of Charlottesville; income level.**

An Act to amend and reenact § 1 of Chapter 693 of the Acts of Assembly of 2008, as amended by Chapter 527 of the Acts of Assembly of 2013, relating to affordable housing in the City of Charlottesville.

[\[S 1245\]](#)

Approved March 16, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 693 of the Acts of Assembly of 2008, as amended by Chapter 527 of the Acts of Assembly of 2013, is amended and reenacted as follows:

§ 1. A. The governing body of the City of Charlottesville may provide in its comprehensive plan for the physical development within the city, adopted pursuant to § [15.2-2223](#), for densities of development ranging between a floor area ratio (FAR) of 1.0 FAR and 10.0 FAR, or greater, and as such, the governing body may adopt as part of its zoning ordinance requirements for the provision of (i) on-site or off-site "Affordable Dwelling Units," as defined herein, or (ii) a cash contribution to the city's affordable housing fund, in lieu of such units, in such amounts as set out herein, as a condition of the governing

body's approval of a rezoning or special use application for residential or the residential portion of mixed-use projects with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre. Residential or the residential portion of mixed-use projects with a density less than 1.0 FAR, or an equivalent density based on units per acre, shall be exempt from the requirements of this section and the city's zoning ordinance adopted pursuant to this section. The city's zoning ordinance requirements shall provide as follows:

1. Upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant shall provide on-site Affordable Dwelling Units as part of the project, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that exceeds 1.0 FAR or an equivalent density based on units per acre. For purposes of this section, "applicant" shall mean the person or entity submitting a rezoning or special use application for approval of a residential or mixed-use project that contains residential dwelling units in the city and shall include the successors or assigns of the applicant.

2. As an alternative, upon approval of a rezoning or special use application approving a residential, or the residential portion of a mixed-use project with a density equal to or greater than 1.0 FAR, or an equivalent density based on units per acre, the applicant may elect to provide any one of the following:

a. Affordable Dwelling Units at an off-site location in the city, the total gross square footage of such units shall be five percent of the amount of the gross floor area of the project that is over 1.0 FAR, or an equivalent density based on units per acre; or

b. A cash contribution to the city's affordable housing fund, which contribution shall be calculated as follows for each of the density tiers described below:

(1) Two dollars per square foot of gross floor area for residential projects greater than 1.0 FAR or an equivalent density based on units per acre.

(2) For mixed-use projects, cash contributions shall be calculated by applying the proportionate amount of residential gross floor area at two dollars per square foot.

The cash contribution shall be indexed to the Consumer Price Index for Housing in the south urban region as published by the Bureau of Labor Statistics and shall be adjusted annually based upon the changes made in January to such index.

3. For purposes of this section, "Affordable Dwelling Units" ~~mean units committed for a 30-year term as~~ *means units that are affordable to households with incomes at 60 percent or less not more than 80 percent of the area median income and that are committed to remain affordable for a term of not more than 30 years. However, the city may*

*establish a minimum term as it deems necessary to ensure the establishment of committed Affordable Dwelling Units in accordance with subdivision 1 or 2.*

B. With the exception of the authority under § [15.2-2305](#), this section establishes the legislative authority for the city to obtain Affordable Dwelling Units in exchange for the approval of a rezoning or special use application for a residential, or mixed-use project that contains residential dwelling units in the city, and may not be used in combination with any other provision of law in this chapter to obtain Affordable Dwelling Units from an applicant. Nothing in this section shall be construed to repeal the city's authority under any other provision of law.

### **Chapter 375 Kenneth B. Gibson Memorial Park-and-Ride; designating as park-and-ride facility on Interstate 81.**

An Act to designate the park-and-ride facility on Interstate 81 in the Town of Christiansburg the "Kenneth B. Gibson Memorial Park-and-Ride."

[\[H 2269\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The park-and-ride facility on Interstate 81 in the Town of Christiansburg is hereby designated the "Kenneth B. Gibson Memorial Park-and-Ride." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this facility.-*

### **Chapter 255 Waterfowl blinds; expiration and renewal of licenses in Virginia Beach, late fee, etc.**

An Act relating to the expiration and renewal of waterfowl blind licenses in Virginia Beach.

[\[S 1461\]](#)

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of § [29.1-347](#), until such time as new waterfowl blinds are permitted to be licensed in Virginia Beach, licenses for such blinds in Virginia Beach that have expired during calendar year 2014 and thereafter may be renewed by the last licensee during the licensing period for the year following the expiration of the license. There shall be a late fee of \$75 per license renewed. The Department shall notify the licensee by mail or email at the licensee's last known address of the expiration of the license and the opportunity to renew late, and the licensee may request to keep the blind in public waters until such renewal. If the license is not renewed during the licensing period for the year following the expiration of the license, the license shall not be renewed thereafter and the blind shall be removed from public waters.*

*Blinds in Virginia Beach shall not be required to be removed upon initial expiration if the licensee notifies the Department that he intends to renew the license.*

## **Chapter 326 Licensed local school board instructional or administrative employees; service retirement allowance.**

An Act to amend and reenact the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, Chapter 609 of the Acts of Assembly of 2005, and the first enactment of Chapter 590 of the Acts of Assembly of 2009, and to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004, as amended by Chapters 607 and 608 of the Acts of Assembly of 2005 and the second enactment of Chapter 590 of the Acts of Assembly of 2009, relating to retirement allowance for and rehiring retired teachers.

[\[H 2020\]](#)

Approved March 17, 2015

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, Chapter 609 of the Acts of Assembly of 2005, and the first enactment of Chapter 590 of the Acts of Assembly of 2009, is amended and reenacted as follows:

**5. That the provisions of this act shall expire on July 1, ~~2015~~ 2020.**

2. That the third enactment of Chapter 563 of the Acts of Assembly of 2004, as amended by Chapters 607 and 608 of the Acts of Assembly of 2005 and the second enactment of Chapter 590 of the Acts of Assembly of 2009, is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2015~~ 2020.

### **Chapter 346 Cash proffer for residential construction; sunset date.**

An Act to amend and reenact § [15.2-2303.1:1](#) of the Code of Virginia and to repeal the second enactment of Chapter 193 of the Acts of Assembly of 2009, as amended by Chapter 508 of the Acts of Assembly of 2012, relating to cash proffers; sunset date.

[\[S 1257\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-2303.1:1](#) of the Code of Virginia is amended and reenacted as follows:

§ [15.2-2303.1:1](#). When certain cash proffers collected or accepted.

A. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § [15.2-2298](#), [15.2-2303](#), or [15.2-2303.1](#) for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

B. Notwithstanding the provisions of any proffer to the contrary, the assertion of a right to delayed payment of cash proffers pursuant to this section shall not constitute cause for any action pursuant to § [15.2-2299](#).

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with this section.

~~D. The provisions of this section shall expire on July 1, 2017.~~

2. That the second enactment of Chapter 193 of the Acts of Assembly of 2009, as amended by Chapter 508 of the Acts of Assembly of 2012, is repealed.

## **Chapter 376 Blue Star Memorial Highway; designating as a portion of Va. Route 36 in Prince George County.**

An Act to designate a portion of Virginia Route 36 the "Blue Star Memorial Highway."

[\[H 2312\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the portion of Virginia Route 36 in Prince George County between the Hopewell city limits and the Petersburg city limits is hereby designated the "Blue Star Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 353 Lawrenceville, Town of; DOC to convey certain real property to be used for water facilities.**

An Act to authorize the Department of Corrections to convey certain real property to the Town of Lawrenceville to be used for water facilities.

[\[H 2255\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Corrections, with approval of the Governor pursuant to § [2.2-1150](#), is hereby authorized to convey to the Town of Lawrenceville all interest in that certain lot or parcel of land including existing improvements located thereon situate and being in Totaro District, Brunswick County, Virginia, being a portion of Tax Parcel 53-1 containing 0.94 acres, more or less, being shown and designated on a plat entitled "Boundary Survey of a New 0.94 Acre Tank and Booster Station Lot" made by Larry E.*

*Hartsoe, Land Surveyor, dated November 10, 2014. This conveyance shall be made without consideration or cost to the Commonwealth and shall be for the purpose of housing a water booster station and storage tank maintained by the Town of Lawrenceville.*

*§ 2. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 358 Chesapeake Hospital Authority; changes compensation for members.**

An Act to amend and reenact § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966, relating to the Chesapeake Hospital Authority.

[\[H 2236\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966 is amended and reenacted as follows:

§ 2. The Authority shall be composed of eleven members, two of whom shall be licensed members of the medical profession, all of whom shall be appointed by the city council. The terms of the members shall be four years and staggered so that no more than four members shall be appointed in any one year; provided, however, that for terms which commence in 1999, the council shall appoint four members for four-year terms and two members for five-year terms, and for terms which commence in 2001, the council shall appoint four members for four-year terms and one member for a three-year term. Any member may be reappointed. Members shall be compensated for their services in the amount of *\$250 per attendance at each meeting, provided, however, that no member shall be compensated for participation in a meeting by electronic means when the member is not physically present at the meeting. The Authority shall adopt as part of its bylaws a definition of "compensable meeting" prior to compensating any member in accordance with this section.* Members shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties. Each member shall continue to hold office until the earlier of the effective date of his

resignation or the date on which his successor has been appointed and qualified. The council shall have the right to remove any member or officer, for malfeasance or misfeasance, incompetency or gross neglect of duty. Vacancies shall be filled by appointment of the council for unexpired terms, or in the case of an increase in the size of the Authority, filled by appointment of the council, which appointments may be for an initial term less than four years. Members shall take an appropriate oath of office and same shall be filed with the city clerk. Members shall elect on an annual basis one of their number as chairman and another as vice-chairman and shall also elect a secretary and treasurer for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer. The members shall make such rules, regulations and bylaws for their own government and procedure as they shall determine; they shall meet regularly at least once a month and may hold such special meetings as they deem necessary.

## **Chapter 511 Virginia Retirement System; cash balance retirement plan.**

An Act to require the Virginia Retirement System to report to the General Assembly on a cash balance retirement plan.

[\[H 1969\]](#)

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Retirement System (VRS) shall review cash balance retirement plans implemented in other statewide retirement systems and develop and submit a plan to the General Assembly no later than November 1, 2015. The analysis shall include: (i) a comparison of the long-term employer and employee costs of such cash balance plans to current VRS plan designs, (ii) an assessment of their financial risks to employers and employees, (iii) the administrative impact of such plans to VRS and its employers, (iv) the likely effect upon retirement benefits for employees, and (v) a recommended funding structure under which a cash balance plan could be funded by state and local employers while still meeting the funding requirements of existing VRS plans.*

## **Chapter 527 Virginia Retirement System; revocation of participation by Town of Damascus.**

An Act relating to the Virginia Retirement System; revocation of participation by the Town of Damascus.

[\[S 1173\]](#)

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That notwithstanding the provisions of § [51.1-139](#) of the Code of Virginia and based on its not having made contributions to the Virginia Retirement System for a period of 25 consecutive years, the Town of Damascus may revoke, in writing, its agreement to contribute to the Virginia Retirement System on behalf of any eligible employees for creditable service rendered on or after the date of the revocation.*

## **Chapter 367 School Performance Report Card; redesign to be more effective in communicating to parents & public.**

An Act to redesign the School Performance Report Card and repeal Chapters 672 and 692 of the Acts of Assembly of 2013 and Chapters 480 and 485 of the Acts of Assembly of 2014.

[\[S 727\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No later than July 1, 2016, the Board of Education, in consultation with the Standards of Learning Innovation Committee, shall redesign the School Performance Report Card so that it is more effective in communicating to parents and the public the status and achievements of the public schools and local school divisions in the Commonwealth. The Board, in redesigning the School Performance Report Card, may*

*consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate statement of performance for each public elementary and secondary school and local school division in the Commonwealth. No later than October 1, 2015, the Board shall provide notice and solicit public comment on the redesigned School Performance Report Card. No later than December 1, 2015, the Board shall make a summary of the redesigned School Performance Report Card available to the public and submit such summary to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall make available to the public a School Performance Report Card for each public elementary and secondary school and local school division in the Commonwealth.*

2. That Chapters 672 and 692 of the Acts of Assembly of 2013 and Chapters 480 and 485 of the Acts of Assembly of 2014 are repealed.

## **Chapter 368 School Performance Report Card; redesign to be more effective in communicating to parents & public.**

An Act to redesign the School Performance Report Card and repeal Chapters 672 and 692 of the Acts of Assembly of 2013 and Chapters 480 and 485 of the Acts of Assembly of 2014.

[\[H 1672\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. No later than July 1, 2016, the Board of Education, in consultation with the Standards of Learning Innovation Committee, shall redesign the School Performance Report Card so that it is more effective in communicating to parents and the public the status and achievements of the public schools and local school divisions in the Commonwealth. The Board, in redesigning the School Performance Report Card, may*

*consider (i) the standards of accreditation, (ii) state and federal accountability requirements, (iii) state-mandated assessments, (iv) any alternative assessments developed or approved for use by the relevant local school board, (v) student growth indicators, (vi) student mobility, (vii) the experience and qualifications of school staff, (viii) total cost and funding per pupil, (ix) school safety, and (x) any other factors that the Board deems necessary to produce a full and accurate statement of performance for each public elementary and secondary school and local school division in the Commonwealth. No later than October 1, 2015, the Board shall provide notice and solicit public comment on the redesigned School Performance Report Card. No later than December 1, 2015, the Board shall make a summary of the redesigned School Performance Report Card available to the public and submit such summary to the Chairman of the House Committee on Education and the Chairman of the Senate Committee on Education and Health. No later than October 1, 2016, and each October 1 thereafter, the Board shall make available to the public a School Performance Report Card for each public elementary and secondary school and local school division in the Commonwealth.*

2. That Chapters 672 and 692 of the Acts of Assembly of 2013 and Chapters 480 and 485 of the Acts of Assembly of 2014 are repealed.

## **Chapter 630 License plates, special; issuance for supporters of curing childhood cancer bearing legend CURE CHILDHOOD CANCER.**

An Act to authorize the issuance of special license plates for supporters of curing childhood cancer bearing the legend CURE CHILDHOOD CANCER.

[\[H 1319\]](#)

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of curing childhood cancer bearing the legend CURE CHILDHOOD CANCER.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant*

*special license plates for supporters of curing childhood cancer bearing the legend CURE CHILDHOOD CANCER.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 671 Dependents of active duty military members; DMAS shall amend waiver eligibility criteria.**

An Act to require the Department of Medical Assistance Services to amend waiver eligibility criteria to allow dependents of active duty military members to remain on waiting lists for services when stationed outside the Commonwealth.

[\[S 1036\]](#)

Approved March 27, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Medical Assistance Services shall amend eligibility criteria for waivers supporting individuals with intellectual and developmental disabilities to allow the dependent of an active duty member of the military who was added to the waiting list for services through such waivers while he was a resident of the Commonwealth to maintain his position on the waiting list following a transfer of the active duty military member to an assignment outside of the Commonwealth, so long as the active duty military member maintains the Commonwealth as his legal residence to which he intends to return following completion of military service.-*

## **Chapter 377 Virginia Marine Resources Commission; conveyance of easement across Rappahannock River.**

An Act to authorize the Virginia Marine Resources Commission to convey a permanent easement and rights-of-way across the Rappahannock River, including a portion of the Baylor Survey, to Virginia Electric and Power Company (Dominion Virginia Power), for the purpose of installing, constructing, maintaining, repairing, and operating an overhead electric transmission line.

[\[S 1030\]](#)

Approved March 19, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor and the Attorney General, shall deem proper, a permanent easement and right-of-way of 80 feet of width, a right-of-way of 200 feet of width section at the navigational channel, and a temporary right-of-way of a reasonable width as needed for the purpose of installing, constructing, maintaining, repairing, and operating an overhead electric transmission line across the Rappahannock River, including a portion of the Baylor Survey, the center line of such easement being described as follows:*

*Beginning at a point on the mean low water mark on the south side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the southerly line of the Commonwealth of Virginia and being N 14°48'58" W, a distance of 13.51' from the northwesterly property corner of a parcel of land owned by David B. Wallace and Heidi M. Ott as recorded in Deed Book 282, page 699 in the Clerk's Office of the Circuit Court of Middlesex County, Virginia, said point having a coordinate value of North 3,753,495.48, East 12,081,488.92 based on the Virginia State Plane Coordinate System, South Zone, NAD 1983(2011), thence continuing in the waters of the Rappahannock River, N 40°00'45" E, a distance of 316.22' to a point having a coordinate value of North 3,753.737.68, East 12,081,692.23, thence N 36°59'28" E, a distance of 9889.26' ending at a point on the mean low water mark on the north side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the northerly line of the Commonwealth of Virginia and being S 77°21'59" E, a distance of 53.10' from the southwesterly property corner of a parcel of land owned by Highbank Association Incorporated as recorded in instrument number LR20080000163 in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, and also being on the northerly line of the Commonwealth of Virginia, having a coordinate value of North 3,761,636.52, East 12,087,642.51 and containing 18.95 acres more or less.*

*§ 2. The portion of the property described in § 1 that lies within the Baylor Survey shall not be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth and is described as follows:*

*Area within Public Ground No. 1 Middlesex County*

*Beginning at a point on the southerly line of the Baylor Survey Grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Middlesex County, Virginia (119.001.0300). Said point also being along the centerline of a proposed 80' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,754,367.78, East 12,082,166.90, based on the Virginia State Plane Coordinate System, South Zone, NAD1983(2011) and being the point of beginning: thence, from said point of beginning along the southerly line of the Baylor Survey Grounds of Public Ground No. 1, N 75°00'02" W, a distance of 43.14' to a point having a coordinate value of North 3,754,378.94, East 12,082,125.23, thence leaving the aforesaid southerly line, N 36°59'28" E, a distance of 2257.07' to a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 having a coordinate value of North 3,756,181.73, East 12,083,483.29, thence along the aforesaid northerly line, S 73°58'25" E, a distance of 42.84' to a point, said point being along the centerline of a proposed 80' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,756,169.90, East 12,083,524.46, thence S 73°58'25" E, a distance of 42.84' to a point having a coordinate value of North 3,756,158.08, East 12,083,565.63, thence leaving the aforesaid northerly line, S 36°59'28" W, a distance of 2255.41' to a point, said point being on the southerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,754,356.61, East 12,082,208.57, thence along the aforesaid southerly line, N 75°00'02" W, a distance of 43.14' to the point of beginning, containing 4.14 acres.*

*Area within Public Ground No.1 Lancaster County*

*Beginning at a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Lancaster County, Virginia (103.001.0300). Said point also being along the centerline of a proposed 80' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,761,010.52, East 12,087,170.94 based on the Virginia State Plane Coordinate System, South Zone, NAD1983(2011) and being the point of beginning: thence, from said point of beginning along the northerly line of the Baylor Survey Grounds of Public Ground No. 1, S 36°47'27" E, a distance of 41.66' to a point, having a coordinate value of North 3,760,977.16, East 12,087,195.89, thence leaving the aforesaid northerly line, S 36°59'28" W, a distance of 2235.02' to a point on the southerly line of the Baylor Survey Grounds of Public Ground No. 1, having a coordinate value of North 3,759,191.98, East 12,085,851.10, thence along the aforesaid southerly line, N 55°16'47" W, a distance of 40.03' to a point, said point being along the centerline of a proposed 80' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,759,214.78, East 12,085,818.19, thence N 55°16'47" W, a distance of 40.03' to a point having a*

*coordinate value of North 3,759,237.58, East 12,085,785.29, thence leaving the aforesaid southerly line N 36°59'28" E, a distance of 2261.46' to a point, said point being on the northerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,761,043.88, East 12,087,145.99, thence along the aforesaid northerly line S 36°47'27" E, a distance of 41.66' to the point of beginning, containing 4.13 acres.-*

*§ 3. The instruments granting and conveying the easement and rights-of-way from the Commonwealth to Virginia Electric and Power Company shall be in a form approved by the Attorney General. The legal descriptions above may be modified to correct any errors discovered during the process of finalizing these instruments. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 466 Mobile food vending businesses; regulations to permit on state highway rights-of-way, exception.**

An Act to direct the Commonwealth Transportation Board to amend its regulations to permit mobile food vending on state highway rights-of-way.

[\[H 2042\]](#)

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth Transportation Board shall amend its regulations so as to permit mobile food vending on state highway rights-of-way except limited access highways. Such regulations may provide for the issuance of permits by the Department of Transportation to mobile food vendors authorizing such vendors to operate on state highway rights-of-way in certain business districts, urban development areas, or areas zoned for commercial use and limited to specific locations within those business districts, urban development areas, or areas zoned for commercial use where the Department of Transportation has determined that motor vehicle traffic flow and motorist and pedestrian safety on the state highway rights-of-way would not be adversely affected by the operation of the mobile food vendors. The Department of Transportation shall seek input from affected localities and other stakeholders during the process of amending the*

*regulations authorized by this section. Such regulations shall allow localities to regulate the operation of such mobile food vending businesses located on the state highway rights-of-way within the locality in a manner consistent with local ordinances and the Commonwealth Transportation Board's regulations and policies.*

## **Chapter 472 Henry County; DCR to convey certain property in Horsepasture District.**

An Act authorizing the Department of Conservation and Recreation to grant a 15-foot-wide easement in Henry County.

[\[H 2247\]](#)

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Conservation and Recreation, with approval of the Governor pursuant to § [10.1-109](#) of the Code of Virginia, is hereby authorized to convey a 15-foot-wide, permanent, nonexclusive right-of-way easement for ingress and egress in the Horsepasture District coming off of Virginia State Route 823 (Pratt Road) onto the Old Mica Mine Road (unpaved access road) and continuing in a southwesterly direction on Old Mica Road along the west of the property belonging to the Department of Conservation and Recreation (Tax Map Number 69.7(000)000/008) to Russell C. Stone, his successors and assigns. The conveyance shall be made without consideration. This conveyance shall be for the purpose of allowing the grantee to access his property in a manner advantageous to the Department and the grantee.*

*§ 2. The granting and conveying of the right-of-way easement shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 473 State agencies; work group established to provide public access to operational data, etc.

An Act to facilitate access to operational data and information of state agencies for use by the public and the standing committees of the General Assembly to promote the effectiveness and efficiency of state government.

[\[H 2378\]](#)

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Secretaries of Administration, Finance, and Technology shall jointly establish a work group to provide the public, the Chairmen of each standing committee of the General Assembly or their designees, and a designated staff member of the House Committee on Appropriations and the Senate Committee on Finance with access to data and information pertaining to the operation of state agencies within the subject matter jurisdiction of each standing committee. Access shall be by electronic means to the extent possible, as determined by the work group, taking into account security and privacy restrictions. Where it is not currently feasible to provide such access by electronic means due to the costs or technological considerations, the provision of such data or documentation may be made available by hard copy, provided, however, that in the latter case, the work group shall prepare written documentation on alternative approaches and costs to modify systems so that relevant data may be accessed in an electronic fashion on an ongoing basis, if desired.*

*Such electronic access shall include the following data and information:*

- 1. Any agency mission statement;*
- 2. The current agency budget;*
- 3. The total number of full-time and part-time employees at the agency;*
- 4. The current cash balance of the agency;*
- 5. All sources of state or federal funding received by the agency, preferably over the immediately preceding five years, and the amount thereof;*
- 6. Any grant awarded by the agency and the amount thereof; and*
- 7. Any contracts in excess of \$10,000 awarded by the agency and the cost thereof.*

*§ 2. The Secretaries of Administration, Finance, and Technology shall ensure that the work group makes substantial progress toward accessing the information and data required by § 1 on or before November 1, 2015, and identify possible future steps to further facilitate electronic access to such data.*

## **Chapter 664 Cooperative degree program; Secretary of Education, et al., shall develop a plan to establish.**

An Act to direct the Secretary of Education and the Director of the State Council of Higher Education for Virginia to develop a plan to establish an online cooperative degree program.

[\[H 2320\]](#)

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Secretary of Education (Secretary) and the Director of the State Council of Higher Education for Virginia (Director), in consultation with each two-year or four-year public or private, nonprofit institution of higher education in the Commonwealth and the Virginia Community College System, shall develop a plan to establish and advertise a cooperative degree program whereby any undergraduate student enrolled at any two-year or four-year public or private, nonprofit institution of higher education in the Commonwealth may complete, through the use of online courses at any such institution, the course credit requirements to receive a degree at a tuition cost not to exceed \$4,000, or such cost that is achievable, per academic year.*

*No later than October 1, 2016, the Secretary and the Director shall report to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health on the progress made by the Secretary and Director toward developing a cooperative degree program plan pursuant to this act.*

## **Chapter 669 State and federal programs; VRS shall convene a work group to review, etc.**

An Act to require the Virginia Retirement System to convene a work group to develop recommendations to encourage and facilitate saving for retirement.

[\[H 1998\]](#)

Approved March 27, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Retirement System shall convene a work group to review current state and federal programs that encourage citizens of the Commonwealth to save for retirement by participating in retirement savings plans including, but not limited to, plans pursuant to §§ 401(k), 403(b), 408(k), 408(p), and 457(b) of the Internal Revenue Code. Such review shall include an examination of retirement savings options for self-employed individuals, part-time employees, full-time employees whose employers do not offer a retirement savings plan, and groups with a low savings rate. The membership of the work group shall include representatives of the Virginia Retirement System, the Department of Taxation, small business, the self-employed, the Virginia College Savings Plan, and other stakeholders. The findings may include recommendations for statutory changes or amendments to the general appropriation act. The Virginia Retirement System shall report the findings of the work group to the Governor and the General Assembly by January 1, 2017, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports, and the report shall be posted on the General Assembly's website.*

## **Chapter 686 Creditor process; bankruptcy proceeding exemptions.**

An Act to amend and reenact § [34-26](#) of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 34 a section numbered [34-28.2](#), relating to bankruptcy proceeding exemptions.

[\[H 2015\]](#)

Approved March 27, 2015

Be it enacted by the General Assembly of Virginia:

1. That § [34-26](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 34 a section numbered [34-28.2](#) as follows:

§ [34-26](#). Poor debtor's exemption; exempt articles enumerated.

In addition to the exemptions provided in Chapter 2 (§ [34-4](#) et seq.), every householder shall be entitled to hold exempt from creditor process the following enumerated items:

1. The family Bible.

1a. Wedding and engagement rings.

2. Family portraits and family heirlooms not to exceed \$5,000 in value.

3. (i) A lot in a burial ground, and (ii) any preneed funeral contract not to exceed \$5,000.

4. All wearing apparel of the householder not to exceed \$1,000 in value.

4a. All household furnishings including, but not limited to, beds, dressers, floor coverings, stoves, refrigerators, washing machines, dryers, sewing machines, pots and pans for cooking, plates, and eating utensils, not to exceed \$5,000 in value.

4b. ~~One firearm~~ *Firearms*, not to exceed *a total of* \$3,000 in value.

5. All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit.

6. Medically prescribed health aids.

7. Tools, books, instruments, implements, equipment, and machines, including motor vehicles, vessels, and aircraft, which are necessary for use in the course of the householder's occupation or trade not exceeding \$10,000 in value, except that a perfected security interest on such personal property shall have priority over the claim of exemption under this section. A motor vehicle, vessel or aircraft used to commute to and from a place of occupation or trade and not otherwise necessary for use in the course of such occupation or trade shall not be exempt under this subdivision. "Occupation," as used in this subdivision, includes enrollment in any public or private elementary, secondary, or career and technical education school or institution of higher education.

8. ~~A motor vehicle~~ *Motor vehicles*, not held as exempt under subdivision 7, owned by the householder, not to exceed *a total of* \$6,000 in value, except that a perfected security interest on ~~the~~ a motor vehicle shall have priority over the claim of exemption under this subdivision.

9. *Those portions of a tax refund or governmental payment attributable to the Child Tax Credit or Additional Child Tax Credit pursuant to § 24 of the Internal Revenue Code of*

*1986, as amended, or the Earned Income Credit pursuant to § 32 of the Internal Revenue Code of 1986, as amended.*

*10. Unpaid spousal or child support.*

The value of an item claimed as exempt under this section shall be the fair market value of the item less any prior security interest.

The monetary limits, where provided, are applicable to the total value of property claimed as exempt under that subdivision.

The purchase of an item claimed as exempt under this section with nonexempt property in contemplation of bankruptcy or creditor process shall not be deemed to be in fraud of creditors.

No officer or other person shall levy or distrain upon, or attach, such articles, or otherwise seek to subject such articles to any lien or process. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption.

*§ [34-28.2](#). Spousal and child support exempt.*

*The debtor's right to receive spousal or child support, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, shall be exempt from creditor process.*

## **Chapter 717 Constitutional amendment; right to work.**

HOUSE JOINT RESOLUTION NO. 490

Proposing an amendment to the Constitution of Virginia by adding in Article I a section numbered 11-A, relating to the right to work.

Agreed to by the House of Delegates, February 9, 2015

Agreed to by the Senate, February 20, 2015

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of

Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article I a section numbered 11-A as follows:

ARTICLE I

BILL OF RIGHTS

*Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

**Chapter 718 Constitutional amendment; real property tax exemption.**

HOUSE JOINT RESOLUTION NO. 597

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 6-B, relating to property tax exemptions.

Agreed to by the House of Delegates, February 9, 2015

Agreed to by the Senate, February 20, 2015

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-B as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-B. Property tax exemptions for spouses of certain emergency services providers.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may provide for a local option to exempt from taxation the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, who occupies the real property as his or her principal place of residence. The exemption under this section shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in the line of duty prior to the effective date of this section, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel.*

## **Chapter 720 Veterans Care Center projects; funding of projects.**

An Act to allocate funding for certain Veterans Care Center projects.

[\[H 1275\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In order to expedite the completion of certain Veterans Care Center projects, \$66.7 million in Virginia Public Building Authority Bonds authorized in Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I, shall be made available as a priority for the Hampton Roads Veterans Care Center project or the Northern Virginia*

*Veterans Care Center project set forth in paragraph B of such Item. Bond proceeds may be used for, but are not limited to, the design, environmental assessments, and construction of one or both Veterans Care Centers. Prior to allocating bond proceeds to a project or projects, the Department of Veterans Services shall provide a plan of action to the Chairmen of the House Appropriations Committee and the Senate Finance Committee and the Secretaries of Veterans and Defense Affairs and Finance. The Director of the Department of Planning and Budget shall allocate bond proceeds up to the amounts provided above, and the same shall be appropriated, to the Department of Veterans Services so that the project or projects may proceed without further action by the Commonwealth, in accordance with 38 C.F.R. § 59.50 and 38 C.F.R. § 59.70(b).*

*§ 2. In addition to such priority allocation of bonds under § 1, the General Assembly hereby appropriates nongeneral funds in an amount equal to any federal grant funds to the Department of Veterans Services for the Veterans Care Center projects described in § 1.*

*§ 3. Each Veterans Care Center project is authorized up to a 230-bed facility.*

## **Chapter 721 Veterans Care Center projects; funding of projects.**

An Act to allocate funding for certain Veterans Care Center projects.

[\[H 1276\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In order to expedite the completion of certain Veterans Care Center projects, \$66.7 million in Virginia Public Building Authority Bonds authorized in Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I, shall be made available as a priority for the Hampton Roads Veterans Care Center project or the Northern Virginia Veterans Care Center project set forth in paragraph B of such Item. Bond proceeds may be used for, but are not limited to, the design, environmental assessments, and construction of one or both Veterans Care Centers. Prior to allocating bond proceeds to a project or projects, the Department of Veterans Services shall provide a plan of action to the Chairmen of the House Appropriations Committee and the Senate Finance Committee and the Secretaries of Veterans and Defense Affairs and Finance. The Director of the*

*Department of Planning and Budget shall allocate bond proceeds up to the amounts provided above, and the same shall be appropriated, to the Department of Veterans Services so that the project or projects may proceed without further action by the Commonwealth, in accordance with 38 C.F.R. § 59.50 and 38 C.F.R. § 59.70(b).*

*§ 2. In addition to such priority allocation of bonds under § 1, the General Assembly hereby appropriates nongeneral funds in an amount equal to any federal grant funds to the Department of Veterans Services for the Veterans Care Center projects described in § 1.*

*§ 3. Each Veterans Care Center project is authorized up to a 230-bed facility.*

## **Chapter 742 Involuntary civil admissions; evaluations.**

An Act to direct the Commissioner of Behavioral Health and Developmental Services to develop a comprehensive plan to authorize psychiatrists and emergency physicians to evaluate individuals for involuntary civil admission.

[\[H 2368\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) shall, in conjunction with relevant stakeholders including the Virginia Association of Community Services Boards, the National Alliance on Mental Illness - Virginia, the Psychiatric Society of Virginia, the Virginia College of Emergency Physicians, the Virginia Hospital and Healthcare Association, the Virginia Academy of Clinical Psychologists, the Medical Society of Virginia, and the University of Virginia Institute for Law, Psychiatry, and Public Policy, review the current practice of conducting emergency evaluations for individuals subject to involuntary civil admission. Such review shall identify community services boards and catchment areas where significant delays in responding to emergency evaluations are occurring or have occurred in recent years. Further, the Commissioner shall develop a comprehensive plan to authorize psychiatrists and emergency physicians to evaluate individuals for involuntary civil admission where appropriate to expedite emergency evaluations. The review and comprehensive plan including recommendations shall be completed by November 15,*

*2015, and reported to the Governor and the Joint Subcommittee Studying Mental Health Services in the Commonwealth in the 21st Century, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Education and Health.*

## **Chapter 743 Veterans Care Center projects; funding of projects.**

An Act to allocate funding for certain Veterans Care Center projects.

[\[S 675\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In order to expedite the completion of certain Veterans Care Center projects, \$66.7 million in Virginia Public Building Authority Bonds authorized in Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I, shall be made available as a priority for the Hampton Roads Veterans Care Center project or the Northern Virginia Veterans Care Center project set forth in paragraph B of such Item. Bond proceeds may be used for, but are not limited to, the design, environmental assessments, and construction of one or both Veterans Care Centers. Prior to allocating bond proceeds to a project or projects, the Department of Veterans Services shall provide a plan of action to the Chairmen of the House Appropriations Committee and the Senate Finance Committee and the Secretaries of Veterans and Defense Affairs and Finance. The Director of the Department of Planning and Budget shall allocate bond proceeds up to the amounts provided above, and the same shall be appropriated, to the Department of Veterans Services so that the project or projects may proceed without further action by the Commonwealth, in accordance with 38 C.F.R. § 59.50 and 38 C.F.R. § 59.70(b).*

*§ 2. In addition to such priority allocation of bonds under § 1, the General Assembly hereby appropriates nongeneral funds in an amount equal to any federal grant funds to the Department of Veterans Services for the Veterans Care Center projects described in § 1.*

*§ 3. Each Veterans Care Center project is authorized up to a 230-bed facility.*

## **Chapter 744 Veterans Care Center projects; funding of projects.**

An Act to allocate funding for certain Veterans Care Center projects.

[\[S 676\]](#)

Approved April 15, 2015

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. In order to expedite the completion of certain Veterans Care Center projects, \$66.7 million in Virginia Public Building Authority Bonds authorized in Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I, shall be made available as a priority for the Hampton Roads Veterans Care Center project or the Northern Virginia Veterans Care Center project set forth in paragraph B of such Item. Bond proceeds may be used for, but are not limited to, the design, environmental assessments, and construction of one or both Veterans Care Centers. Prior to allocating bond proceeds to a project or projects, the Department of Veterans Services shall provide a plan of action to the Chairmen of the House Appropriations Committee and the Senate Finance Committee and the Secretaries of Veterans and Defense Affairs and Finance. The Director of the Department of Planning and Budget shall allocate bond proceeds up to the amounts provided above, and the same shall be appropriated, to the Department of Veterans Services so that the project or projects may proceed without further action by the Commonwealth, in accordance with 38 C.F.R. § 59.50 and 38 C.F.R. § 59.70(b).*

*§ 2. In addition to such priority allocation of bonds under § 1, the General Assembly hereby appropriates nongeneral funds in an amount equal to any federal grant funds to the Department of Veterans Services for the Veterans Care Center projects described in § 1.*

*§ 3. Each Veterans Care Center project is authorized up to a 230-bed facility.*

# Uncodified Acts of Assembly - 2016

## Chapter 12 Constitutional amendment; right to work (submitting to qualified voters).

An Act to provide for the submission to the voters of a proposed amendment to the Constitution of Virginia adding to Article I a section numbered 11-A, relating to the right to work.

[\[H 4\]](#)

Approved February 24, 2016

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2016, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend the Constitution of Virginia by adding to Article I a section numbered 11-A as follows:

ARTICLE I

BILL OF RIGHTS

*Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

§ 2. The ballot shall contain the following question:

"Question: Should Article I of the Constitution of Virginia be amended to prohibit any agreement or combination between an employer and a labor union or labor organization

whereby (i) nonmembers of the union or organization are denied the right to work for the employer, (ii) membership to the union or organization is made a condition of employment or continuation of employment by such employer, or (iii) the union or organization acquires an employment monopoly in any such enterprise?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2017.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 17 Constitutional amendment; real property tax exemptions.**

An Act to provide for the submission to the voters of a proposed amendment to the Constitution of Virginia adding in Article X a section numbered 6-B, relating to real property tax exemptions.

[\[H 865\]](#)

Approved February 24, 2016

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2016, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-B as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 6-B. Property tax exemptions for spouses of certain emergency services providers.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may provide for a local option to exempt from taxation the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, who occupies the real property as his or her principal place of residence. The exemption under this section shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in the line of duty prior to the effective date of this section, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel.*

§ 2. The ballot shall contain the following question:

"Question: Shall the Constitution of Virginia be amended to allow the General Assembly to provide an option to the localities to exempt from taxation the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, where the surviving spouse occupies the real property as his or her principal place of residence and has not remarried?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2017.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 41 Conservation police officers; certain officers of Department of Game and Inland Fisheries.**

An Act authorizing benefits to certain conservation police officers.

[\[H 315\]](#)

Approved February 26, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Any conservation police officer who (i) has at least 20 years of service as a conservation police officer, (ii) was a full-time sworn conservation police officer immediately prior to January 1, 2016, and (iii) was transitioned to a civilian position on January 1,*

2016, by the Department of Game and Inland Fisheries shall be considered a retired law-enforcement officer for the purposes of §§ [9.1-1000](#), [18.2-308](#), [18.2-308.03](#), and [59.1-148.3](#).

## **Chapter 54 Reformulated gasoline (RFG) program; sale by marina.**

An Act to seek an exemption from the federal reformulated gasoline program for gasoline sold by a marina for marine use.

[\[S 557\]](#)

Approved February 29, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality be directed to seek from the U.S. Environmental Protection Agency (EPA) an exemption from the federal reformulated gasoline (RFG) program for the sale by a qualifying marina of conventional, ethanol-free gasoline. A qualifying marina shall be one that sells gasoline exclusively to the marine recreational or commercial trade. No ethanol-free gasoline sold by such marina shall be used in any road vehicle.*

## **Chapter 67 U.S. Department of the Interior; monitoring by VMRC, Assateague Island National Seashore.**

An Act to direct the Marine Resources Commission to monitor efforts of the U.S. Department of the Interior; Assateague Island National Seashore; jurisdiction.

[\[S 643\]](#)

Approved February 29, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Marine Resources Commission (the Commission) shall monitor any effort by the U.S. Department of the Interior to expand federal jurisdiction regarding fishing or*

*shellfish harvesting in the waters adjoining the Assateague Island National Seashore. The Commission shall seek to preserve the right and ability of Virginia watermen to use such waters.*

## **Chapter 73 Anatomical gifts; search and rescue dog training.**

An Act to require the Department of Health to convene a work group to establish policies and procedures for making anatomical gifts for the purpose of search and rescue dog training.

[\[H 202\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health shall convene a work group of stakeholders, which shall include representatives of the Department of Health, the Department of Emergency Management, the State Anatomical Program, procurement organizations, and local search and rescue teams and organizations, to (i) identify and evaluate options for using human remains donated to search and rescue teams and organizations as anatomical gifts for the purpose of training dogs to find human remains during search and rescue operations and (ii) establish policies and procedures to govern the process of using anatomical gifts for such purpose. In conducting its work, the work group shall respect the sensitive nature of donation for donors and families of decedents and assure that all policies and procedures reflect and incorporate this understanding. The work group shall report its activities, findings, and recommendations to the General Assembly by December 1, 2016.*

## **Chapter 79 Emergency medical services providers; interstate agreements.**

An Act to require the Secretary of Health and Human Resources to undertake efforts to establish collaborative agreements with other states to allow emergency medical services providers to provide emergency medical services across state lines.

[\[H 311\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Health and Human Resources shall undertake efforts to establish collaborative agreements with other states, particularly those states that share a border with the Commonwealth, for the interstate recognition of certifications of emergency medical services providers for the purpose of allowing emergency medical services providers to enter into other states to provide emergency medical services and shall report to the General Assembly regarding the status of such efforts no later than November 1, 2016.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 80 SHHR; increase sharing of electronic health records, report.**

An Act to require the Department of Health to work with stakeholders to increase sharing of electronic health records.

[\[H 312\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Health and Human Resources shall work with stakeholders, which shall include representatives of hospitals and other health care providers in the Commonwealth, to (i) evaluate interoperability of electronic health records systems among health systems and health care providers and the ability of health systems and health care providers to share patient records in electronic format and (ii) develop recommendations for improving the ability of health systems and health care providers to share electronic health records with the goal of ensuring that all health care providers in the Commonwealth are able to share electronic health information to reduce the cost of health care and improve the efficiency of health care services. The Secretary shall report his findings and recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by*

*December 1, 2016.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 114 DMAS; Request for Proposal.**

An Act to direct the Department of Medical Assistance Services to issue a Request for Proposal for statewide nonemergency medical transportation services.

[\[S 774\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Medical Assistance Services shall issue a Request for Proposal for statewide nonemergency medical transportation services as soon as reliable rate setting is available, in order to enter a new contract by July 1, 2017.*

## **Chapter 118 Trooper Nathan-Michael W. Smith Memorial Bridge; designating as Rt. 301 bridge over Interstate 95.**

An Act to designate the Route 301 bridge in Prince George County the "Trooper Nathan-Michael W. Smith Memorial Bridge."

[\[H 184\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Route 301 bridge in Prince George County at Exit 45 over Interstate 95 is hereby designated the "Trooper Nathan-Michael W. Smith Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 119 State parks; establishing fee schedule.**

An Act directing the Department of Conservation and Recreation to develop a plan establishing a fee structure for campsites and cabins at state parks.

[\[H 200\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation shall develop a plan establishing a fee structure for the use of campsites and cabins in state parks, considering (i) seasonal usage, (ii) local and regional markets, (iii) travel trends, (iv) weather, (v) geographic location of a park, (vi) time of year, and (vii) other factors considered important by the Department. Based on such factors, the plan shall include recommendations for rental rates for campsites and cabins for (a) the general population and (b) persons 65 years of age and older. The plan shall be submitted to the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 1, 2016.*

## **Chapter 134 Designating the Trooper Nathan-Michael W. Smith Memorial Bridge.**

An Act to designate the Route 301 bridge in Prince George County the "Trooper Nathan-Michael W. Smith Memorial Bridge."

[\[S 107\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Route 301 bridge in Prince George County at Exit 45 over Interstate 95 is hereby designated the "Trooper Nathan-Michael W. Smith Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore*

*or hereafter applied to this bridge.*

## **Chapter 138 Trooper Harry Lee Henderson Memorial Bridge; designating as Interstate 66 bridge in Warren County.**

An Act to designate the Interstate 66 bridge in Warren County the “Trooper *Harry Lee Henderson Memorial Bridge.*”

[\[S 448\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Interstate 66 bridge in Warren County over Route 624 is hereby designated the "Trooper HarryLee Henderson Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 148 High school graduation and dropout data; on-time graduation.**

An Act to require the Department of Education to review certain federal regulations and suggest revisions to its guidance documents on such regulations relating to students who have been treated for pediatric cancer.

[\[H 475\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Education (Department) shall review regulations established pursuant to the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., and § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794, and suggest revisions to Department guidance documents on such federal regulations relating to*

*a return to learn protocol for students who have been treated for pediatric cancer.*

## **Chapter 217 Landscape cover materials; local ordinances concerning installation or use.**

An Act to address local ordinances concerning the installation or use of landscape cover materials.

[\[S 736\]](#)

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any provision of law, general or special, any ordinance in effect and any ordinance adopted by the governing body of the City of Harrisonburg shall not include in any local fire prevention regulations a requirement that an owner of real property who has an occupancy permit issued by the City use specific landscape cover materials or retrofit existing landscape cover materials at such property.*

## **Chapter 247 Virginia Beach arena; extends an existing contingent sunset provision.**

An Act to amend and reenact the fifth enactment of Chapter 767 of the Acts of Assembly of 2013, as amended by Chapters 738 and 742 of the Acts of Assembly of 2014, relating to Virginia Beach arena.

[\[H 138\]](#)

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 767 of the Acts of Assembly of 2013, as amended by Chapters 738 and 742 of the Acts of Assembly of 2014, is amended and reenacted as follows:

5. That if prior to January 1, 2018, (i) the City of Virginia Beach has not executed a lease with a team as defined under § [15.2-5921](#) as added by this act that is a member

of the National Hockey League or the National Basketball Association, (ii) the City of Virginia Beach or the City of Virginia Beach Development Authority has not issued bonds for an arena as defined under § [15.2-5921](#) for the purpose of holding conferences and entertainment events, or (iii) the City of Virginia Beach or the City of Virginia Beach Development Authority has not entered into a contract for the construction, development, operation, or maintenance of the facility, then the provisions of this act shall expire on January 1, 2018. If prior to January 1, 2018, (a) the City of Virginia Beach has executed such a lease, (b) the City of Virginia Beach or the City of Virginia Beach Development Authority has issued bonds for an arena as defined under § [15.2-5921](#) for the purpose of holding conferences and entertainment events, or (c) the City of Virginia Beach or the City of Virginia Beach Development Authority has entered into a contract for the construction, development, operation, or maintenance of the facility, then the provisions of this act shall expire on the earliest of (1) the maturity date of any bonds that were first issued by the City of Virginia Beach or the City of Virginia Beach Development Authority for such arena, excluding any refunding or refinancing of such bonds first issued and excluding any bond anticipation notes issued, (2) the expiration of the City's or Authority's contractual obligations for the construction, development, operation, or maintenance of the facility, or (3) July 1, 2043 2050.

## **Chapter 255 Investor-owned electric utilities; establishment of protocols for energy efficiency programs.**

An Act to direct the State Corporation Commission to evaluate the establishment of protocols for energy efficiency programs implemented by investor-owned electric utilities; report.

[\[S 395\]](#)

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission (the Commission) shall evaluate the establishment of uniform protocols for measuring, verifying, validating, and reporting the impacts of energy efficiency measures implemented by investor-owned electric utilities*

*providing retail electric utility service in the Commonwealth and the establishment of a methodology for estimating annual kilowatt savings and a formula to calculate the levelized cost of saved energy for such energy efficiency measures. The Commission shall promptly commence such evaluation following the effective date of this act and shall receive input from interested parties and the Department of Mines, Minerals and Energy. The Commission shall submit to the Governor and the General Assembly a report of its findings and recommendations by December 1, 2016.*

## **Chapter 258 Virginia Beach arena.**

An Act to amend and reenact the fifth enactment of Chapter 767 of the Acts of Assembly of 2013, as amended by Chapters 738 and 742 of the Acts of Assembly of 2014, relating to Virginia Beach arena.

[\[S 642\]](#)

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactment of Chapter 767 of the Acts of Assembly of 2013, as amended by Chapters 738 and 742 of the Acts of Assembly of 2014, is amended and reenacted as follows:

5. That if prior to January 1, 2018, (i) the City of Virginia Beach has not executed a lease with a team as defined under § [15.2-5921](#) as added by this act that is a member of the National Hockey League or the National Basketball Association, (ii) the City of Virginia Beach or the City of Virginia Beach Development Authority has not issued bonds for an arena as defined under § [15.2-5921](#) for the purpose of holding conferences and entertainment events, or (iii) the City of Virginia Beach or the City of Virginia Beach Development Authority has not entered into a contract for the construction, development, operation, or maintenance of the facility, then the provisions of this act shall expire on January 1, 2018. If prior to January 1, 2018, (a) the City of Virginia Beach has executed such a lease, (b) the City of Virginia Beach or the City of Virginia Beach Development Authority has issued bonds for an arena as defined under § [15.2-5921](#) for the purpose of holding conferences and entertainment events, or (c) the City of Virginia Beach or the City of Virginia Beach Development Authority has entered into a contract for the construction, development, operation, or

maintenance of the facility, then the provisions of this act shall expire on the earliest of (1) the maturity date of any bonds that were first issued by the City of Virginia Beach or the City of Virginia Beach Development Authority for such arena, excluding any refunding or refinancing of such bonds first issued and excluding any bond anticipation notes issued, (2) the expiration of the City's or Authority's contractual obligations for the construction, development, operation, or maintenance of the facility, or (3) July 1, -2043 2050.

### **Chapter 319 Private animal shelters; Board of Agriculture and Consumer Services shall adopt regulations.**

An Act directing the Board of Agriculture and Consumer Services to adopt regulations for private animal shelters.

[\[H 340\]](#)

Approved March 7, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Agriculture and Consumer Services shall adopt regulations that determine whether a private animal shelter meets the purpose of finding permanent adoptive homes for animals.*

### **Chapter 355 Financial exploitation of adults; DARS work group to study.**

An Act to require the Commissioner of the Department for Aging and Rehabilitative Services to convene a work group to study financial exploitation of adults in the Commonwealth.

[\[H 676\]](#)

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commissioner of the Department for Aging and Rehabilitative Services*

*shall, together with the Director of the Department for Planning and Budget or his designee, representatives of the Department for Aging and Rehabilitative Services' Adult Protective Services Unit and local department of social services' adult protective services units, law-enforcement agencies, financial institutions in the Commonwealth, and organizations representing elderly individuals and adults with disabilities, determine the cost of financial exploitation of adults in the Commonwealth and develop recommendations for improving the ability of financial institutions to identify financial exploitation of adults, the process by which financial institutions report suspected financial exploitation of adults, and interactions between financial institutions and local adult protective services units investigating reports of suspected financial exploitation of adults. The Commissioner shall develop recommendations for a plan to educate adults regarding financial exploitation, including common methods of exploitation and warning signs that exploitation may be occurring. The Department for Aging and Rehabilitative Services' Adult Protective Services Unit shall provide information about founded cases of financial exploitation of adults and any related compiled information to the Commissioner, who shall maintain the confidentiality of such information, for his review upon request. The Commissioner shall complete his work and report on his activities and recommendations to the Governor and the General Assembly by January 1, 2017.*

## **Chapter 366 Veterans care centers; issuance of bonds for certain projects.**

An Act to authorize issuance of bonds for certain veterans care center projects.

[\[H 477\]](#)

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

### **1. § 1.**

*That, pursuant to § [2.2-2264](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to undertake the following projects, including, without limitation, constructing, improving, furnishing, equipping, acquiring, and renovating buildings, facilities, improvements, and land therefor, and to exercise any and all powers granted to it by law in connection therewith, including the power to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal*

*amount not to exceed \$29,300,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section.*

<i>Agency</i>	<i>Project Title</i>
<i>Department of Veterans Services</i>	<i>Construct Hampton Roads Veterans Care Center</i>
<i>Department of Veterans Services</i>	<i>Construct Northern Virginia Veterans Care Center</i>

## **Chapter 394 Virginia Criminal Sentencing Commission; recidivism rate for certain released federal prisoners.**

An Act to direct the Virginia Criminal Sentencing Commission to calculate and report the recidivism rate for certain released federal prisoners.

[\[H 1105\]](#)

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Criminal Sentencing Commission shall calculate annually the recidivism rate of federal prisoners released by the U.S. Bureau of Prisons whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual for crimes committed in the Commonwealth. The Commission shall make a reasonable attempt to acquire the information necessary to complete the calculation from any available source, including any state or federal entity that has access to such information. The Commission shall report annually to the Chairmen of the House and Senate Committees for Courts of Justice (i) such recidivism rate no later than December 31 for the preceding 12-month period complete through the*

*last day of October or (ii) if the Commission is unable to complete the calculation, any information regarding the recidivism rate of such prisoners as the Commission was able to acquire.*

2. That the provisions of this act shall expire on January 1, 2018.

## **Chapter 398 Heroin possession; Virginia Criminal Sentencing Commission to evaluate sentencing guidelines.**

An Act to direct the Virginia Criminal Sentencing Commission to study the sentencing guidelines for heroin possession.

[\[H 1059\]](#)

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Criminal Sentencing Commission (the Commission) under its powers and duties shall evaluate judge-sentencing and jury-sentencing patterns and practices in cases of manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute heroin across the Commonwealth and recommend adjustments in the sentencing guidelines previously adopted by the Commission.*

## **Chapter 440 Recurrent Flooding Resiliency, Commonwealth Center for; at various educational institutions.**

An Act to designate the Commonwealth Center for Recurrent Flooding Resiliency jointly at Old Dominion University, the Virginia Institute of Marine Science, and The College of William and Mary.

[\[H 903\]](#)

Approved March 11, 2016

Whereas, Old Dominion University, the Virginia Institute of Marine Science, and The College of William and Mary have joined together to provide critical applied research, policy, and outreach resources to support the efforts of the Commonwealth and its

political subdivisions to build resilience in the face of rising water throughout the state; and

Whereas, Old Dominion University, the Virginia Institute of Marine Science, and The College of William and Mary have developed the basis for a joint center of excellence in recurrent flooding resiliency, resulting in national leadership in this domain; and

Whereas, House Joint Resolution 50 and Senate Joint Resolution 76 (2012) directed the Virginia Institute of Marine Science (VIMS) to study strategies for adaptation, migration, and the prevention of recurrent flooding in Tidewater and Eastern Shore Virginia localities, resulting in Senate Document 3 (2013), entitled "Recurrent Flooding Study for Tidewater Virginia"; and

Whereas, VIMS found that recurrent flooding is occurring repeatedly in the same area over time due to precipitation events, high tides, or storm surges throughout coastal Virginia and is predicted to worsen, resulting in more frequent or larger-scale flood events; and

Whereas, VIMS found that "[i]mpacts from flooding can range from temporary road closures to the loss of homes, loss of businesses, property and life. In coastal Virginia, the cost of large storm damage can range from millions to hundreds of millions of dollars per storm. With a long history of flooding from coastal storms, there is a keen interest in Virginia to identify areas of potential flooding and establish measures or adaptation strategies to reduce the impact of future flood events"; and

Whereas, VIMS found that a review of global flood management strategies suggests that it is possible for Virginia to have an effective flood response, but such efforts may take 20 to 30 years to effectively plan and implement; and

Whereas, VIMS has developed state-of-the-art storm surge models capable of predicting street-level flooding associated with storm events that can be used to inform planning and emergency preparedness; and

Whereas, Old Dominion University (ODU) has prioritized interdisciplinary and applied research in areas impacting recurrent flooding and resilience in Virginia, demonstrated through the Hampton Roads Sea Level Rise Adaptation Forums; the Virginia Modeling, Analysis, and Simulation Center (VMASC); the Center for Coastal Physical Oceanography (CCPO); the Hampton Roads Intergovernmental Pilot Project; the Hampton Roads Sea Level Rise and Adaptation Forums; and other programs and initiatives; and

Whereas, ODU CCPO researchers identified a "hot spot" of accelerated sea level rise along the East Coast of the United States, including Coastal Virginia, resulting from a diminished Gulf Stream; and

Whereas, ODU VMASC researchers have modeled evacuation responses in vulnerable and medically fragile populations, providing information to facilitate better policies and decision making; and

Whereas, ODU VMASC researchers are actively designing models to facilitate planning practices for increased housing recovery and resilience in the event of a severe storm event; and

Whereas, the Hampton Roads Intergovernmental Pilot Project convened by ODU has effectively brought together federal, state, regional, municipal, and community partners to develop a framework for a whole of government and whole of community approach to resilience throughout the Commonwealth; and

Whereas, the Virginia Coastal Policy Center at The College of William and Mary provides legal and policy analysis of ecological issues affecting the state's coastal resources, providing education and advice to decision makers throughout Virginia; and

Whereas, localities included in the Hampton Roads Planning District Commission are required to incorporate into the next scheduled and all subsequent reviews of its comprehensive plan strategies to combat projected relative sea level rise and recurrent flooding with assistance from Old Dominion University, the Virginia Institute of Marine Science, and other agencies of the Commonwealth; and

Whereas, VIMS offered several recommendations, including that the Commonwealth, working with its coastal localities, (i) begin comprehensive and coordinated planning efforts; (ii) initiate identification, collection, and analysis of data needed to support effective planning for response efforts; and (iii) take a lead role in addressing recurrent flooding in Virginia for the following reasons: (a) accessing relevant federal resources for planning and mitigation may be enhanced through state mediation, (b) flooding problems are linked to water bodies and therefore often transcend locality boundaries, and (c) prioritizing flood management actions must be based in part on risk; and therefore, the Commonwealth must oversee the necessary studies to determine adaptation strategies as well as implementation of the agreed-upon strategies; and

Whereas, the Joint Legislative Audit and Review Commission (JLARC) study mandated by House Joint Resolution 132 (2012) and presented on October 15, 2013, entitled "Review of Disaster Preparedness Planning in Virginia," stated, "The state generally has strong disaster response plans, but deficiencies in evacuation and shelter plans may compromise the safety of the Hampton Roads population during a catastrophic disaster"; and

Whereas, the JLARC study further noted that if four key assumptions in the state's current evacuation plan do not hold, "timely hurricane evacuations could be compromised," placing citizens at risk after the storm; and

Whereas, the flooding affects areas outside of the Atlantic and Chesapeake Bay watersheds, as experienced in 1969, when Hurricane Camille spawned destruction and the loss of lives in Nelson County as well as severe flooding in the Valley, and in 1972, when Hurricane Agnes notably affected Central and Southwest Virginia; and

Whereas, many Virginia communities regularly battle recurrent flooding from nearby rivers and runoff as well as flooding associated with aging public and private dams; and

Whereas, a number of Virginia-based federal (including military), state, regional, and local agencies, private and not-for-profit groups, and colleges and universities are actively examining issues resulting from recurrent flooding in Virginia's coastal communities and investing in specific flood mitigation strategies; and

Whereas, the Virginia Housing Commission studied this issue through its Housing and the Environment Work Group and found that zoning, building codes, and planning issues will all be affected by recurrent flooding; and

Whereas, House Joint Resolution 16 (2013) established a joint subcommittee to formulate recommendations for the development of a comprehensive and coordinated planning effort to address recurrent flooding; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth Center for Recurrent Flooding Resiliency (the Center) be designated jointly at Old Dominion University, the Virginia Institute of Marine Science, and The College of William and Mary. The Center shall serve, advise, and support the Commonwealth by conducting interdisciplinary studies and investigations and provide training, technical and nontechnical services, and outreach in the area of recurrent flooding and resilience research to the Commonwealth and its political subdivisions.*

*The Commonwealth and any agency or political subdivision thereof may designate the Center to conduct special studies and to develop, integrate, coordinate, and share federal, state, local, and nongovernmental data, best practices, regulations, models, plans, projects, and other means for increasing resilience and enabling short-term and long-term decision making in the Commonwealth.*

*The Commonwealth and any agency or political subdivision thereof may designate the Center to maintain liaison with appropriate agencies of the federal government or*

*respond to opportunities provided by those agencies on behalf of the Commonwealth as may arise.*

*All state agencies, political subdivisions, and authorities are encouraged to consult with the Center on matters of information, data, and services to improve methods of data sharing, efficiency, and resilience within the Commonwealth.*

## **Chapter 444 Onsite sewage systems and private wells; evaluation and design, report.**

An Act to direct the State Health Commissioner to develop a plan to eliminate evaluation and design services by the Department of Health for onsite sewage systems and private wells; report.

[\[H 558\]](#)

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Health Commissioner (the Commissioner) shall develop a plan for the orderly reduction and elimination of evaluation and design services by the Department of Health (the Department) for onsite sewage systems and private wells. The plan shall provide for the protection of public health as the Department transitions to accepting only applications that are supported with private site evaluations and designs from a licensed professional engineer or licensed onsite soil evaluator or, for any work subject to regulations governing private wells in the Commonwealth, by a licensed water well system provider.*

*The plan shall include (i) provisions related to transparency of costs for services provided by the private sector, including options available, necessary disclosures for cost of installation and operation and maintenance, and recommendations to resolve disputes that might arise from private sector designs, warranties, or installations; (ii) a date by which all site evaluations and designs will be performed by the private sector; (iii) a transition timeline to incrementally eliminate site evaluations and designs provided by the Department to fully transition all such services to the private sector; (iv) procedures and minimum requirements for the Department's review of private evaluations and designs; (v) a timeline to incrementally require private evaluations and designs for*

*certain categories of services such as applications for subdivision review, certification letters, voluntary upgrades, repairs, submissions previously accompanied by private sector work, new construction, and reviews pursuant to § [32.1-165](#) of the Code of Virginia; (vi) a recommendation concerning whether the Department can reduce or eliminate services in a particular area on the basis of the number and availability of licensed private-sector professional engineers and onsite soil evaluators and licensed water well system providers to provide services in that particular area; (vii) necessary changes to application fees in order to encourage private sector evaluations and designs and projected schedules for those changes; (viii) a recommendation concerning the need to establish a fund to assist income-eligible citizens with repairing failing onsite sewage systems and private wells; (ix) provisions for disclosing to the consumer that an option to install a conventional onsite sewage system exists in the event that an evaluator or designer specifies an alternative onsite sewage system where the site conditions will allow a conventional system to be installed; (x) provisions for involvement by the Department in resolving disputes that may arise between the consumer and the private sector service providers related to evaluations or designs of onsite sewage systems and private wells; (xi) provisions for the continued provision of evaluation and design services by the Department in areas that are underserved by the private sector; (xii) necessary improvements in other services performed by the Department that may derive from the transition to private evaluations and designs, including programmatic oversight; inspections; review procedures; data collection, analysis, and dissemination; quality assurance; environmental health surveillance and enforcement; timely correction of failing onsite sewage systems and determination of reasons for failure; operation and maintenance; health impacts related to onsite sewage systems; and water quality, including impacts of onsite sewage systems on the Chesapeake Bay; (xiii) an analysis of the ranges of costs to the consumer for evaluation and design services currently charged by the Department and ranges of the potential costs to the consumer for such services if provided by the private sector, and (xiv) legislative, regulatory, or policy changes necessary to implement the plan.*

*The Commissioner shall present an interim report or the completed plan and recommendations to the Governor and the General Assembly by November 15, 2016.*

## Chapter 506 Constitutional amendment (voter referendum); right to work.

An Act to provide for the submission to the voters of a proposed amendment to the Constitution of Virginia adding to Article I a section numbered 11-A, relating to the right to work.

[\[S 446\]](#)

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2016, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend the Constitution of Virginia by adding to Article I a section numbered 11-A as follows:

ARTICLE I

BILL OF RIGHTS

*Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

§ 2. The ballot shall contain the following question:

"Question: Should Article I of the Constitution of Virginia be amended to prohibit any agreement or combination between an employer and a labor union or labor organization whereby (i) nonmembers of the union or organization are denied the right to work for the employer, (ii) membership to the union or organization is made a condition of

employment or continuation of employment by such employer, or (iii) the union or organization acquires an employment monopoly in any such enterprise?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2017.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 508 Insurance policy; electronic delivery of information, repeals sunset provision.**

An Act to repeal the second enactment of Chapter 257 of the Acts of Assembly of 2013, relating to electronic delivery of insurance policy information.

[\[H 851\]](#)

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 257 of the Acts of Assembly of 2013 is repealed.

## **Chapter 517 Investor-owned electric utilities; establishment of protocols for energy efficiency programs.**

An Act to direct the State Corporation Commission to evaluate the establishment of protocols for energy efficiency programs implemented by investor-owned electric utilities; report.

[\[H 1053\]](#)

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Corporation Commission (the Commission) shall evaluate the establishment of uniform protocols for measuring, verifying, validating, and reporting the impacts of energy efficiency measures implemented by investor-owned electric utilities providing retail electric utility service in the Commonwealth and the establishment of a methodology for estimating annual kilowatt savings and a formula to calculate the levelized cost of saved energy for such energy efficiency measures. The Commission shall promptly commence such evaluation following the effective date of this act and shall receive input from interested parties and the Department of Mines, Minerals and Energy. The Commission shall submit to the Governor and the General Assembly a report of its findings and recommendations by December 1, 2016.*

## **Chapter 530 Claims; Paul R. DesRoches II.**

An Act for the relief of Paul R. DesRoches II.

[\[H 1376\]](#)

Approved March 29, 2016

Whereas, Paul R. DesRoches II (Mr. DesRoches) entered into a property management agreement with Apple Real Estate, a Virginia corporation; and  
Whereas, on December 1, 2009, Mr. DesRoches terminated the management agreement with Apple Real Estate effective January 1, 2010; and

Whereas, despite the termination, Apple Real Estate continued to collect rent from tenants and never submitted any additional payments to Mr. DesRoches; and

Whereas, the total amount of rent payments that were fraudulently collected by Apple Real Estate reached \$25,000; and

Whereas, on April 25, 2012, Mr. DesRoches obtained a judgment against Apple Real Estate in the amount of \$26,304.84; and

Whereas, despite taking action to enforce the judgment, including conducting debtor interrogatories, Mr. DesRoches was unsuccessful, as Apple Real Estate had gone out of business; and

Whereas, the Virginia Real Estate Transaction Recovery Act (the Act) established the Real Estate Transaction Recovery Fund to provide relief to persons who have incurred losses through the improper or dishonest conduct of a licensed real estate salesperson, broker, or firm; and

Whereas, qualified claimants have been awarded judgments in courts of competent jurisdiction in the Commonwealth of Virginia that are based on improper or dishonest conduct; and

Whereas, "improper or dishonest conduct" is defined in § [54.1-2112](#) of the Code of Virginia as including "only the wrongful and fraudulent taking or conversion of money, property, or other things of value or material misrepresentation or deceit"; and

Whereas, in December 2012, Mr. DesRoches submitted a claim under the Act to recover the amount of the unpaid judgment he had obtained against Apple Real Estate; and

Whereas, in March 2013, the Virginia Real Estate Board (the Board) notified Mr. DesRoches that his claim had been denied because the judgment he had been awarded did not include the words "improper or dishonest conduct" on the face of the judgment order; and

Whereas, while the factual basis for the judgment supported detailed conduct that is included under the codified definition of "improper or dishonest conduct," the judgment order did not include the words "improper or dishonest conduct," causing the Board to conclude that the claim did not meet the requirements of the Act and therefore had to be denied; and

Whereas, in 2015, the General Assembly amended the Act to provide a means for the Board to determine what constitutes improper or dishonest conduct based on the facts of the case if the judgment order is otherwise silent, rather than be forced to deny a claimant relief because the claimant's attorney or the judge failed to use the correct words; and

Whereas, the amendments to the Act could not be used to retroactively approve the claim previously denied by the Board; and

Whereas, Mr. DesRoches has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Virginia Real Estate Board is directed to pay from the Virginia Real Estate Transaction Recovery Fund the sum of \$20,000 for the relief of Paul R. DesRoches II, to be paid upon execution of a release of all claims Mr. DesRoches may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence.*

## **Chapter 537 Cancer; possession or distribution of marijuana for medical purposes.**

An Act to amend and reenact Chapter 690 of the Acts of Assembly of 2014, relating to special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.

[\[S 434\]](#)

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That Chapter 690 of the Acts of Assembly of 2014 is amended and reenacted as follows:

§ 1. Special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.

A. On receipt of an application *and payment of the fee prescribed by this section* and following the provisions of ~~§46.2-275~~ § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of pollinator conservation bearing the legend: PROTECT POLLINATORS.

B. *The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Pollinator Habitat Program Fund*

*established within the Department of Accounts. These funds shall be paid annually to the Virginia Department of Transportation and used to support its Pollinator Habitat Program in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

2. That all license plates issued pursuant to Chapter 690 of the Acts of Assembly of 2014 prior to July 1, 2016, shall remain valid until their expiration, but shall thereafter be renewed as provided in this act.

## **Chapter 566 Forest fire protection compacts; codification.**

An Act to amend and reenact §§ [10.1-1149](#) and [10.1-1150](#) of the Code of Virginia and to repeal § 3 of Chapter 63 of the Acts of Assembly of 1956, relating to forest fire protection compacts.

[\[H 1127\]](#)

Approved March 29, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ [10.1-1149](#) and [10.1-1150](#) of the Code of Virginia are amended and reenacted as follows:

§ [10.1-1149](#). Southeastern Interstate Forest Fire Protection Compact.

~~Chapter 63 of the 1956 Acts of Assembly authorizing the Governor to execute a compact to promote effective prevention and control of forest fires in the Southeastern region of the United States, is incorporated in this Code by this reference.~~

*§ 1. The Governor is hereby authorized to execute, on behalf of the Commonwealth of Virginia, a compact with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and West Virginia, which compact shall be in form substantially as follows:*

**SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT.**

*Article I.*

*The purpose of this compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member*

*states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other Regional Forest Fire Protection compacts or agreements, and for more adequate forest protection.*

*Article II.*

*This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.*

*Article III.*

*In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.*

*The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.*

*There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.*

*The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.*

*It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.*

*Article IV.*

*Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.*

*Article V.*

*Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.*

*No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith; Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.*

*All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.*

*Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.*

*Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.*

*For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.*

*The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.*

*Article VI.*

*Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.*

*Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.*

*Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.*

*Article VII.*

*The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.*

*Article VIII.*

*The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.*

*Article IX.*

*This compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.*

§ 2. *When the Governor shall have executed said compact on behalf of the Commonwealth of Virginia and shall have caused a verified copy thereof to have been filed with the Secretary of the Commonwealth, and when said compact also shall have been ratified by one or more of the states named in § 1 of this act, then said compact shall become operative and effective as between this State and such other state or states; and the Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents between this State and any other state ratifying said compact.*

§ 3. *Pursuant to the provisions of Article III of said compact, the State Forester, under the general direction of the Secretary of Agriculture and Forestry, shall act as Compact Administrator for the Commonwealth of Virginia of the compact set forth in § 1 of this act.*

§ 4. *The State Forester, under the general direction of the Secretary of Agriculture and Forestry, as Compact Administrator, shall be vested with all powers provided for in said compact and all powers necessary and incidental to the carrying out of said compact in every particular.*

§ 5. *If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.*

§ 6. *This act shall become effective the first day of July 1956.*

§ [10.1-1150](#). Middle Atlantic Interstate Forest Fire Protection Compact.

~~Chapter 6 of the 1966 Acts of Assembly authorizing the Governor to execute a compact to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States, is incorporated in this Code by this reference.~~

§ 1. *The Governor is hereby authorized to execute, on behalf of the Commonwealth of Virginia, a compact with any one or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania and West Virginia which compact shall be in substantially the following form:*

*MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT*

*ARTICLE I*

*The purpose of this compact is to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, and by providing for mutual aid in fighting forest fires among the compacting*

*states of the region and with states which are party to other regional forest fire protection compacts or agreements.*

**ARTICLE II**

*This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia which are contiguous have ratified it and Congress has given consent thereto.*

**ARTICLE III**

*In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.*

*The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.*

*The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.*

*It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.*

**ARTICLE IV**

*Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.*

**ARTICLE V**

*Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.*

*No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so*

*engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.*

*All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.*

*Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.*

*Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.*

*For the purposes of this compact, the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.*

*The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.*

#### **ARTICLE VI**

*Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest fire fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.*

*Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.*

*Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.*

#### ARTICLE VII

*The compact administrators may request the United States Forest Service to act as the primary research and coordinating agency of the Middle Atlantic Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.*

#### ARTICLE VIII

*The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region, provided that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.*

#### ARTICLE IX

*This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.*

*§ 2. The right to alter, amend, or repeal this Act is expressly reserved.*

2. That § 3 of Chapter 63 of the Acts of Assembly of 1956 is repealed.

## **Chapter 592 Standards of Learning Innovation Committee; review of standardized testing in public high schools.**

An Act to require the Standards of Learning Innovation Committee to review and make recommendations to the Board of Education and the General Assembly on standardized testing in public high schools in the Commonwealth.

[\[H 525\]](#)

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Standards of Learning Innovation Committee (the Committee) shall review and, no later than November 1, 2016, make recommendations to the Board of Education and the General Assembly on the number, subjects, and question composition of standardized tests administered to public high school students in the Commonwealth. Such recommendations shall be approved by a majority of the legislative members of the Committee in attendance and a majority of the nonlegislative members of the Committee in attendance. The Board of Education shall review such recommendations and submit to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health, in advance of the 2017 Regular Session of the General Assembly, any comments on such recommendations that the Board deems appropriate.*

## **Chapter 600 Nursing facilities; electronic monitoring.**

An Act to require the State Board of Health to promulgate regulations for the audio-visual recording of residents in nursing facilities and to repeal Chapters 674 and 682 of the Acts of Assembly of 2013.

[\[S 553\]](#)

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The State Board of Health (the Board) shall promulgate regulations, by July 1, 2017, for the audio-visual recording of residents in nursing facilities. Such regulations shall include provisions related to (i) resident privacy, (ii) notice and disclosure, (iii) liability, (iv) ownership and maintenance of equipment, (v) cost, (vi) recording and data security, and (vii) nursing facility options for both nursing facility-managed recording and resident-managed recording. The Department of Health shall convene a workgroup that includes representatives of nursing facilities, advocates for residents of nursing facilities, and other stakeholders to make recommendations to the Board on such regulations and shall report its recommendations to the Board and the General Assembly by December 1, 2016.*

2. That Chapters 674 and 682 of the Acts of Assembly of 2013 are repealed.

## **Chapter 601 Thomas Jefferson Scenic Byway Loop; Virginia byway designation.**

An Act to designate portions of Virginia Route 72, Virginia Route 619, and U.S. Route 58 Alternate in the Counties of Scott and Wise and the City of Norton the "Thomas Jefferson Scenic Byway Loop."

[\[H 41\]](#)

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding § [33.2-405](#) of the Code of Virginia, the portion of Virginia Route 72 from Coeburn to Weber City, the portion of Virginia Route 619 from Norton to Fort Blackmore, and the portion of U.S. Route 58 Alternate from Coeburn to Norton is hereby designated a Virginia byway to be known as the "Thomas Jefferson Scenic Byway Loop." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this Virginia byway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

## **Chapter 602 Relief; Robert Scott.**

An Act for the relief of Robert Scott.

[\[H 256\]](#)

Approved April 1, 2016

Whereas, Robert Scott (Mr. Scott) entered into two contracts with Towne Automotive Brokers and Francis Masika: one for the purchase of a 2006 BMW on July 21, 2009, and one for the purchase of a 2006 Honda Odyssey on August 14, 2009, for a total purchase price of \$56,000; and

Whereas, Mr. Scott never received either vehicle and on July 28, 2010, the Circuit Court of the City of Chesapeake awarded Mr. Scott a default judgment against Towne Automotive Brokers; and

Whereas, Mr. Scott was not able to recover the judgment awarded to him, and four additional consumers who were defrauded by Towne Automotive Brokers and Francis Masika were also awarded judgments; and

Whereas, the total amount of all five judgments exceeded the required \$50,000 bond carried by the dealer, and each consumer received a proportional amount of the \$50,000 bond as designated on February 27, 2012, by the Circuit Court for the City of Chesapeake; Mr. Scott's share of payment from the bond was \$13,632.50; and

Whereas, the Motor Vehicle Transaction Recovery Fund (the Fund) may pay claims totaling an additional \$50,000, and Mr. Scott filed a claim against the Fund in April 2012; and

Whereas, § 46.2-1527.3 of the Code of Virginia requires that claims against the Fund be filed with the Board no later than 12 months after the judgment becomes final; however, Mr. Scott did not file his claim with the Board against the Fund until April 2012 which was not within the statutorily required time frame because the claim cannot be filed until a payment from the bond is received and despite receiving a default judgment on July 28, 2010, Mr. Scot did not receive his share of the bond payout until February 27, 2012; and

Whereas, the Motor Vehicle Dealer Board voted unanimously that Mr. Scott should receive reimbursement from the Fund and requests that the General Assembly grant relief in the form of payment from the Fund; and

Whereas, pursuant to § 46.2-1527.5 of the Code of Virginia, as it was in effect in April 2012, the maximum claim against the Fund involving a single transaction shall be limited to \$20,000, including any amount paid from the dealer's surety bond, and therefore had Mr. Scott met the statutorily required time frame he would have been entitled to receive \$26,367.50; and

Whereas, Mr. Scott has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That there is hereby appropriated from the Motor Vehicle Transaction Recovery Fund the sum of \$26,367.50 for the relief of Robert Scott (Mr. Scott), to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Scott may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence. In the event that Mr. Scott receives the amount owed to him from the unpaid final judgment that he has obtained against Towne Automotive Brokers and Francis

Masika, he shall reimburse the Motor Vehicle Dealer Board whatever amount he receives up to \$26,367.50, and such amount shall be assigned to the Motor Vehicle Transaction Recovery Fund.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 606 Special license plates; MEG'S MILES.**

An Act to authorize the issuance of special license plates for supporters of the safety of runners bearing the legend MEG'S MILES.

[\[H 1312\]](#)

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the safety of runners bearing the legend MEG'S MILES.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the safety of runners bearing the legend MEG'S MILES.*

## **Chapter 647 School boards; reasonable access by certain youth groups.**

An Act to require local school boards to provide access to school property to youth-oriented, community organizations.

[\[H 942\]](#)

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Local school boards shall, subject to the provisions of § [22.1-131](#) of the Code of Virginia, provide reasonable and appropriate access to school property to youth-oriented,*

*community organizations such as the Boy Scouts of America and Girl Scouts of the USA, and their volunteers and staff, to distribute and provide instructional materials in order to encourage participation in such organizations and their activities. Any such access provided during the school day shall not conflict with instructional time. Such access may also include after-school sponsored activities such as "Back to School" events, where it can be reasonably accommodated.*

## **Chapter 706 License plates, special; issuance to family members of persons who have died in military service.**

An Act to issue special license plates for immediate family members of persons who have died in military service to their country.

[\[H 98\]](#)

Approved April 6, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for immediate family members of a member of the Armed Forces of the United States who died on or after March 29, 1973, while serving on active duty or while assigned to a Reserve or National Guard unit in a drill status.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue special license plates to immediate family members of a member of the Armed Forces of the United States who died on or after March 29, 1973, while serving on active duty or while assigned to a Reserve or National Guard unit in a drill status. For the purpose of this section, "immediate family member" means (i) a widow or widower, remarried or not; (ii) a mother, father, stepmother, stepfather, mother or father through adoption, or foster parent who stood in loco parentis; (iii) a child, stepchild, or adopted child; and (iv) a sibling or half-sibling. For each set of license plates issued, the Commissioner shall charge the prescribed cost of state license plates. Such license plates shall not be subject to the provisions of subdivision B 1 or 2 of § [46.2-725](#) of the Code of Virginia.*

## **Chapter 722 Claims; Michael Kenneth McAlister.**

An Act for the relief of Michael Kenneth McAlister.

[\[H 700\]](#)

Approved April 8, 2016

Whereas, on September 24, 1986, Michael Kenneth McAlister (Mr. McAlister) was convicted of attempted rape and abduction with the intent to defile in the Circuit Court for the City of Richmond and on December 1, 1986, Mr. McAlister was sentenced to serve 10 years for attempted rape and 40 years for abduction with the intent to defile; and

Whereas, on the night of February 23, 1986, in the laundry room of the Town & Country apartment complex in Richmond, a female resident of the complex was attacked by a white male approximately six feet tall wearing a plaid shirt and a stocking mask over his face and brandishing a knife; and

Whereas, during the investigation of the attack on February, 23, 1986, a picture of Mr. McAlister in a plaid shirt was shown to the victim and the victim positively identified Mr. McAlister; and

Whereas, in the year prior to and directly after this attack, a white male approximately six feet tall wearing a stocking mask over his face and carrying a knife attacked women five other times in four other apartment complex laundry rooms; two such attacks occurred while Mr. McAlister was held in the Richmond City jail; and

Whereas, as a result of such attacks a special action police force (SAF) including several police jurisdictions, including the Henrico County Police Department, began following a man named Norman Bruce Derr (Derr), whom they suspected of being a serial rapist and who bore a striking resemblance to Mr. McAlister and who police investigators had followed to a laundry room at the same Town & Country apartment complex and witnessed him prepare to attack a female police decoy in that laundry room; and

Whereas, the lead detective on the investigation only learned about the SAF investigation of Derr and of his striking resemblance to Mr. McAlister after the victim had identified Mr. McAlister in the photo line-up; and

Whereas, Derr was convicted of numerous other rapes, including a 1984 rape, forcible sodomy, and armed burglary of a Hanover county woman; the 1984 rape of a Charles County, Maryland, woman; the 1985 robbery of a Spotsylvania County woman; and the 1988 rape, forcible sodomy, burglary, and abduction of a Fredericksburg woman; and

Whereas, Mr. McAlister was scheduled to be released on January 15, 2015, but was held in prison beyond that date as part of the Commonwealth's civil commitment process; and

Whereas, Mr. McAlister's indefinite detention as well as the accumulation of evidence of Derr's criminal history over the years and other indications of Mr. McAlister's innocence led the Richmond Attorney for the Commonwealth, Michael Herring, to support Mr. McAlister's efforts to obtain an absolute pardon from Governor McAuliffe, and on April 8, 2015, Mr. McAlister, together with Mr. Herring, submitted his Joint Petition for Absolute Pardon to Governor McAuliffe; and

Whereas, on April 29, 2015, Derr confessed to the February 23, 1986, attempted rape and abduction with intent to defile; and

Whereas, on May 13, 2015, Governor McAuliffe granted Mr. McAlister's request for an absolute pardon; and

Whereas, Mr. McAlister has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$1,268,694 for the relief of Mr. McAlister, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Mr. McAlister may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia, and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$253,740 to be paid to Mr. McAlister by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$1,014,954 to purchase an annuity no later than September 30, 2016, for the primary benefit of Mr. McAlister, the terms of such annuity structured in Mr. McAlister's best interests based on consultation among Mr. McAlister or his representatives, the State Treasurer, and other necessary parties.*

*The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. McAlister's death.*

2. That the provisions of § [8.01-195.12](#) of the Code of Virginia shall apply to any compensation awarded under this act.

## **Chapter 730 Bonds for institutions of higher education.**

An Act to authorize the issuance of bonds, in an amount up to \$40,987,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth.

[\[H 1063\]](#)

Approved April 8, 2016

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2016."*

*§ 2. Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated*

*"Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$40,987,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>-</i>
<i>Amount</i>		
<i>Norfolk State University</i>	<i>Renovate and Upgrade</i>	
	<i>Dormitories</i>	<i>-</i>
<i>\$9,237,000</i>		
<i>Richard Bland College</i>	<i>Convert Former Humanities and</i>	
	<i>Social Science Building into</i>	
	<i>Student Housing</i>	<i>-</i>
<i>\$2,650,000</i>		
<i>The College of William</i>		
<i>and Mary in Virginia</i>	<i>Renovate Dormitories</i>	<i>-</i>
<i>\$2,500,000</i>		
<i>James Madison University</i>	<i>Renovate Phillips Hall</i>	<i>\$-</i>
<i>26,600,000</i>		

Total

\$-

40,987,000

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs, except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs, shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (a) bonds the issuance of which has been anticipated by BANs, (b) refunding bonds, and (c) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details; sale of bonds and BANs.**

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters*

*as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

**§ 6. Sources for payment of expenses.**

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

**§ 7. Revenues.**

*The institutions of higher education named in § 2 are hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of and premium, if any, and interest on the bonds and other reserves*

*required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A*

*Pending the application of the proceeds of the bonds or BANs, including refunding bonds and BANs, to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth in § 2 and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and*

*the interest on bonds and BANs, unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise, issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANS or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of and premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the*

*applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability.**

*The provisions of this act, or the application thereof to any person or circumstance, that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 731 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2016; created.**

An Act to authorize the issuance of bonds, in an amount up to \$40,987,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth.

[\[S 61\]](#)

Approved April 8, 2016

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

**§ 1. Title.**

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2016."*

*§ 2. Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$40,987,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>-</i>
<i>Amount</i>		
<i>Norfolk State University</i>	<i>Renovate and Upgrade</i>	
	<i>Dormitories</i>	<i>-</i>
<i>\$9,237,000</i>		
<i>Richard Bland College</i>	<i>Convert Former Humanities and</i>	
	<i>Social Science Building into</i>	
	<i>Student Housing</i>	<i>-</i>
<i>\$2,650,000</i>		
<i>The College of William</i>		
<i>and Mary in Virginia</i>	<i>Renovate Dormitories</i>	<i>-</i>
<i>\$2,500,000</i>		

<i>James Madison University</i>	<i>Renovate Phillips Hall</i>	\$-
<i>26,600,000</i>		

<i>Total</i>		\$-
<i>40,987,000</i>		

**§ 3. Application of proceeds.**

*The proceeds, including any premium, of bonds and BANs, except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs, shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (a) bonds the issuance of which has been anticipated by BANs, (b) refunding bonds, and (c) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details; sale of bonds and BANs.**

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."*

**§ 5. Execution of bonds and BANs.**

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN although, at the date of such bond or BAN, such persons may not have been such officers.*

**§ 6. Sources for payment of expenses.**

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

**§ 7. Revenues.**

*The institutions of higher education named in § 2 are hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments*

*of the principal of and premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A.*

*Pending the application of the proceeds of the bonds or BANs, including refunding bonds and BANs, to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth in § 2 and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs, unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise, issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of and premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company,*

*within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

§ 13. Severability.

*The provisions of this act, or the application thereof to any person or circumstance, that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 732 Budget Bill.**

An Act to amend and reenact Chapter 665 of the 2015 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2015, and the thirtieth day of June, 2016.

[\[H 29\]](#)

Approved April 10, 2016

Be it enacted by the General Assembly of Virginia:

## **Chapter 733 Constitutional amendment; right to work (second reference).**

HOUSE JOINT RESOLUTION NO. 2

Proposing an amendment to the Constitution of Virginia by adding in Article I a section numbered 11-A, relating to the right to work.

Agreed to by the House of Delegates, February 2, 2016

Agreed to by the Senate, February 15, 2016

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2015 and referred to this, the next regular

session held after the 2015 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article I a section numbered 11-A as follows:

ARTICLE I

BILL OF RIGHTS

*Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

**Chapter 734 Constitutional amendment; real property tax exemption.**

HOUSE JOINT RESOLUTION NO. 123

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 6-B, relating to real property tax exemptions.

Agreed to by the House of Delegates, February 2, 2016

Agreed to by the Senate, February 15, 2016

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2015 and referred to this, the next regular session held after the 2015 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 6-B as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

*Section 6-B. Property tax exemptions for spouses of certain emergency services providers.*

*Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may provide for a local option to exempt from taxation the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, who occupies the real property as his or her principal place of residence. The exemption under this section shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in the line of duty prior to the effective date of this section, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel.*

### **Chapter 735 Constitutional amendment; right to work (second reference).**

SENATE JOINT RESOLUTION NO. 70

Proposing an amendment to the Constitution of Virginia by adding in Article I a section numbered 11-A, relating to the right to work.

Agreed to by the Senate, February 2, 2016

Agreed to by the House of Delegates, March 8, 2016

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2015 and referred to this, the next regular session held after the 2015 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article I a section numbered 11-A as follows:

#### ARTICLE I

#### BILL OF RIGHTS

##### *Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

## **Chapter 736 Constitutional amendment; right to work (submitting to qualified voters).**

SENATE JOINT RESOLUTION NO. 127

Submitting to the voters a proposed amendment to the Constitution of Virginia in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia.

Agreed to by the Senate, February 15, 2016

Agreed to by the House of Delegates, March 8, 2016

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the 2015 Regular Session and referred to this, the next regular session held after the 2015 general election of members of the House of Delegates, as required by the Constitution of Virginia; and

WHEREAS, Section 2 of Article XII of the Constitution of Virginia provides that if any such amendment is agreed to by a majority of all the members elected to each house at this, the next regular session held after the 2015 general election of members of the House of Delegates, it shall be the duty of the General Assembly to submit the proposed amendment to the voters qualified to vote in elections by the people, in such manner as it shall prescribe; and

WHEREAS, § [30-19](#) of the Code of Virginia provides that such amendment shall be submitted to the people by a bill or resolution introduced for such purpose; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article I a section numbered 11-A as follows:

ARTICLE I

BILL OF RIGHTS

*Section 11-A. Right to work.*

*Any agreement or combination between any employer and any labor union or labor organization whereby nonmembers of the union or organization are denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is against public policy and constitutes an illegal combination or conspiracy and is void.*

RESOLVED FURTHER, That the officers conducting the election to be held on the Tuesday after the first Monday in November 2016, at the places appointed for holding the same, open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution; and, be it

RESOLVED FURTHER, That the ballot contain the following question:

"Question: Should Article I of the Constitution of Virginia be amended to prohibit any agreement or combination between an employer and a labor union or labor organization whereby (i) nonmembers of the union or organization are denied the right to work for the employer, (ii) membership to the union or organization is made a condition of employment or continuation of employment by such employer, or (iii) the union or organization acquires an employment monopoly in any such enterprise?"; and, be it

RESOLVED FURTHER, That the ballots be prepared, distributed, and voted, and the results of the election be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code of Virginia and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day; and, be it

RESOLVED FURTHER, That the electoral board of each county and city make out, certify, and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections; and, be it

RESOLVED FURTHER, That the State Board of Elections open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment; and, be it

RESOLVED FURTHER, That if a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2017; and, be it

RESOLVED FINALLY, That the Clerk of the Senate transmit a copy of this resolution to the Governor and the Department of Elections in order that they may be apprised of the actions of the General Assembly taken in furtherance of its duty to submit to the voters any proposed amendment agreed to by a majority of the members elected to each of the two houses of the General Assembly, in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia and in accordance with the authority set forth in § [30-19](#) of the Code of Virginia.

### **Chapter 741 Interstate 95; VDOT, et al., to evaluate traffic congestion in Stafford and Spotsylvania Counties.**

An Act to direct the Department of Transportation to conduct, with the Fredericksburg Area Metropolitan Planning Organization, an evaluation of traffic congestion on the Interstate 95 corridor in the George Washington Regional Commission region and an evaluation of alternative solutions to such traffic congestion, which may include but not be limited to extending the HOT lanes south on Interstate 95.

[\[H 97\]](#)

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation and the Fredericksburg Area Metropolitan Planning Organization shall conduct a joint evaluation of traffic congestion occurring in the George Washington Regional Commission region on Interstate 95 between mile marker 145 in Stafford County and mile marker 125 in Spotsylvania County and an evaluation of alternative solutions to such traffic congestion, which may include but not be limited to extending the HOT lanes south on Interstate 95. The results of such evaluation shall be submitted to the General Assembly as an executive summary. To the extent that the Department of Transportation is in possession of or develops information or data that would assist or expedite the Fredericksburg Area Metropolitan Planning Organization's evaluation and development of an improvement program to address the congestion and needs of the Interstate 95 corridor in the area, the Department of Transportation shall*

*make such information available to the Fredericksburg Area Metropolitan Planning Organization upon request, provided that such information does not constitute confidential or proprietary information of a private entity.*

2. That the executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

## **Chapter 759 Bonds; certain capital projects.**

An Act to authorize the Virginia Public Building Authority and the Virginia College Building Authority to issue bonds in an aggregate principal amount not to exceed \$2,235,432,677 plus certain costs to fund certain capital projects and to appropriate the proceeds of such bonds.

[\[H 1344\]](#)

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. That pursuant to § [2.2-2264](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority (VPBA) to undertake the following projects, including, without limitation, constructing, improving, furnishing, equipping, acquiring, and renovating buildings, facilities, improvements, and land therefor, and to exercise any and all powers granted to it by law in connection therewith, including the power to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal amount not to exceed \$426,818,771 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.*

<i>Agency/Institution/Agency Code</i>	<i>Project Title</i>
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- 146 *Science Museum of Virginia Construct Parking Facility / Master Site Plan*
- 199 *Department of Conservation Renovate Walnut Valley Farm at and Recreation Chippokes State Park*
- 199 *Department of Conservation Provide Various Utility/ADA and Recreation Upgrades*
- 199 *Department of Conservation Construct Retaining Wall on Lover's and Recreation Leap Trail at Natural Tunnel State Park*
- 199 *Department of Conservation Repair/Replace Trestles at New and Recreation River Trail State Park*
- 199 *Department of Conservation Replace Existing Bulkheads at False and Recreation Cape State Park*
- 199 *Department of Conservation Replace Bridge to Amphitheater at and Recreation Hungry Mother State Park*
- 199 *Department of Conservation Complete Bridge Repair at Staunton and Recreation River Battlefield State Park*
- 199 *Department of Conservation Construct Restroom at 64th Street and Recreation Entrance at First Landing State Park*
- 199 *Department of Conservation Construct Restroom at Massie Gap in and Recreation Grayson Highlands State Park*
- 199 *Department of Conservation Renovate Foster Falls Hotel at New and Recreation River Trail State Park*
- 199 *Department of Conservation Construct Various Cabins at and Recreation Pocahontas and Powhatan State Parks*
- 199 *Department of Conservation Renovate Various Cabins and Recreation*
- 199 *Department of Conservation Renovate Various Campgrounds and Recreation*
- 199 *Department of Conservation Construct Widewater Phase I and Recreation*
- 199 *Department of Conservation Develop Clinch River State Park and Recreation*
- 203 *Wilson Workforce and Rehabilitation Center Renovate and Expand Anderson Vocational Training Building, Phase II*

218	<i>Virginia School for the Deaf and the Blind</i>	<i>Renovate Bradford Hall</i>	
238	<i>Virginia Museum of Fine Arts</i>	<i>Replace Air Handling Units</i>	
239	<i>Frontier Culture Museum</i>	<i>Construct Early American Industry Exhibit</i>	
425	<i>Jamestown-Yorktown Foundation</i>	<i>Renovate Exhibits</i>	
720	<i>Department of Behavioral Health and Developmental Services</i>	<i>Expand Western State Hospital</i>	
720	<i>Department of Behavioral Health and Developmental Services</i>	<i>Expand Sexually Violent Predator Facility</i>	
777	<i>Department of Juvenile Justice</i>	<i>Construct New Juvenile Correctional Center, Chesapeake</i>	
778	<i>Department of Forensic Science</i>	<i>Expand Central Forensic Laboratory and Office of the Chief Medical Examiner Facility</i>	
799	<i>Department of Corrections</i>	<i>Renovate Marion Correctional Center</i>	
799	<i>Department of Corrections</i>	<i>Replace Roofs—Red Onion and Wal-lens Ridge</i>	
799	<i>Department of Corrections</i>	<i>Replace Generators Statewide</i>	
	<i>Total</i>		<i>\$426,818,771</i>

*B. Funding for the planning phase of the project "Construct New Juvenile Correctional Center, Chesapeake," for the Department of Juvenile Justice may not be released until 30 days after the submission of the interim report of the task force required to be established by Item 415 of the 2016-2018 Appropriation Act (House Bill 30), enacted by the 2016 Session of the General Assembly.*

*§ 2. That pursuant to § [23-30.28](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia College Building Authority to undertake the following projects, including, without limitation, constructing, improving, furnishing, equipping, acquiring, and renovating buildings, facilities, improvements, and land therefor, to exercise any and all powers granted to it by law in connection therewith; and to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal amount not to exceed \$1,351,813,906 plus amounts needed to fund issuance costs, reserve funds, original*

*issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. Bonds of the Virginia College Building Authority issued to finance such projects may be sold and issued under the 21st Century College Program at the same time with other obligations of the Virginia College Building Authority as separate issues or as a combined issue. The Authority may pay all or any part of the cost of any project listed in this section or authorized or any portion thereof with any income and reserve funds of the Authority available for such purpose, and in such case may transfer such funds of the Authority, with the approval of the Governor. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.*

<i>Agency/Institution/Agency Code</i>	<i>Project Title</i>
<i>204 The College of William and Mary</i>	<i>Construct Fine and Performing Arts Complex, Phases I &amp; II</i>
<i>204 The College of William and Mary</i>	<i>Construct West Utilities Plant</i>
<i>207 University of Virginia</i>	<i>Renovate Gilmer Hall and Chemistry Building</i>
<i>208 Virginia Polytechnic Institute and State University</i>	<i>Renovate Holden Hall (Engineering)</i>
<i>208 Virginia Polytechnic Institute and State University</i>	<i>Construct VT Carilion Research Institute Biosciences Addition</i>
<i>208 Virginia Polytechnic Institute and State University</i>	<i>Construct Central Chiller Plant, Phase II</i>
<i>211 Virginia Military Institute</i>	<i>Renovate Preston Library</i>
<i>211 Virginia Military Institute</i>	<i>Post Infrastructure Improvements, Phase I, II, and III</i>
<i>211 Virginia Military Institute</i>	<i>Renovate Scott Shipp Hall</i>
<i>212 Virginia State University</i>	<i>Maintenance Reserve Supplement / Master Plan Update</i>
<i>213 Norfolk State University</i>	<i>Maintenance Reserve Supplement / Master Plan Update</i>
<i>214 Longwood University</i>	<i>Construct New Academic Building</i>
<i>214 Longwood University</i>	<i>Replace Steam Distribution System, Wheeler Mall</i>

214	<i>Longwood University</i>	<i>Construct Admissions Office</i>
215	<i>University of Mary Wash- ington</i>	<i>Construct Jepson Science Center Addi- tion</i>
215	<i>University of Mary Wash- ington</i>	<i>Renovate Seacobeck Hall</i>
215	<i>University of Mary Wash- ington</i>	<i>Repair/Replace Underground Utilities</i>
216	<i>James Madison University</i>	<i>Construct New School of Business</i>
216	<i>James Madison University</i>	<i>Renovate Wilson Hall</i>
217	<i>Radford University</i>	<i>Renovate Curie and Reed Halls</i>
221	<i>Old Dominion University</i>	<i>Construct Chemistry Building</i>
229	<i>Virginia Cooperative Extension and Agri- cultural Experiment Sta- tion</i>	<i>Construct Livestock and Poultry Research Facilities, Phase I</i>
236	<i>Virginia Commonwealth University</i>	<i>Construct School of Allied Health Pro- fessions Building</i>
236	<i>Virginia Commonwealth University</i>	<i>Expand School of Engineering</i>
236	<i>Virginia Commonwealth University</i>	<i>Construct Commonwealth Center for Advanced Logistics Systems (CCALS)</i>
242	<i>Christopher Newport University</i>	<i>Construct and Renovate Fine Arts and Rehearsal Space</i>
242	<i>Christopher Newport University</i>	<i>Construct Library, Phase II</i>
247	<i>George Mason University</i>	<i>Renovate Robinson Hall and Harris Theater</i>
247	<i>George Mason University</i>	<i>Construct Utilities Distribution Infra- structure</i>
260	<i>Virginia Community Col- lege System</i>	<i>Renovate Seefeldt Academic Building / Replace Building Envelope, Wood- bridge Campus, Northern Virginia</i>
260	<i>Virginia Community Col- lege System</i>	<i>Renovate Bird Hall and Renovate / Expand Nicholas Center, Chester</i>

		<i>Campus, John Tyler</i>	
260	<i>Virginia Community College System</i>	<i>Renovate Howsmon/Colgan Building, Manassas Campus, Northern Virginia</i>	
260	<i>Virginia Community College System</i>	<i>Repair or Replace Major Mechanical Systems, Northern Virginia, New River and Mountain Empire</i>	
260	<i>Virginia Community College System</i>	<i>Construct Bioscience Building, Blue Ridge</i>	
260	<i>Virginia Community College System</i>	<i>Construct Academic Building, Fauquier Campus, Lord Fairfax</i>	
260	<i>Virginia Community College System</i>	<i>Replace Phase I Academic and Administration Building, Eastern Shore</i>	
260	<i>Virginia Community College System</i>	<i>Construct Student Service and Learning Resources Center, Christianna Campus, Southside Virginia</i>	
260	<i>Virginia Community College System</i>	<i>Improve Life Safety and Security, Systemwide, Phase I</i>	
268	<i>Virginia Institute of Marine Science</i>	<i>Replace Mechanical Systems and Repair Building Envelope of Chesapeake Bay Hall</i>	
268	<i>Virginia Institute of Marine Science</i>	<i>Construct Facilities Management Building</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Construct New Education and Academic Administration Building</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Renovate Hofheimer Hall</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Renovate Lewis Hall</i>	
935	<i>Roanoke Higher Education Authority</i>	<i>Renovate and Expand Clinical Simulation Labs for Nursing</i>	
937	<i>Southern Virginia Higher Education Center</i>	<i>Replace Roof, HVAC, and Make Other Repairs</i>	
948	<i>Southwest Virginia Higher Education Center</i>	<i>Construct Service Corridor, Storage Area; Replace Generator</i>	
	<i>Total</i>		<i>\$1,351,813,906</i>

2.

§ 1. That the Virginia Public Building Authority, pursuant to § [2.2-2264](#) of the Code of

*Virginia, or the Virginia College Building Authority pursuant to § [23-30.28](#) of the Code of Virginia, is authorized to issue revenue bonds in a principal amount not to exceed \$12,200,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The proceeds of such bonds shall be used to supplement the prior funding for the projects in this enactment. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.*

<i>Agency Code</i>	<i>Institution/Agency</i>	<i>Project Title</i>	
238	Virginia Museum of Fine Arts	Renovate Robinson House	
912	Department of Veterans Services	Expand Virginia War Memorial	
425	Jamestown Yorktown Foundation	Yorktown Museum Generators (Supplement)	
935	Roanoke Higher Education Authority	Renovate Claude Moore Building	
	<i>Total</i>		<i>\$12,200,000</i>

**3.**

*§ 1. That the Virginia Public Building Authority, pursuant to § [2.2-2264](#) of the Code of Virginia, or the Virginia College Building Authority pursuant to § [23-30.28](#) of the Code of Virginia, is authorized to issue revenue bonds in a principal amount not to exceed \$15,600,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses to provide funds for equipment for the following projects for which funding for construction was previously provided, or to maintain existing operational capability. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.*

<i>Agency Code</i>	<i>Institution/Agency</i>	<i>Project Title</i>
146	Science Museum of Virginia	Construct Event Space (17974)

214	Longwood University	Construct Student Success Center (17982)	
216	James Madison University	Renovate/ Addition Madison Hall (18085)	
217	Radford University	Renovate Whitt Hall (18067)	
236	Virginia Commonwealth University	Renovate Sanger Hall, Phase II (18070)	
236	Virginia Commonwealth University	Renovate Raleigh Building (18071)	
247	George Mason University	Construct Academic VII / Research III, Phase I (17999)	
912	Department of Veterans Services	Expand Virginia War Memorial (18010)	
238	Virginia Museum of Fine Arts	Art Conservation Laboratory	
	Total		\$15,600,000

4.

§ 1. A. That beginning July 1, 2017, the following projects shall be funded for detailed planning from amounts in the Central Capital Planning Fund established under § [2.2-1520](#) of the Code of Virginia, and amounts are hereby appropriated from the Central Capital Planning Fund for such purposes as provided in this enactment.

Agency Code	Institution/Agency	Project Title
123	Department of Military Affairs	Renovate Roanoke Readiness Center
156	Department of State Police	Construct Division Six Headquarters
194	Department of General Services	Expand Consolidated Labs, 1st Floor
194	Department of General Services	Renovate Morson Row
204	The College of William and Mary	Construct Integrated Science Center, Phase IV
207	University of Virginia	Renovate Physics Building
207	University of Virginia	Renovate Alderman Library, Life Safety, Phase I
208	Virginia Polytechnic Institute and State University	Construct Undergraduate Lab Building
212	Virginia State University	Demolish / Replace Daniel Gym and Demolish Harris Hall

216	<i>James Madison University</i>	<i>Renovate Jackson Hall</i>
221	<i>Old Dominion University</i>	<i>Construct Health Sciences Building</i>
236	<i>Virginia Commonwealth University</i>	<i>Construct STEM Class Lab Building</i>
241	<i>Richard Bland College</i>	<i>Construct Center for Innovation and Educational Development</i>
246	<i>University of Virginia's College at Wise</i>	<i>Renovate / Convert Wyllie Library</i>
247	<i>George Mason University</i>	<i>Improve Telecommunications Infrastructure</i>
260	<i>Virginia Community College System</i>	<i>Replace French Slaughter Building, Locust Grove, Germanna</i>
260	<i>Virginia Community College System</i>	<i>Renovate Diggs/Moore/Harrison Complex, Hampton, Thomas Nelson</i>
260	<i>Virginia Community College System</i>	<i>Construct Advanced Technical Training Center, Piedmont Virginia</i>
260	<i>Virginia Community College System</i>	<i>Renovate Amherst/Campbell Hall, Central Virginia</i>
268	<i>Virginia Institute of Marine Science</i>	<i>Replace Oyster Hatchery</i>
777	<i>Department of Juvenile Justice</i>	<i>Renovate or Construct Juvenile Correctional Center</i>

*B. Funding for detailed planning for the project "Renovate or Construct Juvenile Correctional Center" for the Department of Juvenile Justice may not be released until 30 days after the submission of the final report of the task force required to be established by Item 415 of the 2016-2018 Appropriation Act (House Bill 30), enacted by the 2016 Session of the General Assembly, but not before July 1, 2017.*

*§ 2. In accordance with Chapter 15.1 (§ [2.2-1515](#) et seq.) of Title 2.2 of the Code of Virginia, each institution and agency shall submit its completed detailed planning documents to the Six-Year Capital Outlay Plan Advisory Committee for its review and recommendation.*

*§ 3. Each public college and university is authorized to use additional higher education operating nongeneral funds to move to working drawings for the projects listed in § 1.*

*§ 4. Each agency may utilize other nongeneral funds to move to working drawings for the projects authorized in § 1.*

*§ 5. Each agency or institution shall be reimbursed for all nongeneral funds used when the project is funded to move into the construction phase.*

§ 6. *In accordance with § [2.2-1520](#) of the Code of Virginia, the Director of the Department of Planning and Budget shall authorize the reimbursement of the Central Capital Planning Fund for the amounts provided for detailed planning when the project is funded to move into the construction phase.*

§ 7. *No planning documents pursuant to this enactment shall be submitted to the Governor or the General Assembly prior to July 1, 2018.*

5. That pursuant to § [2.2-2263](#) of the Code of Virginia, the Virginia Public Building Authority is authorized to issue bonds in an aggregate amount not to exceed \$350,000,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The proceeds of such bonds shall be used to fund capital projects at Norfolk International Terminal. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this enactment. Debt service on projects contained in this enactment shall be provided from appropriations to the Treasury Board.

6. That pursuant to § [2.2-2263](#) of the Code of Virginia, the Virginia Public Building Authority is authorized to issue bonds in an aggregate amount not to exceed \$59,000,000 plus amounts to fund related issuance costs and other financing expenses. The proceeds of such bonds shall be provided to the Department of Environmental Quality to reimburse entities as provided in Chapter 21.1 (§ [10.1-2117](#) et seq.) of Title 10.1 of the Code of Virginia, considered as eligible Significant and Non-Significant Dischargers in the Chesapeake Bay watershed, for capital costs incurred for the design and installation of nutrient removal technology. Such reimbursements shall be in accordance with eligibility determinations made by the Department pursuant to the provisions of this enactment and Chapter 21.1 (§ [10.1-2117](#) et seq.) of Title 10.1 of the Code of Virginia. The Department of Environmental Quality shall submit cash flow requirements for this program to the Director of the Department of Planning and Budget and the State Treasurer. The cash flows shall indicate quarterly cash needs to the program's completion. The appropriations under this enactment are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015, but are not subject to the other provisions of § 2-0, the provisions of 4-4.01 of Chapter 665 of the Acts of Assembly of 2015, or the provisions of § [2.2-1132](#) of the Code of Virginia. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this enactment. Debt service on projects contained in this enactment shall be provided from appropriations to the Treasury Board.

7. That pursuant to § [2.2-2263](#) of the Code of Virginia, the Virginia Public Building Authority is authorized to issue bonds in an aggregate amount not to exceed \$20,000,000 plus amounts to fund related issuance costs and other financing expenses. The proceeds of such bonds shall be deposited into the Stormwater Local Assistance Fund, established in Item 360 of Chapter 806 of the Acts of Assembly of 2013 and continued in paragraph C. 1. of Item 363 of Chapter 665 of the Acts of Assembly of 2015, and used by the Department of Environmental Quality to provide grants solely for capital projects consistent with the purpose of the Fund, including: (i) new stormwater best management practices; (ii) stormwater best management practice retrofits; (iii) stream restoration; (iv) low impact development projects; (v) buffer restoration; (vi) pond retrofits; and (vii) wetlands restoration. Such grants shall be in accordance with eligibility determinations made by the Department of Environmental Quality. The appropriations under this enactment are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015, but are not subject to the other provisions of § 2-0, the provisions of 4-4.01 of Chapter 665 of the Acts of Assembly of 2015, or the provisions of § [2.2-1132](#) of the Code of Virginia. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this enactment. Debt service on projects contained in this enactment shall be provided from appropriations to the Treasury Board.

8. That the provisions of Item C-46.10 of Chapter 665 of the Acts of Assembly of 2015, as it relates to the Advanced Manufacturing Apprentice Academy Center and Regional Centers of Excellence, are hereby extended without change.

9. That out of the amounts authorized in Item C-43, D 1 of Chapter 665 of the Acts of Assembly of 2015, \$5,250,000 is designated and appropriated to renovate the Post Library as a visitor center for Fort Monroe.

10. That the appropriations for the capital projects authorized in §§ 1 and 2 of the first enactment of this act are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015. In addition, not more than a total aggregate principal amount of \$300 million in debt obligations shall be issued excluding refunding bonds in any fiscal year for such capital projects, provided, however, that if less than a total aggregate principal amount of \$300 million in debt obligations is incurred in any fiscal year for such capital projects, the unused amount may be added to any other subsequent fiscal year. Issuance of debt shall proceed so that the projected average annual debt service on all tax-supported debt over the 10-year horizon shall be in accordance with the guidelines established by the Debt Capacity Advisory Committee. The Six-Year Capital Outlay

Plan Advisory Committee shall establish procedures to ensure compliance with the annual issuance limits and shall meet at least quarterly to review project progress. The Auditor of Public Accounts shall issue a report annually to the Governor, the Speaker of the House of Delegates, the President pro tempore of the Senate, and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, regarding the adherence to the annual issuance limits.

11. That funding for the projects in the first and fourth enactments of this act shall not be released until the Governor approves a decision brief that directs the Department of General Services to proceed with all due speed with hazardous material abatement, demolition, and construction services to complete Commonwealth of Virginia construction project code 194-18081-001 having a project title: Capitol Complex Infrastructure and Security and a sub-project title: New Construction of General Assembly Building. All funds for all phases of the stated project code shall be released as necessary to the Department of General Services to execute each contract or contracts for the project pursuant to funding authorized in paragraph E. 1. of Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I. A copy of such approved decision brief shall be provided to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance. Beginning July 1, 2016, the Director of the Department of Planning and Budget and the Director of the Department of General Services shall report to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance on a quarterly basis on the status of the completion of the General Assembly Building project. The Auditor of Public Accounts shall monitor any release of funding for the projects in the first and fourth enactments for compliance with the conditions of this enactment and report any noncompliance to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance.

## **Chapter 763 Telemedicine pilot program; to expand access, etc., to health care services in certain areas.**

An Act to establish a telehealth pilot program to expand access to and improve coordination and quality of health care services in rural and medically underserved areas of the Commonwealth.

[\[S 369\]](#)

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Center for Telehealth of the University of Virginia shall, together with the Virginia Telehealth Network, establish a telehealth pilot program to expand access to and improve the coordination and quality of health care services in rural areas of the Commonwealth and areas of the Commonwealth that have been identified as medically underserved by the State Department of Health through the use of telemedicine services, as defined in § [38.2-3418.16](#) of the Code of Virginia, for the purpose of providing access to health care services that would not be available to individuals in rural and medically underserved areas of the Commonwealth without the use of telehealth technology. Such pilot program shall include a process for establishing and providing support to patient care teams, as defined in § [54.1-2900](#) of the Code of Virginia, that deliver telemedicine services through the pilot program. Patient care teams participating in the pilot program shall include one or more patient care team physicians, as defined in § [54.1-2900](#), who provide leadership of the patient care team through the use of telemedicine, and one or more nurse practitioners who are licensed in accordance with § [54.1-2957](#) of the Code of Virginia and who presently practice in or who relocate to rural or medically underserved areas of the Commonwealth served by the pilot program.*

*The pilot program shall include a process for assisting nurse practitioners who seek to participate in the pilot program with identifying and developing a written or electronic practice agreement with a patient care team physician who will provide the required leadership of the patient care team through the use of telemedicine, which shall include developing and maintaining a list of physicians who are ready to serve as patient care team physicians and making such list available to nurse practitioners seeking physicians to serve as a patient care team physician in order to participate in the pilot program. The Center for Telehealth, the Virginia Telehealth Network, and the Department of Health Professions shall make such list available on their respective websites for the use of nurse practitioners seeking patient care team physicians.*

*The pilot program shall provide technology, training, and protocols to participating patient care teams to assist such teams in the delivery of telemedicine services in accordance with the goals of the pilot program. The Center for Telehealth shall provide oversight of patient care teams providing telemedicine services as part of the pilot program and shall evaluate the success of patient care teams in improving access to care and coordination of care through evaluation of established clinical evidence.*

*The pilot program shall, to the extent possible, leverage existing resources within the Center for Telehealth, the Virginia Telehealth Network, and communities served by the pilot program.*

2. That the Center for Telehealth shall consult all appropriate stakeholders in establishing the pilot program created by this act, including but not limited to the Medical Society of Virginia, the Virginia Council of Nurse Practitioners, the Virginia Academy of Family Physicians, the Virginia Chapter of the American Academy of Pediatrics, the Virginia Hospital and Healthcare Association, the Virginia Community Healthcare Association, and public and private institutions of higher education located in the Commonwealth that award medical degrees.

3. That the Center for Telehealth of the University of Virginia shall report to the Governor and the General Assembly on the results of the pilot program established pursuant to this act in establishing and supporting patient care teams providing health care services in accordance with this act and improving access to health care services and coordination and quality of health care services in rural and medically underserved areas of the Commonwealth by October 15, 2017.

4. That in the case of psychiatric services provided to individuals receiving services from a community services board, free health clinic, or federally qualified health center by a practitioner engaged by the Center for Telehealth of the University of Virginia to deliver such services, the requirement for an appropriate examination set forth in § [54.1-3303](#) of the Code of Virginia may be satisfied through the use of telemedicine.

5. That the provisions of this act shall expire on July 1, 2018.

## **Chapter 769 Capital outlay funding; issuance of bonds by VPBA & VCBA for certain projects & programs.**

An Act to authorize the Virginia Public Building Authority and the Virginia College Building Authority to issue bonds in an aggregate principal amount not to exceed \$2,235,432,677 plus certain costs to fund certain capital projects and to appropriate the proceeds of such bonds.

[\[S 731\]](#)

Approved April 20, 2016

Be it enacted by the General Assembly of Virginia:

1.

§ 1. A. That pursuant to § [2.2-2264](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority (VPBA) to undertake the following projects, including, without limitation, constructing, improving, furnishing, equipping, acquiring, and renovating buildings, facilities, improvements, and land therefor, and to exercise any and all powers granted to it by law in connection therewith, including the power to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal amount not to exceed \$426,818,771 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.

<i>Agency/Institution/Agency Code</i>	<i>Project Title</i>
146	Science Museum of Virginia Construct Parking Facility / Master Site Plan
199	Department of Conservation Renovate Walnut Valley Farm at Chippokes State Park and Recreation
199	Department of Conservation Provide Various Utility/ADA Upgrades and Recreation
199	Department of Conservation Construct Retaining Wall on Lover's Leap Trail at Natural Tunnel State Park and Recreation
199	Department of Conservation Repair/Replace Trestles at New River Trail State Park and Recreation
199	Department of Conservation Replace Existing Bulkheads at False Cape State Park and Recreation
199	Department of Conservation Replace Bridge to Amphitheater at Hungry Mother State Park and Recreation
199	Department of Conservation Complete Bridge Repair at Staunton River Battlefield State Park and Recreation
199	Department of Conservation Construct Restroom at 64th Street Entrance at First Landing State Park and Recreation
199	Department of Conservation Construct Restroom at Massie Gap in Grayson Highlands State Park and Recreation

199	<i>Department of Conservation and Recreation</i>	<i>Renovate Foster Falls Hotel at New River Trail State Park</i>
199	<i>Department of Conservation and Recreation</i>	<i>Construct Various Cabins at Pocahontas and Powhatan State Parks</i>
199	<i>Department of Conservation and Recreation</i>	<i>Renovate Various Cabins</i>
199	<i>Department of Conservation and Recreation</i>	<i>Renovate Various Campgrounds</i>
199	<i>Department of Conservation and Recreation</i>	<i>Construct Widewater Phase I</i>
199	<i>Department of Conservation and Recreation</i>	<i>Develop Clinch River State Park</i>
203	<i>Wilson Workforce and Rehabilitation Center</i>	<i>Renovate and Expand Anderson Vocational Training Building, Phase II</i>
218	<i>Virginia School for the Deaf and the Blind</i>	<i>Renovate Bradford Hall</i>
238	<i>Virginia Museum of Fine Arts</i>	<i>Replace Air Handling Units</i>
239	<i>Frontier Culture Museum</i>	<i>Construct Early American Industry Exhibit</i>
425	<i>Jamestown-Yorktown Foundation</i>	<i>Renovate Exhibits</i>
720	<i>Department of Behavioral Health and Developmental Services</i>	<i>Expand Western State Hospital</i>
720	<i>Department of Behavioral Health and Developmental Services</i>	<i>Expand Sexually Violent Predator Facility</i>
777	<i>Department of Juvenile Justice</i>	<i>Construct New Juvenile Correctional Center, Chesapeake</i>
778	<i>Department of Forensic Science</i>	<i>Expand Central Forensic Laboratory and Office of the Chief Medical Examiner Facility</i>
799	<i>Department of Corrections</i>	<i>Renovate Marion Correctional Center</i>
799	<i>Department of Corrections</i>	<i>Replace Roofs—Red Onion and Wal-</i>

*lens Ridge*

799 Department of Corrections *Replace Generators Statewide*  
 Total

\$426,818,771

*B. Funding for the planning phase of the project "Construct New Juvenile Correctional Center, Chesapeake," for the Department of Juvenile Justice may not be released until 30 days after the submission of the interim report of the task force required to be established by Item 415 of the 2016-2018 Appropriation Act (House Bill 30), enacted by the 2016 Session of the General Assembly.*

*§ 2. That pursuant to § [23-30.28](#) of the Code of Virginia, the General Assembly hereby authorizes the Virginia College Building Authority to undertake the following projects, including, without limitation, constructing, improving, furnishing, equipping, acquiring, and renovating buildings, facilities, improvements, and land therefor, to exercise any and all powers granted to it by law in connection therewith; and to finance all or any portion of the cost thereof by the issuance of revenue bonds in a principal amount not to exceed \$1,351,813,906 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. Bonds of the Virginia College Building Authority issued to finance such projects may be sold and issued under the 21st Century College Program at the same time with other obligations of the Virginia College Building Authority as separate issues or as a combined issue. The Authority may pay all or any part of the cost of any project listed in this section or authorized or any portion thereof with any income and reserve funds of the Authority available for such purpose, and in such case may transfer such funds of the Authority, with the approval of the Governor. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.*

<i>Agency/Institution/Agency Code</i>	<i>Project Title</i>
<i>204 The College of William and Mary</i>	<i>Construct Fine and Performing Arts Complex, Phases I &amp; II</i>
<i>204 The College of William and Mary</i>	<i>Construct West Utilities Plant</i>
<i>207 University of Virginia</i>	<i>Renovate Gilmer Hall and Chemistry Building</i>
<i>208 Virginia Polytechnic Institute and State University</i>	<i>Renovate Holden Hall (Engineering)</i>

- 208 Virginia Polytechnic Insti- Construct VT Carilion Research Insti-  
tute and State University tute Biosciences Addition
- 208 Virginia Polytechnic Insti- Construct Central Chiller Plant, Phase  
tute and State University II
- 211 Virginia Military Institute Renovate Preston Library
- 211 Virginia Military Institute Post Infrastructure Improvements,  
Phase I, II, and III
- 211 Virginia Military Institute Renovate Scott Shipp Hall
- 212 Virginia State University Maintenance Reserve Supplement /  
Master Plan Update
- 213 Norfolk State University Maintenance Reserve Supplement /  
Master Plan Update
- 214 Longwood University Construct New Academic Building
- 214 Longwood University Replace Steam Distribution System,  
Wheeler Mall
- 214 Longwood University Construct Admissions Office
- 215 University of Mary Wash- Construct Jepson Science Center Addi-  
ington tion
- 215 University of Mary Wash- Renovate Seacobeck Hall  
ington
- 215 University of Mary Wash- Repair/Replace Underground Utilities  
ington
- 216 James Madison University Construct New School of Business
- 216 James Madison University Renovate Wilson Hall
- 217 Radford University Renovate Curie and Reed Halls
- 221 Old Dominion University Construct Chemistry Building
- 229 Virginia Cooperative Construct Livestock and Poultry  
Extension and Agri- Research Facilities, Phase I  
cultural Experiment Sta-  
tion
- 236 Virginia Commonwealth University Construct School of Allied Health Pro-  
fessions Building
- 236 Virginia Commonwealth University Expand School of Engineering

- |     |   |  |
|-----|---|--|
| 236 | <i>Virginia Commonwealth University</i>     | <i>Construct Commonwealth Center for Advanced Logistics Systems (CCALS)</i>                                  |
| 242 | <i>Christopher Newport University</i>       | <i>Construct and Renovate Fine Arts and Rehearsal Space</i>  |
| 242 | <i>Christopher Newport University</i>       | <i>Construct Library, Phase II</i>   |
| 247 | <i>George Mason University</i>              | <i>Renovate Robinson Hall and Harris Theater</i>   |
| 247 | <i>George Mason University</i>              | <i>Construct Utilities Distribution Infrastructure</i>   |
| 260 | <i>Virginia Community College System</i>    | <i>Renovate Seefeldt Academic Building / Replace Building Envelope, Woodbridge Campus, Northern Virginia</i> |
| 260 | <i>Virginia Community College System</i>    | <i>Renovate Bird Hall and Renovate / Expand Nicholas Center, Chester Campus, John Tyler</i>                  |
| 260 | <i>Virginia Community College System</i>    | <i>Renovate Howsmon/Colgan Building, Manassas Campus, Northern Virginia</i>                                  |
| 260 | <i>Virginia Community College System</i>    | <i>Repair or Replace Major Mechanical Systems, Northern Virginia, New River and Mountain Empire</i>          |
| 260 | <i>Virginia Community College System</i>    | <i>Construct Bioscience Building, Blue Ridge</i>   |
| 260 | <i>Virginia Community College System</i>    | <i>Construct Academic Building, Fauquier Campus, Lord Fairfax</i>  |
| 260 | <i>Virginia Community College System</i>    | <i>Replace Phase I Academic and Administration Building, Eastern Shore</i>                                   |
| 260 | <i>Virginia Community College System</i>    | <i>Construct Student Service and Learning Resources Center, Christianna Campus, Southside Virginia</i>       |
| 260 | <i>Virginia Community College System</i>    | <i>Improve Life Safety and Security, Systemwide, Phase I</i>   |
| 268 | <i>Virginia Institute of Marine Science</i> | <i>Replace Mechanical Systems and Repair Building Envelope of Chesapeake Bay Hall</i>                        |
| 268 | <i>Virginia Institute of Marine Science</i> | <i>Construct Facilities Management Build-</i>  |

	<i>ine Science</i>	<i>ing</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Construct New Education and Academic Administration Building</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Renovate Hofheimer Hall</i>	
274	<i>Eastern Virginia Medical School</i>	<i>Renovate Lewis Hall</i>	
935	<i>Roanoke Higher Education Authority</i>	<i>Renovate and Expand Clinical Simulation Labs for Nursing</i>	
937	<i>Southern Virginia Higher Education Center</i>	<i>Replace Roof, HVAC, and Make Other Repairs</i>	
948	<i>Southwest Virginia Higher Education Center Area</i>	<i>Construct Service Corridor, Storage Area; Replace Generator</i>	
	<i>Total</i>		<i>\$1,351,813,906</i>

2.

§ 1. That the Virginia Public Building Authority, pursuant to § [2.2-2264](#) of the Code of Virginia, or the Virginia College Building Authority pursuant to § [23-30.28](#) of the Code of Virginia, is authorized to issue revenue bonds in a principal amount not to exceed \$12,200,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses. The proceeds of such bonds shall be used to supplement the prior funding for the projects in this enactment. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.

<i>Agency Code</i>	<i>Institution/Agency</i>	<i>Project Title</i>	
238	<i>Virginia Museum of Fine Arts</i>	<i>Renovate Robinson House</i>	
912	<i>Department of Veterans Services</i>	<i>Expand Virginia War Memorial</i>	
425	<i>Jamestown Yorktown Foundation</i>	<i>Yorktown Museum Generators (Supplement)</i>	
935	<i>Roanoke Higher Education Authority</i>	<i>Renovate Claude Moore Building</i>	
	<i>Total</i>		<i>\$12,200,000</i>

3.

§ 1. That the Virginia Public Building Authority, pursuant to § [2.2-2264](#) of the Code of Virginia, or the Virginia College Building Authority pursuant to § [23-30.28](#) of the Code of Virginia, is authorized to issue revenue bonds in a principal amount not to exceed \$15,600,000 plus amounts needed to fund issuance costs, reserve funds, original issue discount, interest prior to and during acquisition, construction, or renovation and for one year after completion thereof, and other financing expenses to provide funds for equipment for the following projects for which funding for construction was previously provided, or to maintain existing operational capability. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this section. Debt service on projects contained in this section shall be provided from appropriations to the Treasury Board.

Agency Code	Institution/Agency	Project Title	
146	Science Museum of Virginia	Construct Event Space (17974)	
214	Longwood University	Construct Student Success Center (17982)	
216	James Madison University	Renovate/ Addition Madison Hall (18085)	
217	Radford University	Renovate Whitt Hall (18067)	
236	Virginia Commonwealth University	Renovate Sanger Hall, Phase II (18070)	
236	Virginia Commonwealth University	Renovate Raleigh Building (18071)	
247	George Mason University	Construct Academic VII / Research III, Phase I (17999)	
912	Department of Veterans Services	Expand Virginia War Memorial (18010)	
238	Virginia Museum of Fine Arts	Art Conservation Laboratory	
	Total		\$15,600,000

4.

§ 1 A. That beginning July 1, 2017, the following projects shall be funded for detailed planning from amounts in the Central Capital Planning Fund established under § [2.2-](#)

[1520](#) of the Code of Virginia, and amounts are hereby appropriated from the Central Capital Planning Fund for such purposes as provided in this enactment.

<i>Agency Code</i>	<i>Institution/Agency</i>	<i>Project Title</i>
123	Department of Military Affairs	Renovate Roanoke Readiness Center
156	Department of State Police	Construct Division Six Headquarters
194	Department of General Services	Expand Consolidated Labs, 1st Floor
194	Department of General Services	Renovate Morson Row
204	The College of William and Mary	Construct Integrated Science Center, Phase IV
207	University of Virginia	Renovate Physics Building
207	University of Virginia	Renovate Alderman Library, Life Safety, Phase I
208	Virginia Polytechnic Institute and State University	Construct Undergraduate Lab Building
212	Virginia State University	Demolish / Replace Daniel Gym and Demolish Harris Hall
216	James Madison University	Renovate Jackson Hall
221	Old Dominion University	Construct Health Sciences Building
236	Virginia Commonwealth University	Construct STEM Class Lab Building
241	Richard Bland College	Construct Center for Innovation and Educational Development
246	University of Virginia's College at Wise	Renovate / Convert Wyllie Library
247	George Mason University	Improve Telecommunications Infrastructure
260	Virginia Community College System	Replace French Slaughter Building, Locust Grove, Germanna
260	Virginia Community College System	Renovate Diggs/Moore/Harrison Complex, Hampton, Thomas Nelson
260	Virginia Community College System	Construct Advanced Technical Training Center, Piedmont Virginia
260	Virginia Community College System	Renovate Amherst/Campbell Hall, Central Virginia
268	Virginia Institute of Marine Science	Replace Oyster Hatchery



The proceeds of such bonds shall be provided to the Department of Environmental Quality to reimburse entities as provided in Chapter 21.1 (§ [10.1-2117](#) et seq.) of Title 10.1 of the Code of Virginia, considered as eligible Significant and Non-Significant Dischargers in the Chesapeake Bay watershed, for capital costs incurred for the design and installation of nutrient removal technology. Such reimbursements shall be in accordance with eligibility determinations made by the Department pursuant to the provisions of this enactment and Chapter 21.1 (§ [10.1-2117](#) et seq.) of Title 10.1 of the Code of Virginia. The Department of Environmental Quality shall submit cash flow requirements for this program to the Director of the Department of Planning and Budget and the State Treasurer. The cash flows shall indicate quarterly cash needs to the program's completion. The appropriations under this enactment are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015, but are not subject to the other provisions of § 2-0, the provisions of 4-4.01 of Chapter 665 of the Acts of Assembly of 2015, or the provisions of § [2.2-1132](#) of the Code of Virginia. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this enactment. Debt service on projects contained in this enactment shall be provided from appropriations to the Treasury Board.

7. That pursuant to § [2.2-2263](#) of the Code of Virginia, the Virginia Public Building Authority is authorized to issue bonds in an aggregate amount not to exceed \$20,000,000 plus amounts to fund related issuance costs and other financing expenses. The proceeds of such bonds shall be deposited into the Stormwater Local Assistance Fund, established in Item 360 of Chapter 806 of the Acts of Assembly of 2013 and continued in paragraph C. 1. of Item 363 of Chapter 665 of the Acts of Assembly of 2015, and used by the Department of Environmental Quality to provide grants solely for capital projects consistent with the purpose of the Fund, including: (i) new stormwater best management practices; (ii) stormwater best management practice retrofits; (iii) stream restoration; (iv) low impact development projects; (v) buffer restoration; (vi) pond retrofits; and (vii) wetlands restoration. Such grants shall be in accordance with eligibility determinations made by the Department of Environmental Quality. The appropriations under this enactment are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015, but are not subject to the other provisions of § 2-0, the provisions of 4-4.01 of Chapter 665 of the Acts of Assembly of 2015, or the provisions of § [2.2-1132](#) of the Code of Virginia. The General Assembly hereby appropriates the proceeds from any such bonds for the projects listed in this enactment. Debt service on projects contained in this enactment shall be provided from appropriations to the Treasury Board.

8. That the provisions of Item C-46.10 of Chapter 665 of the Acts of Assembly of 2015, as it relates to the Advanced Manufacturing Apprentice Academy Center and Regional Centers of Excellence, are hereby extended without change.

9. That out of the amounts authorized in Item C-43, D 1 of Chapter 665 of the Acts of Assembly of 2015, \$5,250,000 is designated and appropriated to renovate the Post Library as a visitor center for Fort Monroe.

10. That the appropriations for the capital projects authorized in §§ 1 and 2 of the first enactment of this act are subject to the conditions in § 2-0 F of Chapter 665 of the Acts of Assembly of 2015. In addition, not more than a total aggregate principal amount of \$300 million in debt obligations shall be issued excluding refunding bonds in any fiscal year for such capital projects, provided, however, that if less than a total aggregate principal amount of \$300 million in debt obligations is incurred in any fiscal year for such capital projects, the unused amount may be added to any other subsequent fiscal year. Issuance of debt shall proceed so that the projected average annual debt service on all tax-supported debt over the 10-year horizon shall be in accordance with the guidelines established by the Debt Capacity Advisory Committee. The Six-Year Capital Outlay Plan Advisory Committee shall establish procedures to ensure compliance with the annual issuance limits and shall meet at least quarterly to review project progress. The Auditor of Public Accounts shall issue a report annually to the Governor, the Speaker of the House of Delegates, the President pro tempore of the Senate, and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, regarding the adherence to the annual issuance limits.

11. That funding for the projects in the first and fourth enactments of this act shall not be released until the Governor approves a decision brief that directs the Department of General Services to proceed with all due speed with hazardous material abatement, demolition, and construction services to complete Commonwealth of Virginia construction project code 194-18081-001 having a project title: Capitol Complex Infrastructure and Security and a sub-project title: New Construction of General Assembly Building. All funds for all phases of the stated project code shall be released as necessary to the Department of General Services to execute each contract or contracts for the project pursuant to funding authorized in paragraph E. 1. of Item C-39.40 of Chapter 1 of the Acts of Assembly of 2014, Special Session I. A copy of such approved decision brief shall be provided to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance. Beginning July 1, 2016, the Director of the Department of Planning

and Budget and the Director of the Department of General Services shall report to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance on a quarterly basis on the status of the completion of the General Assembly Building project. The Auditor of Public Accounts shall monitor any release of funding for the projects in the first and fourth enactments for compliance with the conditions of this enactment and report any noncompliance to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance.

### **Chapter 780 Budget Bill.**

An Act for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § [2.2-1509](#), Code of Virginia, and to provide a portion of revenues for the two years ending respectively on the thirtieth day of June, 2017, and the thirtieth day of June, 2018.

[\[H 30\]](#)

Approved May 20, 2016

Be it enacted by the General Assembly of Virginia:

## **Uncodified Acts of Assembly - 2017**

### **Chapter 7 Coal Surface Mining Reclamation Fund; assessment of reclamation tax revenues.**

An Act to repeal the second enactment of Chapter 111 and the second enactment of Chapter 135 of the Acts of Assembly of 2014, relating to Coal Surface Mining Reclamation Fund; assessment of reclamation tax revenues.

[\[H 2200\]](#)

Approved February 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 111 and the second enactment of Chapter 135 of the Acts of Assembly of 2014 are repealed.

## **Chapter 26 Temporary exemption periods from retail sales and use taxes for qualifying items; sunset dates.**

An Act to amend and reenact § [58.1-611.2](#) of the Code of Virginia, and to amend and reenact the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, and the third enactment of Chapter 608 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, relating to temporary exemption periods from retail sales and use taxes for qualifying items; sunset dates.

[\[H 1529\]](#)

Approved February 17, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-611.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-611.2](#). Limited exemption for certain school supplies, clothing, and footwear.

Beginning in 2015, and ending July 1, ~~2017~~ 2022, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § 58.1-605 or 58.1-606 shall not apply to certain (i) school supplies, including, but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators, and (ii) clothing and footwear designed to be worn on or about the human body. The tax exemption shall apply to each article of school supplies with a selling price of \$20 or less, and each article of clothing or footwear with a selling price of \$100 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2. That the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2017~~ 2022.**

3. That the third enactment of Chapter 608 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2017~~ 2022.

## **Chapter 50 License tax, local; methodology for deducting certain gross receipts.**

An Act to require the Department of Taxation to promulgate regulations that clarify the methodology for determining deductible gross receipts attributable to business conducted in another state or a foreign country.

[\[H 1961\]](#)

Approved February 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Taxation shall promulgate regulations that clarify its interpretation of subdivision B 2 of § [58.1-3732](#) of the Code of Virginia regarding the methodology for determining deductible gross receipts attributable to business conducted in another state or a foreign country. The regulations shall be based on previous Rulings of the Tax Commissioner regarding subdivision B 2 of § [58.1-3732](#) and the decision of the Supreme Court of Virginia in *The Nielsen Company, LLC v. County Board of Arlington County*, 289 Va. 79 (2015).*

## **Chapter 62 Opioids; workgroup to establish guidelines for prescribing.**

An Act to require the Secretary of Health and Human Resources to convene a workgroup to develop educational standards and curricula for training health care providers in the safe and appropriate use of opioids to treat pain while minimizing the risk of addiction and substance abuse.

[\[S 1179\]](#)

Approved February 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Health and Human Resources shall convene a workgroup that shall include representatives of the Departments of Behavioral Health and Developmental Services, Health, and Health Professions as well as representatives of the State Council of Higher Education for Virginia and at least one representative of each medical school, dental school, school of pharmacy, physician assistant education program, and nursing education program located in the Commonwealth to develop educational standards and curricula for training health care providers, including physicians, dentists, optometrists, pharmacists, physician assistants, and nurses in the safe and appropriate use of opioids to treat pain while minimizing the risk of addiction and substance abuse. Such educational standards and curricula shall include education and training on pain management, addiction, and the proper prescribing of controlled substances. The workgroup shall report its progress and the outcomes of its activities to the Governor and the General Assembly by December 1, 2017.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 71 Trooper Chad Phillip Dermeyer Memorial Bridge; designating as Rt. 143 bridge over Interstate 64.**

An Act to designate the State Route 143 bridge in the City of Newport News the "Trooper Chad Phillip Dermeyer Memorial Bridge."

[\[S 855\]](#)

Approved February 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Route 143 bridge in the City of Newport News at exit 255 over Interstate 64 is hereby designated the "Trooper Chad Phillip Dermeyer Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 94 Emergency custody or involuntary admission process; alternative transportation model.**

An Act to direct the Commissioner of Behavioral Health and Developmental Services and the Director of Criminal Justice Services to develop a comprehensive model for the use of alternative transportation providers to provide safe and efficient transportation of individuals involved in the emergency custody or involuntary admission process.

[\[H 1426\]](#)

Approved February 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) and the Director of Criminal Justice Services (the Director) shall, in conjunction with the relevant stakeholders, including the Virginia Association of Community Services Boards, the National Alliance on Mental Illness - Virginia, the Department of Medical Assistance Services, the Office of Emergency Medical Services, Mental Health America of Virginia, VOCAL, Inc., the Virginia Hospital and Healthcare Association, the Virginia Association of Health Plans, the Office of the Executive Secretary of the Supreme Court of Virginia, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, the Virginia Association of Regional Jails, and the University of Virginia Institute of Law, Psychiatry, and Public Policy, develop a model for the use of alternative transportation providers to provide safe and efficient transportation of individuals involved in the emergency custody or involuntary admission process as an alternative to transportation by law enforcement.*

*The model shall include criteria for the certification of alternative transportation providers, including the development of a training curriculum required to achieve such certification, and shall identify the appropriate agency responsible for providing such training and such certification. Further, the Commissioner and the Director shall identify any barriers to the use of alternative transportation in the Commonwealth and detail the costs associated with the implementation of such a model, along with the cost savings and benefits associated with the successful implementation of such a model.*

*The model shall be completed by October 1, 2017, and reported to the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century, the House Committee for Courts of Justice, and the Senate Committee for Courts of*

*Justice. The report on such model shall also be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2018 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 97 Emergency custody or involuntary admission process; alternative transportation model.**

An Act to direct the Commissioner of Behavioral Health and Developmental Services and the Director of Criminal Justice Services to develop a comprehensive model for the use of alternative transportation providers to provide safe and efficient transportation of individuals involved in the emergency custody or involuntary admission process.

[\[S 1221\]](#)

Approved February 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) and the Director of Criminal Justice Services (the Director) shall, in conjunction with the relevant stakeholders, including the Virginia Association of Community Services Boards, the National Alliance on Mental Illness - Virginia, the Department of Medical Assistance Services, the Office of Emergency Medical Services, Mental Health America of Virginia, VOCAL, Inc., the Virginia Hospital and Healthcare Association, the Virginia Association of Health Plans, the Office of the Executive Secretary of the Supreme Court of Virginia, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, the Virginia Association of Regional Jails, and the University of Virginia Institute of Law, Psychiatry, and Public Policy, develop a model for the use of alternative transportation providers to provide safe and efficient transportation of individuals involved in the emergency custody or involuntary admission process as an alternative to transportation by law enforcement.*

*The model shall include criteria for the certification of alternative transportation providers, including the development of a training curriculum required to achieve such certification, and shall identify the appropriate agency responsible for providing such training and such certification. Further, the Commissioner and the Director shall identify any barriers to the use of alternative transportation in the Commonwealth and detail the*

*costs associated with the implementation of such a model, along with the cost savings and benefits associated with the successful implementation of such a model.*

*The model shall be completed by October 1, 2017, and reported to the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century, the House Committee for Courts of Justice, and the Senate Committee for Courts of Justice. The report on such model shall also be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2018 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 123 License plates, special; issuance for supporters of Virginia Nurses Foundation.**

An Act to authorize the issuance of special license plates for supporters of the Virginia Nurses Foundation, relating to issuance of special license plates for supporters of the Virginia Nurses Foundation; fees.

[\[H 1732\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Virginia Nurses Foundation; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Virginia Nurses Foundation.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Nurses Foundation Fund, established within the Department of Accounts. These funds shall be paid annually to the Virginia Nurses Foundation and used to assist in its programs, activities, and operations in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and*

*paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 124 Vietnam Veterans Memorial Bridge; designating as Virginia Route 114 bridge.**

An Act to designate the Virginia Route 114 bridge between Montgomery and Pulaski Counties the "Vietnam Veterans Memorial Bridge."

[\[H 1741\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Route 114 bridge between Montgomery and Pulaski Counties is hereby designated the "Vietnam Veterans Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 127 Transportation, Department of, and University of Virginia; use agreement.**

An Act to authorize the Department of Transportation to enter into a use agreement with the Rector and Visitors of the University of Virginia to permit the Department of Transportation use of the Shelburne Building located on the University of Virginia Charlottesville campus.

[\[H 2214\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation, with the recommendation of the Department of General Services to the Governor and the approval of the Governor as required by subsection A of § [2.2-1155](#) of the Code of Virginia, is hereby authorized to enter into a use agreement with the Rector and Visitors of the University of Virginia to permit the*

*Department of Transportation to use the Shelburne Building located on the University of Virginia Charlottesville campus for a period not to exceed 50 years.*

*§ 2. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such documents as may be necessary to complete the use agreement.*

## **Chapter 129 F. W. "Wakie" Howard, Jr., Bridge; designating as State Route 155 bridge in New Kent County.**

An Act to designate the bridge on Virginia State Route 155 in New Kent County the "F.W. 'Wakie' Howard, Jr., Bridge."

[\[S 1367\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the bridge on State Route 155 in New Kent County is hereby designated the "F.W. 'Wakie' Howard, Jr., Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 131 Danville, City of; recordation of deeds subject to liens for unpaid taxes.**

An Act to establish a pilot project in the City of Danville regarding recordation of deeds subject to liens for unpaid taxes.

[\[H 1699\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The City of Danville is hereby authorized to establish a pilot project regarding recordation of deeds subject to liens for unpaid taxes in accordance with the provisions of this act. Such pilot project may only be established by ordinance adopted by the city council after a public hearing.*

*§ 2. Such ordinance may provide that no deed conveying a parcel of real property that has an assessed value for taxation of \$50,000 or less located in the City of Danville shall be recorded by the clerk unless the city director of finance or his designee has certified on the face of such deed that there are no liens against such real property for unpaid local taxes or for other fines or charges assessed by the city that rank on a parity with liens for unpaid taxes and are enforceable in the same manner.*

*§ 3. The provisions of this act shall not apply to (i) any deeds of trust; (ii) any deeds of easement; (iii) any deeds in which a public service company, railroad, or cable system operator is either a grantor or grantee; (iv) any deeds prepared under the supervision of the Office of the Attorney General of Virginia; (v) any deeds conveying property to the Danville Redevelopment and Housing Authority as grantee; and (vi) any deeds conveying a parcel of real property pursuant to Chapter 39 (§ [58.1-3900](#) et seq.) of Title 58.1 of the Code of Virginia.*

*§ 4. The clerk shall be immune from suit arising from any acts or omissions relating to the pilot project pursuant to this act unless the clerk was grossly negligent or engaged in willful misconduct.*

2. That if such pilot project is established, the City of Danville shall make a written report to the Virginia Housing Commission on or before May 31, 2020.

3. That the provisions of this act shall expire on July 1, 2021.

## **Chapter 136 BHDS, Board of; regulations governing licensure of providers.**

An Act to require the State Board of Behavioral Health and Developmental Services to amend regulations governing licensure of providers to include certain definitions.

[\[H 1483\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Behavioral Health and Developmental Services (the Board) shall amend [12VAC35-105-20](#) of the Virginia Administrative Code to include (i) occupational therapists in the definitions of Qualified Mental Health Professional-Adult, Qualified Mental Health Professional-Child, and Qualified Mental Retardation Professional and (ii) occupational therapy assistants in the definition of Qualified Paraprofessional in*

*Mental Health. In amending these definitions, the Board shall require educational and clinical experience for occupational therapists and occupational therapy assistants that is substantially equivalent to comparable professionals listed in current regulations.*

2. That the State Board of Behavioral Health and Developmental Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 137 Forensic discharge planning services; local and regional correctional facilities.**

An Act to direct the Commissioner of Behavioral Health and Developmental Services to develop a comprehensive plan for provision of forensic discharge planning services at local and regional correctional facilities.

[\[S 941\]](#)

Approved February 21, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) shall, in conjunction with the relevant stakeholders, review the availability of forensic discharge planning services at local and regional correctional facilities for persons who have serious mental illnesses who are to be released from such facilities. The Commissioner shall develop a comprehensive plan for the provision of forensic discharge planning services for such persons at local or regional correctional facilities, which shall include the requirement that each facility have access to a discharge planner, and shall detail the cost considerations associated with the implementation of such a plan as well as any cost savings and benefits associated with the successful implementation of such a plan.*

*The plan shall be completed by November 1, 2017, and reported to the Chairmen of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century, the House Committee for Courts of Justice, and the Senate Committee for Courts of Justice. The report on such plan shall also be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2018 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 148 Trooper Chad Phillip Dermyer Memorial Bridge; designating as Rt. 143 bridge over Interstate 64.**

An Act to designate the State Route 143 bridge in the City of Newport News the "Trooper Chad Phillip Dermyer Memorial Bridge."

[\[H 1405\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Route 143 bridge in the City of Newport News at exit 255 over Interstate 64 is hereby designated the "Trooper Chad Phillip Dermyer Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 162 Chesapeake Port Authority; City Council of Chesapeake may transfer any right, power, etc.**

An Act to amend and reenact § 1 of Chapter 397 of the Acts of Assembly of 1987, relating to the Chesapeake Port Authority; City of Chesapeake Economic Development Authority.

[\[S 967\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 397 of the Acts of Assembly of 1987 is amended and reenacted as follows:

§ 1. Creation of Authority.

There is hereby created in the City of Chesapeake a political subdivision of the Commonwealth, with the public and corporate powers hereinafter set forth, to be known as the "Chesapeake Port Authority." *The City Council of Chesapeake may by ordinance transfer any right, power, or privilege granted to the Chesapeake Port Authority by the creation of this act to the Chesapeake Economic Development Authority created*

*pursuant to Article VII of Chapter 2 of the Code of Ordinances of the City of Chesapeake at which time the Chesapeake Port Authority shall be dissolved.*

## **Chapter 165 Municipal elections; local option for timing of elections, effective date.**

An Act to amend Chapter 402 of the Acts of Assembly of 2016 by adding a second enactment, relating to local option for timing of municipal elections; effective date.

[\[S 1304\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That Chapter 402 of the Acts of Assembly of 2016 is amended by adding a second enactment as follows:
2. That the provisions of this act shall be retroactively effective beginning on July 1, 2000.

## **Chapter 172 Air transportation services providers; VDH to review rules for use in medical situations.**

An Act to require the Department of Health to review the rules governing dispatch and use of air transportation services providers in emergency medical situations.

[\[H 1728\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.  
*§ 1. That the Department of Health (the Department) shall convene a work group composed of stakeholders, including representatives of law enforcement, emergency medical services providers, health insurance providers, the Medevac Committee of the Emergency Medical Services Advisory Board, emergency physicians, and other interested stakeholders, to review the rules, regulations, and protocols governing use of air transportation services, also known as air ambulances, in emergency medical situations. The Department shall also review the rules, regulations, and protocols governing*

*dispatch of air transportation services providers in response to emergency medical situations and develop recommendations for changes to such rules, regulations, and protocols that will address differences in procedures governing dispatch of air transportation services providers in emergency medical situations, differences in billing that may affect individuals involved in emergency medical situations during which air transportation services providers are dispatched for the provision of air transportation, and other issues related to the use of air transportation services in emergency medical situations. The Department shall report its findings and recommendations to the Governor and the General Assembly by December 1, 2017.*

## **Chapter 180 Opioids; workgroup to establish guidelines for prescribing.**

An Act to require the Secretary of Health and Human Resources to convene a workgroup to develop educational standards and curricula for training health care providers in the safe and appropriate use of opioids to treat pain while minimizing the risk of addiction and substance abuse.

[\[H 2161\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Health and Human Resources shall convene a workgroup that shall include representatives of the Departments of Behavioral Health and Developmental Services, Health, and Health Professions as well as representatives of the State Council of Higher Education for Virginia and at least one representative of each medical school, dental school, school of pharmacy, physician assistant education program, and nursing education program located in the Commonwealth to develop educational standards and curricula for training health care providers, including physicians, dentists, optometrists, pharmacists, physician assistants, and nurses in the safe and appropriate use of opioids to treat pain while minimizing the risk of addiction and substance abuse. Such educational standards and curricula shall include education and training on pain management, addiction, and the proper prescribing of controlled substances. The workgroup shall report its progress and the outcomes of its activities to the Governor and the General Assembly by December 1, 2017.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 185 Neonatal abstinence syndrome; Board of Health to adopt regulations to include as reportable disease.**

An Act to require the Board of Health to adopt regulations to include neonatal abstinence syndrome on the list of reportable diseases.

[\[S 1323\]](#)[S 1323]

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall adopt regulations to include neonatal abstinence syndrome on the list of diseases that shall be required to be reported in accordance with § [32.1-35](#) of the Code of Virginia.*

## **Chapter 192 Forensic discharge planning services; local and regional correctional facilities.**

An Act to direct the Commissioner of Behavioral Health and Developmental Services to develop a comprehensive plan for provision of forensic discharge planning services at local and regional correctional facilities.

[\[H 1784\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Commissioner of Behavioral Health and Developmental Services (the Commissioner) shall, in conjunction with the relevant stakeholders, review the availability of forensic discharge planning services at local and regional correctional facilities for persons who have serious mental illnesses who are to be released from such facilities. The Commissioner shall develop a comprehensive plan for the provision of forensic discharge planning services for such persons at local or regional correctional facilities, which shall include the requirement that each facility have access to a discharge planner, and shall detail the cost considerations associated with the implementation of such*

*a plan as well as any cost savings and benefits associated with the successful implementation of such a plan.*

*The plan shall be completed by November 1, 2017, and reported to the Chairmen of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century, the House Committee for Courts of Justice, and the Senate Committee for Courts of Justice. The report on such plan shall also be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2018 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 197 Substance-exposed infants; study of barriers to treatment in Commonwealth.**

An Act to require the Secretary of Health and Human Resources to convene a work group to study barriers to treatment of substance-exposed infants in the Commonwealth.

[\[H 2162\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Health and Human Resources shall convene a work group to study barriers to treatment of substance-exposed infants in the Commonwealth. Such work group shall include representatives of the Departments of Behavioral Health and Developmental Services and Health and Social Services and such other stakeholders as the Secretary of Health and Human Resources may deem appropriate and shall (i) review current policies and practices governing the identification and treatment of substance-exposed infants in the Commonwealth; (ii) identify barriers to treatment of substance-exposed infants in the Commonwealth, including barriers related to identification and reporting of such infants, data collection, interagency coordination and collaboration, service planning, service availability, and funding; and (iii) develop legislative, budgetary, and policy recommendations for the elimination of barriers to treatment of substance-exposed infants in the Commonwealth. The Secretary shall report his findings to the Governor and the General Assembly by December 1, 2017.*

2. That an emergency exists and this act is in force from its passage.

## Chapter 198 Medicaid; eligibility of incarcerated individuals.

An Act to require the Department of Medical Assistance Services to convene a work group to identify and develop processes for streamlining the application and enrollment process for Medicaid and FAMIS for incarcerated individuals.

[\[H 2183\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Medical Assistance Services shall convene a work group to identify and develop processes for streamlining the application and enrollment process for the Commonwealth's program of medical assistance services provided pursuant to the state plan for medical assistance, also known as Medicaid, and services provided through the Family Access to Medical Insurance Security (FAMIS) Plan for eligible incarcerated individuals so that applicable services shall be available to such individuals immediately upon release from the correctional facility. Such work group shall include representatives of the Departments of Social Services, Behavioral Health and Developmental Services, Corrections, and Juvenile Justice; the Virginia Sheriffs' Association; the Virginia Association of Regional Jails; the Virginia Juvenile Detention Association; the Virginia Chapter of the National Alliance on Mental Illness; the Virginia Association of Community Services Boards; the Virginia League of Social Services Executives; and other relevant stakeholders. The work group shall identify and take such steps as may be feasible to implement an efficient and cost-effective process for (i) determining eligibility for Medicaid and FAMIS at the time of incarceration or detention and (ii) processing applications for eligible individuals incarcerated in state, local, or regional correctional facilities in order to ensure a seamless provision of appropriate Medicaid and FAMIS services upon release and reentry into society. The work group shall consider (a) how the Department of Medical Assistance Services' Central Processing Unit may be leveraged to benefit this process and (b) how the process may also be utilized to ensure appropriate coverage for inpatient hospitalization of inmates eligible for Medicaid services. The Department of Medical Assistance Services shall report its findings and recommendations, including information on any process improvements that have been implemented, any cost savings that have been identified, and any additional funding that may be necessary to fully implement the work group's recommendations, to the*

*Chairmen of the House Health, Welfare and Institutions Committee, Senate Education and Health Committee, House Appropriations Committee, and Senate Finance Committee by November 30, 2017.*

## **Chapter 218 Hampton Roads Sanitation District; adds County of Surry to territory.**

An Act to amend and reenact §§ 1 and 2, as amended, of Chapter 66 of the Acts of Assembly of 1960, relating to Hampton Roads Sanitation District; adding territory.

[\[S 1311\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 1 and 2, as amended, of Chapter 66 of the Acts of Assembly of 1960 are amended and reenacted as follows:

§ 1. The creation of the Hampton Roads Sanitation District is hereby ratified, validated and confirmed, and said District shall embrace all the territory within the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the Counties of Gloucester, Isle of Wight, James City, King and Queen, King William, Mathews, Middlesex and York; *the County of Surry, excluding the Town of Claremont*; and the Town of Urbanna. Territory may be added to the District as hereinafter provided in this act.

For the purpose of this section, the territory of a county included within the District shall include all the territory lying within the boundaries of any town in the county *unless otherwise specified*.

Said District shall constitute a political subdivision of Commonwealth established as a governmental instrumentality to provide for the public health and welfare.

§ 2. The functions, affairs and property of the Hampton Roads Sanitation District shall be managed and controlled by a commission, known as the "Hampton Roads Sanitation District Commission," consisting of eight members appointed by the Governor. The Commission and the term of each such member shall continue until his successor shall be duly appointed and qualified. The successor of each such member shall be appointed for a term of four years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Commission shall be eligible for reappointment without

limitation as to the number of terms that may be served. Members of the Commission may be suspended or removed by the Governor at his pleasure.

At the time of their appointment, one of the members of the Commission, and each of his successors, shall be residents of the territory in the District within the City of Norfolk;; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Virginia Beach;; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Newport News;; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Hampton;; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Chesapeake;; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Suffolk or Isle of Wight County; *or Surry County*; one of the members, and each of his successors, shall be residents of the territory in the District within the City of Williamsburg or James City County or York County or the City of Poquoson or Gloucester County or King William County or Mathews County or Middlesex County or the Town of Urbanna; or King and Queen County;; and one of the members, and each of his successors, shall be residents of the territory in the District within the City of Portsmouth. Any member who shall cease to reside within the territory from which he was appointed shall thereupon be disqualified from holding office as a member of the Commission and the vacancy thus created shall be filled by appointment by the Governor for the balance of the unexpired term.

## **Chapter 229 VPI & SU and Virginia State University; purpose and courses of study.**

An Act to express the intent of the General Assembly relating to the Commonwealth's two land-grant universities.

[\[H 1569\]](#)

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. It is the intent of the General Assembly that in order to support a strong Commonwealth and to fulfill the principles of the federal Morrill Land-Grant Acts of 1862 and 1890 and Smith-Lever Act of 1914 (7 U.S.C. § 301 et seq.), the Commonwealth's two*

*land-grant universities, Virginia Polytechnic Institute and State University and Virginia State University, shall maintain strong programs of instruction, research, and the extension of knowledge in agriculture, natural resources, family and consumer sciences, community viability, youth development, and such other fields as are necessary to fulfill their respective land-grant missions. Therefore, it is incumbent on these two institutions to ensure that these objectives will be addressed in all strategic plans for the future.-*

## **Chapter 249 Opioids; limit on amount prescribed, extends sunset provision.**

An Act to amend and reenact § [54.1-2522.1](#), as it is currently effective, of the Code of Virginia and to amend and reenact the second enactment of Chapter 113 and the second enactment of Chapter 406 of the Acts of Assembly of 2016, relating to prescription of opioids; limit.

[\[H 1885\]](#)

Approved February 24, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2522.1](#), as it is currently effective, of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2522.1](#). (Effective until July 1, 2019) Requirements of prescribers.

A. Any prescriber who is licensed in the Commonwealth to treat human patients and is authorized pursuant to §§ [54.1-3303](#) and [54.1-3408](#) to issue a prescription for a covered substance shall be registered with the Prescription Monitoring Program by the Department of Health Professions.

B. A prescriber registered with the Prescription Monitoring Program or a person to whom he has delegated authority to access information in the possession of the Prescription Monitoring Program pursuant to § [54.1-2523.2](#) shall, at the time of initiating a new course of treatment to a human patient that includes the prescribing of opioids anticipated at the onset of treatment to last more than ~~14~~ *seven* consecutive days, request information from the Director for the purpose of determining what, if any, other covered substances are currently prescribed to the patient. In addition, any prescriber who holds a special identification number from the Drug Enforcement Administration authorizing the prescribing of controlled substances approved for use in opioid addiction therapy shall, prior to or as a part of execution of a treatment agreement with the patient, request information from

the Director for the purpose of determining what, if any, other covered substances the patient is currently being prescribed. Nothing in this section shall prohibit prescribers from making additional periodic requests for information from the Director as may be required by routine prescribing practices.

C. A prescriber shall not be required to meet the provisions of subsection B if:

1. The opioid is prescribed to a patient currently receiving hospice or palliative care;
2. The opioid is prescribed to a patient as part of treatment for a surgical or invasive procedure and such prescription is ~~not refillable~~ *for no more than 14 consecutive days*;
3. The opioid is prescribed to a patient during an inpatient hospital admission or at discharge;
4. The opioid is prescribed to a patient in a nursing home or a patient in an assisted living facility that uses a sole source pharmacy;
5. The Prescription Monitoring Program is not operational or available due to temporary technological or electrical failure or natural disaster; or
6. The prescriber is unable to access the Prescription Monitoring Program due to emergency or disaster and documents such circumstances in the patient's medical record.

2. That the second enactment of Chapter 113 and the second enactment of Chapter 406 of the Acts of Assembly of 2016 are amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2019~~ 2022.**

3. That the provisions of the first enactment of this act shall expire on July 1, 2022.

## **Chapter 252 Opioids; limit on amount prescribed, extends sunset provision.**

An Act to amend and reenact § [54.1-2522.1](#), as it is currently effective, of the Code of Virginia and to amend and reenact the second enactment of Chapter 113 and the second enactment of Chapter 406 of the Acts of Assembly of 2016, relating to prescription of opioids; limit.

[\[S 1232\]](#)

Approved February 24, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2522.1](#), as it is currently effective, of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2522.1](#). (Effective until July 1, 2019) Requirements of prescribers.

A. Any prescriber who is licensed in the Commonwealth to treat human patients and is authorized pursuant to §§ [54.1-3303](#) and [54.1-3408](#) to issue a prescription for a covered substance shall be registered with the Prescription Monitoring Program by the Department of Health Professions.

B. A prescriber registered with the Prescription Monitoring Program or a person to whom he has delegated authority to access information in the possession of the Prescription Monitoring Program pursuant to § [54.1-2523.2](#) shall, at the time of initiating a new course of treatment to a human patient that includes the prescribing of opioids anticipated at the onset of treatment to last more than ~~14~~ *seven* consecutive days, request information from the Director for the purpose of determining what, if any, other covered substances are currently prescribed to the patient. In addition, any prescriber who holds a special identification number from the Drug Enforcement Administration authorizing the prescribing of controlled substances approved for use in opioid addiction therapy shall, prior to or as a part of execution of a treatment agreement with the patient, request information from the Director for the purpose of determining what, if any, other covered substances the patient is currently being prescribed. Nothing in this section shall prohibit prescribers from making additional periodic requests for information from the Director as may be required by routine prescribing practices.

C. A prescriber shall not be required to meet the provisions of subsection B if:

1. The opioid is prescribed to a patient currently receiving hospice or palliative care;
2. The opioid is prescribed to a patient as part of treatment for a surgical or invasive procedure and such prescription is ~~not refillable~~ *for no more than 14 consecutive days*;
3. The opioid is prescribed to a patient during an inpatient hospital admission or at discharge;
4. The opioid is prescribed to a patient in a nursing home or a patient in an assisted living facility that uses a sole source pharmacy;
5. The Prescription Monitoring Program is not operational or available due to temporary technological or electrical failure or natural disaster; or
6. The prescriber is unable to access the Prescription Monitoring Program due to emergency or disaster and documents such circumstances in the patient's medical record.

2. That the second enactment of Chapter 113 and the second enactment of Chapter 406 of the Acts of Assembly of 2016 are amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2019~~ 2022.**

3. That the provisions of the first enactment of this act shall expire on July 1, 2022.

## **Chapter 272 License plates, special; issuance for supporters of highway safety.**

An Act to authorize the issuance of special license plates for supporters of highway safety.

[\[H 1763\]](#)

Approved March 3, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of highway safety.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of highway safety, including awareness of distracted driving.*

*The provisions of subdivisions B 1 and 2 of § [46.2-725](#) shall not apply to license plates issued under this section.*

*Notwithstanding subdivision B 3 of § [46.2-725](#), for each set of license plates issued under this section, the Commissioner shall only charge, in addition to the prescribed cost of state license plates, a one-time fee of \$10 at the time the plates are issued.*

## **Chapter 280 Neonatal abstinence syndrome; Board of Health to adopt regulations to include as reportable disease.**

An Act to require the Board of Health to adopt regulations to include neonatal abstinence syndrome on the list of reportable diseases.

[\[H 1467\]](#)

Approved March 3, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall adopt regulations to include neonatal abstinence syndrome on the list of diseases that shall be required to be reported in accordance with § [32.1-35](#) of the Code of Virginia.*

## **Chapter 313 Standards of Learning; DOE to review multipart assessment questions, partial credit, etc.**

An Act to require the Department of Education to review multipart Standards of Learning assessment questions.

[\[H 1414\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Education shall collaborate with the existing educational advisory committees in the Commonwealth that advise on student assessments to review multipart Standards of Learning assessment questions and determine the feasibility of awarding students partial credit for correct answers on one or more parts of such questions. The Department shall report its determination to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health by November 1, 2017. The Department shall not take action regarding the awarding of partial credit prior to the 2018 Session of the General Assembly.*

## **Chapter 317 Neighborhood Assistance Act tax credits; process of allocating credits.**

An Act to require certain neighborhood organization proposals for the Neighborhood Assistance Tax Credit to provide information; report.

[\[H 1838\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That any neighborhood organization, as that term is defined in § [58.1-439.18](#) of the Code of Virginia, submitting a proposal to the Superintendent of Public Instruction for an allocation of tax credits pursuant to § [58.1-439.20](#) of the Code of Virginia for the program year beginning July 1, 2017, shall include with its proposal a list of all localities in the Commonwealth in which the neighborhood organization provided services during the*

*program year beginning July 1, 2016. The Department of Education shall aggregate the information received pursuant to this act and submit it to the Chairmen of the House Committee on Appropriations, the House Committee on Finance, the Senate Committee on Finance, and the Joint Subcommittee to Evaluate Tax Preferences no later than December 1, 2017.*

## **Chapter 341 Landfills; DEQ, et al., to work towards odor reduction in Campbell County.**

An Act to direct coordination regarding landfill odor reduction at landfill in Campbell County.

[\[H 1600\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality (the Department) and the Region 2000 Services Authority (the Authority) shall continue to work together to reduce the odor issues at the landfill operated by the Authority in Campbell County, and the Department and the Authority shall report to the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources no later than November 1, 2017, on such efforts. The Authority shall connect Phases IV and V of its landfill gas collection system to the gas collection system that was installed in Phase III of the current landfill operated by the Authority in Campbell County at such time as the Authority's engineers advise the Authority that the connections will operate efficiently.*

## **Chapter 345 Stormwater management; work group to examine ways to improve.**

An Act to amend and reenact the tenth enactments of Chapters 68 and 758 of the Acts of Assembly of 2016 and to direct the Commonwealth Center for Recurrent Flooding Resiliency to convene a work group relating to stormwater and erosion control; local rural development growth areas; volume credit program; regional stormwater best management practices banks.

[\[H 1774\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth Center for Recurrent Flooding Resiliency shall convene a work group to examine opportunities to improve stormwater management in rural localities that are located in Tidewater Virginia, as defined in § [62.1-44.15:68](#) of the Code of Virginia. The work group shall review and consider alternative methods that could be used in such localities to meet or exceed the level of water quality protection and water quantity control provided by the Virginia Stormwater Management Program (VSMP) Regulation, [9VAC25-870](#), including (i) the creation of rural development growth areas within such localities, in which stormwater management could be administered by the localities using different approaches than those set forth in the VSMP Regulation; (ii) the development of a volume credit program to fulfill water quantity requirements; (iii) the payment of fees to support regional stormwater best management practices; and (iv) the allowance of the use of the stormwater in the networks of ditches that line the highways within such localities to generate volume credits.*

*§ 2. That the work group created by this act shall be facilitated by the Virginia Coastal Policy Center at William and Mary Law School and shall include representatives of the Virginia Institute of Marine Science, Old Dominion University, the Virginia Department of Transportation, the Virginia Department of Environmental Quality, the Chesapeake Bay Commission, local governments, environmental interests, private mitigation providers, the agriculture industry, the engineering and development communities, and other stakeholders as determined necessary.*

*§ 3. That in order to support the efforts of the work group created by this act, the Commonwealth Center for Recurrent Flooding Resiliency shall provide comprehensive analysis of the appropriate regulatory sections, and alternatives developed by the work group, with the goal of determining the difference in water quality benefits provided.*

*§ 4. That the Commonwealth Center for Recurrent Flooding Resiliency shall report the results of the examination conducted by the work group created by this act, including recommendations for any legislative or regulatory measures needed to improve the administration of stormwater management by rural localities, to the Governor, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, and the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources no later than January 1, 2018.*

2. That the tenth enactments of Chapters 68 and 758 of the Acts of Assembly of 2016 are amended and reenacted as follows:

10. That the provisions of this act shall become effective July 1, ~~2017~~ 2018, or 30 days after the adoption by the State Water Control Board of the regulations required by the ninth enactment of this act, whichever occurs later.

3. That the provisions of the first enactment of this act shall expire on January 1, 2018.

## **Chapter 411 Occupational therapists; Board of Medicine shall amend regulations governing licensure.**

An Act to require the Board of Medicine to amend regulations governing licensure of occupational therapists to specify Type 1 continuous learning activities.

[\[H 1484\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Medicine shall amend regulations governing licensure of occupational therapists to provide that Type 1 continuing learning activities that shall be completed by the practitioner prior to renewal of a license shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organizations or any of its components: the Virginia Occupational Therapy Association; the American Occupational Therapy Association; the National Board for Certification in Occupational Therapy; a local, state, or federal government agency; a regionally accredited college or university; or a health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation. Such regulations shall also provide that Type 1 continuing learning activities may also include an American Medical Association Category 1 Continuing Medical Education program.*

*§ 2. That the Board of Medicine shall not deem maintenance of any certification provided by the Virginia Occupational Therapy Association; the American Occupational Therapy Association; the National Board for Certification in Occupational Therapy; a local, state, or federal government agency; a regionally accredited college or university; or a health*

*care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation as sufficient to fulfill continuing learning requirements for occupational therapists.*

## **Chapter 420 Virginia State University; revenue-producing capital project.**

An Act to amend and reenact § 2 of the first enactment of Chapters 207 and 604 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, and § 2 of the first enactment of Chapters 11 and 550 of the Acts of Assembly of 2011, relating to modifications to prior revenue bond bills for institutions of higher education; Virginia State University.

[\[H 2249\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 207 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Uncodified Acts of Assembly - 2017

Institution	Project Title	ProjectAmount Code
George Mason University	President's Park Phase II Renovation	17540 \$15,633,000
George Mason University	Smithsonian CRC Housing	17572 17,804,000
George Mason University	Housing VIII	17570 102,460,000
Old Dominion University	Construct Residence Hall, Phase II	17342 34,779,000
Radford University	Renovate Residence Halls	17565 36,000,000
The College of William and Mary in Virginia	Renovate Graduate Student Dormitories	17555 2,500,000
The College of William and Mary in Virginia	Renovate Campus Center and Trinkle Hall	17554 35,000,000
Virginia Polytechnic Institute and State University	Renovate Ambler Johnson Hall	17557 55,000,000
Virginia Polytechnic Institute and State University	Renovate Owens and West End Market Food Courts	17558 5,000,000
Virginia Polytechnic Institute and State University	New Residence Hall	16682 8,047,000
Virginia State University	Demolish Student Village and <i>Dormitories</i> , Construct Gateway-500, Phase II, and <i>Improve Campus Residence Halls</i>	17531 38,342,000
Total		\$350,565,000

2. That § 2 of the first enactment of Chapter 604 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
George Mason University	President's Park Phase II Renovation	17540	\$15,633,000
George Mason University	Smithsonian CRC - Housing	17572	17,804,000
George Mason University	Housing VIII	17570	102,460,000
Old Dominion University	Construct Residence Hall, Phase II	17342	34,779,000
Radford University	Renovate Residence Halls	17565	36,000,000
The College of William and Mary in Virginia	Renovate Graduate Student Dormitories	17555	2,500,000
The College of William and Mary in Virginia	Renovate Campus Center and Trinkle Hall	17554	35,000,000
Virginia Polytechnic Institute and State University	Renovate Ambler Johnson Hall	17557	55,000,000
Virginia Polytechnic Institute and State University	Renovate Owens and West End Market Food Courts	17558	5,000,000

University			
Virginia Polytechnic Institute and State University	New Residence Hall	16682	8,047,000
Virginia State University	Demolish Student Village and Dormitories,	17531	38,342,000
University	Construct Gateway-500, Phase II, and Improve Campus Residence Halls		
Total			\$350,565,000

3. That § 2 of the first enactment of Chapter 11 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
Virginia Commonwealth University	Construct West Grace Street Housing North	17896	\$33,763,000
Virginia State University	Construct Quad, Phase II and Improve Campus Residence Halls	17895	\$30,816,000
Total			\$64,579,000

4. That § 2 of the first enactment of Chapter 550 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
Virginia Commonwealth University	Construct West Grace Street Housing North	17896	\$33,763,000
Virginia State University	Construct Quad, Phase II and Improve Campus Residence Halls	17895	\$30,816,000
Total			\$64,579,000

5. That an emergency exists and this act is in force from its passage.

### **Chapter 438 Real property tax; Stafford County may adopt, by ordinance, to restrict deferral of taxes.**

An Act to authorize Stafford County to permit taxpayers to defer payment of a portion of certain real property taxes.

[\[H 2219\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

§ 1. A. In addition to the deferral program pursuant to § [58.1-3219](#) of the Code of Virginia, Stafford County may adopt, by ordinance, a deferral program for real property

*taxes including the terms and conditions of the program, in such amount as the ordinance may prescribe, subject to the limitations and conditions of this section.*

*B. The deferral program pursuant to this section shall apply only to real property owned by and occupied as the sole dwelling of the taxpayer. To qualify, the real property's tax levy for 2016 shall exceed the tax levy for 2015 by at least 25 percent and this increase shall be the result of improvements completed in 2015 made by Stafford County to real property that, together with any adjacent property owned by Stafford County, is adjacent to the taxpayer's real estate as determined by the commissioner of the revenue or other assessing official as provided in subsection C.*

*C. Whenever the commissioner of the revenue or other assessing official increases the assessed value of real property described in subsection B, he shall notify the taxpayer of his rights under the ordinance. After receipt of the notice, the taxpayer may elect to defer all or any portion of 95 percent of the amount by which the real property tax of the subject property increased from 2015 to 2016 as calculated by the commissioner of the revenue or other assessing official for taxes accruing in 2016 and, subject to the provisions of subsection D, the same amount for taxes accruing in subsequent tax years.*

*D. The deferred amount shall be subject to simple interest computed at a rate established by the governing body, not to exceed five percent per annum. The accumulated amount of taxes deferred and interest shall be paid to the county, city, or town by the owner upon the sale or transfer of the property, or from the estate of the decedent within one year after the death of the owner. If the real property is owned jointly and all such owners applied and qualified for the deferral program established by ordinance, the death of one of the joint owners shall not disqualify the survivor or survivors from participating in the deferral program. All accumulated deferred taxes and interest shall be paid within one year of the date of death of the last qualifying owner. The accumulated amount of tax deferred and interest shall constitute a lien upon the real property.*

*E. All other sections of this article shall apply mutatis mutandis, unless the provisions of such sections are inapplicable.*

2. Any real property that was eligible for the deferral of taxes under this act on January 1, 2016, shall be eligible for deferral of taxes accruing in 2016. For real estate covered under this enactment, Stafford County shall, if it enacts an ordinance pursuant to this act, refund any portion of taxes paid, as applicable.

## **Chapter 446 Temporary exemption periods from retail sales and use taxes for qualifying items; sunset dates.**

An Act to amend and reenact § [58.1-611.2](#) of the Code of Virginia, and to amend and reenact the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, and the third enactment of Chapter 608 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, relating to temporary exemption periods from retail sales and use taxes for qualifying items; sunset dates.

[\[S 1018\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [58.1-611.2](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-611.2](#). Limited exemption for certain school supplies, clothing, and footwear.

Beginning in 2015, and ending July 1, ~~2017~~ 2022, for a three-day period that begins each year on the first Friday in August and ends at 11:59 p.m. on the following Sunday, the tax imposed by this chapter or pursuant to the authority granted in § [58.1-605](#) or [58.1-606](#) shall not apply to certain (i) school supplies, including, but not limited to, dictionaries, notebooks, pens, pencils, notebook paper, and calculators, and (ii) clothing and footwear designed to be worn on or about the human body. The tax exemption shall apply to each article of school supplies with a selling price of \$20 or less, and each article of clothing or footwear with a selling price of \$100 or less. Any discount, coupon, or other credit offered either by the retailer or by a vendor of the retailer to reduce the final price to the customer shall be taken into account in determining the selling price for purposes of this exemption.

The Department shall develop guidelines that describe the items of merchandise that qualify for the exemption and make such guidelines available, both electronically and in hard copy, no later than July 15 of each year.

2. That the second enactment of Chapters 176 and 817 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2017~~ 2022.**

3. That the third enactment of Chapter 608 of the Acts of Assembly of 2007, as amended by Chapter 597 of the Acts of Assembly of 2012, is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2017~~ 2022.

### **Chapter 448 Real property tax; Stafford County may adopt, by ordinance, to restrict deferral of taxes.**

An Act to authorize Stafford County to permit taxpayers to defer payment of a portion of certain real property taxes.

[\[S 1248\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. A. In addition to the deferral program pursuant to § [58.1-3219](#) of the Code of Virginia, Stafford County may adopt, by ordinance, a deferral program for real property taxes including the terms and conditions of the program, in such amount as the ordinance may prescribe, subject to the limitations and conditions of this section.*

*B. The deferral program pursuant to this section shall apply only to real property owned by and occupied as the sole dwelling of the taxpayer. To qualify, the real property's tax levy for 2016 shall exceed the tax levy for 2015 by at least 25 percent and this increase shall be the result of improvements completed in 2015 made by Stafford County to real property that, together with any adjacent property owned by Stafford County, is adjacent to the taxpayer's real estate as determined by the commissioner of the revenue or other assessing official as provided in subsection C.*

*C. Whenever the commissioner of the revenue or other assessing official increases the assessed value of real property described in subsection B, he shall notify the taxpayer of his rights under the ordinance. After receipt of the notice, the taxpayer may elect to defer all or any portion of 95 percent of the amount by which the real property tax of the subject property increased from 2015 to 2016 as calculated by the commissioner of the revenue or other assessing official for taxes accruing in 2016 and, subject to the provisions of subsection D, the same amount for taxes accruing in subsequent tax years.*

*D. The deferred amount shall be subject to simple interest computed at a rate established by the governing body, not to exceed five percent per annum. The accumulated amount of taxes deferred and interest shall be paid to the county, city, or town by the*

*owner upon the sale or transfer of the property, or from the estate of the decedent within one year after the death of the owner. If the real property is owned jointly and all such owners applied and qualified for the deferral program established by ordinance, the death of one of the joint owners shall not disqualify the survivor or survivors from participating in the deferral program. All accumulated deferred taxes and interest shall be paid within one year of the date of death of the last qualifying owner. The accumulated amount of tax deferred and interest shall constitute a lien upon the real property.*

*E. All other sections of this article shall apply mutatis mutandis, unless the provisions of such sections are inapplicable.*

2. Any real property that was eligible for the deferral of taxes under this act on January 1, 2016, shall be eligible for deferral of taxes accruing in 2016. For real estate covered under this enactment, Stafford County shall, if it enacts an ordinance pursuant to this act, refund any portion of taxes paid, as applicable.

## **Chapter 452 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2017; created.**

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$13,637,000 plus financing costs to finance the costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 1369\]](#)

Approved March 13, 2017

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2017."*

§ 2. *Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$13,637,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>The College of William and Mary in Virginia</i>	<i>Renovate Dormitories</i>	<i>\$13,637,000</i>
<i>Total</i>		<i>\$13,637,000</i>

§ 3. *Application of proceeds.*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state*

*treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any*

*BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the*

*Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b) of the Constitution of Virginia, as the case may be.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

*2. That an emergency exists and this act is in force from its passage.*

## **Chapter 464 Suicide; task force to raise public awareness, etc.**

An Act to require the Department of Behavioral Health and Developmental Services to report on its activities related to suicide prevention.

[\[H 2258\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall report by December 1, 2017, to the Governor and the General Assembly on its activities related to suicide prevention across the lifespan pursuant to § [37.2-312.1](#) of the Code of Virginia.*

## **Chapter 476 Alternative onsite sewage systems; sampling.**

An Act to require the Department of Health to evaluate the need for 180-day biochemical oxygen demand sampling of small alternative onsite sewage systems; report.

[\[S 1577\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health shall evaluate the need for 180-day biochemical oxygen demand sampling of small alternative onsite sewage systems that serve no more than three attached or detached single-family residences with a combined average flow of less than or equal to 1,000 gallons per day of residential strength sewage, or a structure with an average daily sewage flow of less than or equal to 1,000 gallons per day of residential strength sewage, and shall report its findings to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2017.*

## **Chapter 478 Workers' compensation; fees for medical services.**

An Act to amend and reenact § [65.2-605](#) of the Code of Virginia and to amend and reenact the fourth enactments of Chapters 279 and 290 of the Acts of Assembly of 2016,

relating to workers' compensation; fees for medical services.

[\[H 1571\]](#)

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [65.2-605](#) of the Code of Virginia is amended and reenacted as follows:

§ [65.2-605](#). Liability of employer for medical services ordered by Commission; fee schedules for medical services; malpractice; assistants-at-surgery; coding.

A. As used in this section, unless the context requires a different meaning:

"Burn center" means a treatment facility designated as a burn center pursuant to the verification program jointly administered by the American Burn Association and the American College of Surgeons and verified by the Commonwealth.

"Categories of providers of fee scheduled medical services" means:

1. Physicians exclusive of surgeons;
2. Surgeons;
3. Type One teaching hospitals;
4. Hospitals, exclusive of Type One teaching hospitals;
5. Ambulatory surgical centers;
6. Providers of outpatient medical services not covered by subdivision 1, 2, or 5; and
7. Purveyors of miscellaneous items and any other providers not described in subdivisions 1 through 6, as established by the Commission in regulations adopted pursuant to subsection C.

"Codes" means, as applicable, CPT codes, HCPCS codes, ~~or~~ DRG classifications, *or revenue codes*.

"CPT codes" means the medical and surgical identifying codes using the Physicians' Current Procedural Terminology published by the American Medical Association.

"Diagnosis related group" or "DRG" means the system of classifying in-patient hospital stays adopted for use with the Inpatient Prospective Payment System.

"Fee scheduled medical service" means a medical service exclusive of a medical service provided in the treatment of a traumatic injury or serious burn.

"Health Care Common Procedure Coding System codes" or "HCPCS codes" means the medical coding system, *including all subsets of codes by alphabetical letter*, used to report hospital outpatient and certain physician services as published by the National Uniform Billing Committee, including Temporary National Code (Non-Medicare) S0000-S-9999.

"Level I or Level II trauma center" means a hospital in the Commonwealth designated by the Board of Health as a Level I trauma center or a Level II trauma center pursuant to the Statewide Emergency Medical Services Plan developed in accordance with § [32.1-111.3](#).

"Medical community" means one of the following six regions of the Commonwealth:

1. Northern region, consisting of the area for which three-digit ZIP code prefixes 201 and 220 through 223 have been assigned by the U.S. Postal Service.
2. Northwest region, consisting of the area for which three-digit ZIP code prefixes 224 through 229 have been assigned by the U.S. Postal Service.
3. Central region, consisting of the area for which three-digit ZIP code prefixes 230, 231, 232, 238, and 239 have been assigned by the U.S. Postal Service.
4. Eastern region, consisting of the area for which three-digit ZIP code prefixes 233 through 237 have been assigned by the U.S. Postal Service.
5. Near Southwest region, consisting of the area for which three-digit ZIP code prefixes 240, 241, 244, and 245 have been assigned by the U.S. Postal Service.
6. Far Southwest region, consisting of the area for which three-digit ZIP code prefixes 242, 243, and 246 have been assigned by the U.S. Postal Service.

"Medical service" means any medical, surgical, or hospital service required to be provided to an injured person pursuant to this title.

*"Medical service provided for the treatment of a serious burn" includes any professional service rendered during the dates of service of the admission or transfer to a burn center.*

*"Medical service provided for the treatment of a traumatic injury" includes any professional service rendered during the dates of service of the admission or transfer to a Level I or Level II trauma center.*

"Miscellaneous items" means medical services provided under this title that are not included within subdivisions 1 through 6 of the definition of categories of providers of fee scheduled medical services. "Miscellaneous items" does not include (i) pharmaceuticals that are dispensed by providers, other than hospitals or Type One teaching hospitals as part of inpatient or outpatient medical services, or dispensed as part of fee scheduled medical services at an ambulatory surgical center or (ii) durable medical equipment dispensed at retail.

*"New type of technology" means an item resulting or derived from an advance in medical technology, including an implantable medical device or an item of medical equipment, that is supplied by a third party, provided that the item has been cleared or approved by the federal Food and Drug Administration (FDA) after the transition date and prior to the date of the provision of the medical service using the item.*

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ [54.1-2900](#) et seq.) of Title 54.1.

*"Professional service" means any medical or surgical service required to be provided to an injured person pursuant to this title that is provided by a physician or any health care practitioner licensed, accredited, or certified to perform the service consistent with state law.*

"Provider" means a person licensed by the Commonwealth to provide a medical service to a claimant under this title.

"Reimbursement objective" means the average of all reimbursements and other amounts paid to providers in the same category of providers of fee scheduled medical services in the same medical community for providing a fee scheduled medical service to a claimant under this title during the most recent period preceding the transition date for which statistically reliable data is available as determined by the Commission.

*"Revenue codes" means a method of coding used by hospitals or health care systems to identify the department in which medical service was rendered to the patient or the type of item or equipment used in the delivery of medical services.*

"Serious burn" means a burn for which admission or transfer to a burn center is medically necessary.

"Transition date" means the date the regulations of the Commission adopting initial Virginia fee schedules for medical services pursuant to subsection C become effective.

"Traumatic injury" means an injury for which admission or transfer to a Level I or Level II trauma center is medically necessary and that is assigned a DRG number of 003, 004, 011, 012, 013, 025 through 029, 082, 085, 453, 454, 455, 459, 460, 463, 464, 465, 474, 475, 483, 500, 507, 510, 515, 516, 570, 856, 857, 862, 901, 904, 907, 908, 955 through 959, 963, 998, or 999. Claimants who die in an emergency room of trauma or burn before admission shall be deemed to be claimants who incurred a traumatic injury.

"Type One teaching hospital" means a hospital that was a state-owned teaching hospital on January 1, 1996.

"Virginia fee schedule" means a schedule of maximum fees for fee scheduled medical services for the medical community where the fee scheduled medical service is provided, as initially adopted by the Commission pursuant to subsection C and as adjusted as provided in subsection D.

B. The pecuniary liability of the employer for a:

1. Medical, surgical, and hospital service herein required when ordered by the Commission that is provided to an injured person prior to the transition date, regardless of the date of injury, shall be limited absent a contract providing otherwise, to such charges as

prevail in the same community for similar treatment when such treatment is paid for by the injured person;

2. Fee scheduled medical service provided on or after the transition date, regardless of the date of injury, shall be limited to:

a. The amount provided for the payment for the fee scheduled medical service as set forth in a contract under which the provider has agreed to accept a specified amount in payment for the service provided, which amount may be less than or exceed the maximum amount for the service as set forth in the applicable Virginia fee schedule;

b. In the absence of a contract described in subdivision 2 a, the lesser of the billing amount or the amount for the fee scheduled medical service as set forth in the applicable Virginia fee schedule that is in effect on the date the service is provided, subject to an increase approved by the Commission pursuant to subsection H; or

c. In the absence of (i) a contract described in subdivision 2 a and (ii) a provision in a Virginia fee schedule that sets forth a maximum amount for the medical service on the date it is provided, the maximum amount determined by the Commission as provided in subsection E; and

3. Medical service provided on or after the transition date ~~in~~ for the treatment of a traumatic injury or serious burn, regardless of the date of injury, shall be limited to:

a. The amount provided for the payment for the medical service provided for the treatment of the traumatic injury or serious burn as set forth in a contract under which the provider has agreed to accept a specified amount in payment for the service provided, which amount may be less than or exceed the maximum amount for the service calculated pursuant to subdivision 3 b; or

b. In the absence of a contract described in subdivision 3 a, an amount equal to 80 percent of the provider's charge for the service based on the provider's charge master or schedule of fees; however, if the compensability under this title of a claim for traumatic injury or serious burn is contested and after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third-party insurance carrier or health care provider and the Commission awards to the claimant's attorney a fee pursuant to subsection B of § [65.2-714](#), then the pecuniary liability of the employer for the service provided shall be limited to 100 percent of the provider's charge for the service based on the provider's charge master or schedule of fees.

C. The Commission shall adopt regulations establishing initial Virginia fee schedules for fee scheduled medical services as follows:

1. The Commission's regulations that establish the initial Virginia fee schedules shall be effective on January 1, 2018.

2. Separate initial Virginia fee schedules shall be established for fee scheduled medical services (i) provided by each category of providers of fee scheduled medical services and (ii) within each of the medical communities to reflect the variations among the medical communities as provided in subdivision 3, for each category of providers of fee scheduled medical services.

3. The Virginia fee schedules for each medical community shall reflect variations among medical communities in (i) all reimbursements and other amounts paid to providers for fee scheduled medical services among the medical communities and (ii) the extent to which the number of providers within the various medical communities is adequate to meet the needs of injured workers.

4. In establishing the initial Virginia fee schedules for fee scheduled medical services, the Commission shall establish the maximum fee for each fee scheduled medical service at a level that approximates the reimbursement objective for each category of providers of fee scheduled medical services among the medical communities. The Commission shall retain a firm with nationwide experience and actuarial expertise in the development of workers' compensation fee schedules to assist the Commission in establishing the initial Virginia fee schedules. The Commission shall consult with the regulatory advisory panel established pursuant to subdivision F 2 prior to retaining such firm. Such firm shall be retained to assist the Commission in developing the Virginia fee schedules by recommending a methodology that will provide, at reasonable cost to the Commission, statistically valid estimates of the reimbursement objective for fee scheduled medical services within the medical communities, based on available data or, if the necessary data is not available, by recommending the optimal methodology for obtaining the necessary data. The Commission shall consult with the regulatory advisory panel prior to adopting any such methodology. Such methodology may, but is not required to, be based on applicable codes. The estimates of the reimbursement objective for fee scheduled medical services shall be derived from data on all reimbursements and other amounts paid to providers for fee scheduled medical services provided pursuant to this title during 2014 and 2015, to the extent available.

D. The Commission shall review Virginia fee schedules during the year that follows the transition date and biennially thereafter and, if necessary, adjust the Virginia fee schedules in order to address (i) inflation or deflation as reflected in the medical care component of the Consumer Price Index for All Urban Consumers (CPI-U) for the South as published by the Bureau of Labor Statistics of the U.S. Department of Labor; (ii) access

to fee scheduled medical services; (iii) errors in calculations made in preparing the Virginia fee schedules; and (iv) incentives for providers. The Commission shall not adjust a Virginia fee schedule in a manner that reduces fees on an existing schedule unless such a reduction is based on deflation or a finding by the Commission that advances in technology or errors in calculations made in preparing the Virginia fee schedules justify a reduction in fees.

E. The maximum pecuniary liability of the employer for a fee scheduled medical service that is not included in a Virginia fee schedule when it is provided shall be determined by the Commission. The Commission's determination of the employer's maximum pecuniary liability for such fee scheduled medical service shall be effective until the Commission sets a maximum fee for the fee scheduled medical service and incorporates such maximum fee into an adjusted Virginia fee schedule adopted pursuant to subsection D. If the fee scheduled medical service is not included in a Virginia fee schedule because it is:

1. ~~A new type of technology, including an implantable medical device or item of medical equipment, that is supplied by a third party, provided that such technology has been cleared or approved by the federal Food and Drug Administration (FDA) prior to the date of the provision of the medical service;~~ the employer's maximum pecuniary liability shall not exceed 130 percent of the provider's invoiced cost for such device, as evidenced by a copy of the invoice. If the new type of technology has not been cleared or approved by the FDA prior to such date, then the provider shall not be entitled to payment or reimbursement therefor unless the employer or its insurer agree; or
2. A new type of procedure that has not been assigned a billing code, the employer's maximum pecuniary liability shall not exceed 80 percent of the provider's charge for the service based on the provider's charge master or schedule of fees, provided the employer and the provider mutually agree to the provision of such procedure.

F. The Commission shall:

1. Provide public access to information regarding the Virginia fee schedules for medical services, by categories of providers of fee scheduled medical services and for each medical community, through the Commission's website. No information provided on the website shall be provider-specific or disclose or release the identity of any provider; and
2. Utilize a 10-member regulatory advisory panel to assist in the development of regulations adopting initial Virginia fee schedules pursuant to subsection C ~~and~~, in adjusting initial Virginia fee schedules pursuant to subsection D, *and on all matters involving or related to the fee schedule as deemed necessary by the Commission*. One member of the regulatory advisory panel shall be selected by the Commission from each of the

following: (i) the American Insurance Association; (ii) the Property and Casualty Insurers Association of America; (iii) the Virginia Self-Insurers Association, Inc.; (iv) the Medical Society of Virginia; (v) the Virginia Hospital and Healthcare Association; (vi) a Type One teaching hospital; (vii) the Virginia Orthopaedic Society; (viii) the Virginia Trial Lawyers Association; (ix) a group self-insurance association representing employers; and (x) a local government group self-insurance pool formed under Chapter 27 (§ [15.2-2700](#) et seq.) of Title 15.2. The Commission shall meet with the regulatory advisory panel and consider the recommendations of its members in its development of the Virginia fee schedules pursuant to subsections C and D.

G. The Commission's retaining of a firm with nationwide experience and actuarial expertise in the development of workers' compensation fee schedules to assist the Commission in developing the Virginia fee schedules pursuant to subsections C and D shall be exempt from the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), provided the Commission shall issue a request for proposals that requires submission by a bidder of evidence that it satisfies the conditions for eligibility established in this subsection and in subdivision C 4. Records and information relating to payments or reimbursements to providers that is obtained by or furnished to the Commission by such firm or any other person shall (i) be for the exclusive use of the Commission in the course of the Commission's development of fee schedules and related regulations and (ii) shall remain confidential and shall not be subject to the provisions of the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.).

H. When the total charges of a hospital or Type One teaching hospital, based on such provider's charge master, for inpatient hospital services covered by a DRG code exceed the charge outlier threshold, then the Commission shall establish the maximum fee for such scheduled inpatient hospital services at an amount equal to the total of (i) the maximum fee for the service as set forth in the applicable fee schedule and (ii) *initially equal to* 80 percent of the provider's total charges for the service in excess of the charge outlier threshold. The charge outlier threshold for such services initially shall equal ~~150~~ 300 percent of the maximum fee for the service set forth in the applicable fee schedule; however, the Commission, in consultation with the firm retained pursuant to subdivision C 4, is authorized on a biennial basis to ~~decrease~~ *adjust* such percentage if it finds that the number of such claims for which the total charges of the hospital or Type One teaching hospital exceed the charge outlier threshold is less than five percent or to increase such percentage if such number is greater than 10 percent of all such claims.

I. No provider shall use a different charge master or schedule of fees for any medical service provided under this title than the provider uses for health care services provided to patients who are not claimants under this title.

J. The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of § [65.2-603](#), but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

K. The Commission shall determine the number and geographic area of communities across the Commonwealth. In establishing the communities, the Commission shall consider the ability to obtain relevant data based on geographic area and such other criteria as are consistent with the purposes of this title. The Commission shall use the communities established pursuant to this subsection in determining charges that prevail in the same community for treatment provided prior to the transition date.

L. The pecuniary liability of the employer for treatment of a medical service that is rendered on or after July 1, 2014, by:

1. A nurse practitioner or physician assistant serving as an assistant-at-surgery shall be limited to no more than 20 percent of the reimbursement due to the physician performing the surgery; and
2. An assistant surgeon in the same specialty as the primary surgeon shall be limited to no more than 50 percent of the reimbursement due to the primary physician performing the surgery.

M. Multiple procedures completed on a single surgical site associated with a medical service rendered on or after July 1, 2014, shall be coded and billed with appropriate CPT codes and modifiers and paid according to the National Correct Coding Initiative rules and the CPT codes as in effect at the time the health care was provided to the claimant.

N. The CPT code and National Correct Coding Initiative rules, as in effect at the time a medical service was provided to the claimant, shall serve as the basis for processing a health care provider's billing form or itemization for such items as global and comprehensive billing and the unbundling of medical services. Hospital in-patient medical services shall be coded and billed through the International Statistical Classification of Diseases and Related Health Problems as in effect at the time the medical service was provided to the claimant.

2. That the fourth enactments of Chapters 279 and 290 of the Acts of Assembly of 2016 are amended and reenacted as follows:

**4. That the Workers' Compensation Commission (Commission) shall select the members of the regulatory advisory panel created pursuant to subdivision F 2 of § [65.2-605](#)**

of the Code of Virginia as added by this act prior to August 1, 2016. The regulatory advisory panel shall meet, review, and make recommendations to the Commission prior to July 1, ~~2017~~ 2018, on workers' compensation issues relating to (i) pharmaceutical costs not previously included in the Virginia fee schedules; (ii) durable medical equipment costs not previously included in the Virginia fee schedules; (iii) attorney fees awarded under § [65.2-714](#); (iv) how to resolve the issues that the peer review committees established under Chapter 13 (§§ [65.2-1300](#) through [65.2-1310](#)) of Title 65.2 of the Code of Virginia as repealed by this act had been authorized to address; (v) prior authorization for medical services; and (vi) any other issues that the Commission assigns to the regulatory advisory panel.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 514 Children, trafficking of; guidelines for training school counselors, etc.**

An Act to direct the Board of Education to develop guidelines for training on the prevention of trafficking of children.

[\[H 2282\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall develop guidelines for training school counselors, school nurses, and other relevant school staff on the prevention of trafficking of children.*

## **Chapter 526 Reformulated gasoline; sale for farm use.**

An Act to seek an exemption from the federal reformulated gasoline program for gasoline sold for farm use.

[\[H 1520\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality be directed to seek from the U.S.*

*Environmental Protection Agency an exemption from the federal reformulated gasoline program for the on-farm sale and delivery of conventional, ethanol-free gasoline for use in farm motor vehicles used exclusively for farm use as defined in § [46.2-698](#) of the Code of Virginia. No ethanol-free gasoline sold pursuant to such exemption shall be sold or delivered to a non-farm customer or used in any road vehicle.*

## **Chapter 541 Term limits; members of certain Authorities in City of Chesapeake limited to two terms.**

An Act to amend and reenact §§ [15.2-4904](#) and [36-11](#) of the Code of Virginia and to amend and reenact § 3, as amended, of Chapter 133 of the Acts of Assembly of 1966 and § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966, relating to term limits; certain public bodies in City of Chesapeake.

[\[H 2449\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-4904](#) and [36-11](#) of the Code of Virginia are amended and reenacted as follows:

§ [15.2-4904](#). Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms

staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however, the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall appoint two at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#), with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council, ~~and the~~; *however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council.*

A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority, or is absent from any four meetings of the authority within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § [49-1](#).

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § 30-140, it shall arrange to have the records audited annually.

Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

§ [36-11](#). Appointment and tenure of commissioners; compensation.

When the need for an authority to be activated in a city or county has been determined in the manner prescribed by law, the governing body of the city or county shall appoint not more than nine or less than five persons as commissioners of the authority created for such city or county. The governing body of the city or county may subsequently increase the number of commissioners of the authority to a maximum of nine. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of four years except that all vacancies shall be filled for the unexpired term. *Notwithstanding any special or general law to the contrary, after July 1, 2017, no member of the Chesapeake Redevelopment and Housing Authority shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Redevelopment and Housing Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Redevelopment and Housing Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Redevelopment and Housing Authority member shall work for the Authority within one year after serving as a member.* Except as may be otherwise expressly provided in the charter of a city or town specifically pertaining to such authority, no commissioner of any authority may be an officer or employee, of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive compensation as may be determined by a locality for each meeting of the authority attended by the commissioner. A commissioner shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

Any exercise of the powers of an authority by its commissioners after June 30, 1968, otherwise in compliance with applicable law, is hereby declared to be valid and effective in all respects, notwithstanding that the number of commissioners exercising the powers, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, may have exceeded the number appointed at the time the need for the authority to be activated had been determined in accordance with this section. No suit or action to vacate or set aside any exercise of said powers may be brought on the ground that the number of commissioners, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, did exceed the number appointed at the time the need for the authority to be activated had been determined.

2. That § 3, as amended, of Chapter 133 of the Acts of Assembly of 1966 is amended and reenacted as follows:

§ 3. "Chesapeake Airport Authority."

There is hereby created and constituted a political subdivision of the Commonwealth to be known as the "Chesapeake Airport Authority". The exercise by the Authority of the powers conferred by this act in the construction, operation and maintenance of the project authorized by this act shall be deemed and held to be the performance of an essential governmental function.

The Authority shall consist of seven members, all of whom shall be appointed by the council of the city of Chesapeake. Four of the members of the Authority first appointed shall continue in office for terms expiring on June thirty, nineteen hundred sixty-nine, and three for terms expiring on June thirty, nineteen hundred sixty-eight the term of each such member to be designated by said council and to continue until his successor shall be duly appointed and qualified. On and after July one, nineteen hundred seventy-five, the membership of the Authority shall increase to nine members and there shall be appointed by the city council two additional members, one of whom shall serve until June thirty, nineteen hundred seventy-nine and the other to serve until June thirty, nineteen hundred seventy-eight. The successor of each such member shall be appointed for a term of five years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Authority shall be eligible for reappointment; *however, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Authority*

*member shall work for the Authority within one year after serving as a member.* Members of the Authority shall be subject to removal from office in like manner as are State, county, town and district officers under the provisions of §§ 15.1-63 to 15.1-66, inclusive, of the Code of Virginia. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary-treasurer, who may or may not be a member of the Authority.

The secretary-treasurer shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority and of the minute book or journal of the Authority and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Authority and to give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates.

Five members of the Authority shall constitute a quorum and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any revenue bonds under the provisions of this act the secretary-treasurer of the Authority shall execute a surety bond in the penal sum of fifty thousand dollars, such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the Commonwealth as surety and to be approved by the Attorney General and filed in the office of the Secretary of the Commonwealth.

The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties. Each member shall also be paid the sum of twenty dollars per day for each day or portion thereof during which he is engaged in the performance of his duties, with the maximum payable to any one member in any one calendar year of fifteen hundred dollars.

3. That § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966 is amended and reenacted as follows:

§ 2. The Authority shall be composed of eleven members, two of whom shall be licensed members of the medical profession, all of whom shall be appointed by the city council. The terms of the members shall be four years and staggered so that no more than four members shall be appointed in any one year; provided, however, that for terms which

commence in 1999, the council shall appoint four members for four-year terms and two members for five-year terms, and for terms which commence in 2001, the council shall appoint four members for four-year terms and one member for a three-year term. Any member may be reappointed; *however, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Authority member shall work for the Authority within one year after serving as a member.* Members shall be compensated for their services in the amount of \$250 per attendance at each meeting, provided, however, that no member shall be compensated for participation in a meeting by electronic means when the member is not physically present at the meeting. The Authority shall adopt as part of its bylaws a definition of "compensable meeting" prior to compensating any member in accordance with this section. Members shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties. Each member shall continue to hold office until the earlier of the effective date of his resignation or the date on which his successor has been appointed and qualified. The council shall have the right to remove any member or officer, for malfeasance or misfeasance, incompetency or gross neglect of duty. Vacancies shall be filled by appointment of the council for unexpired terms, or in the case of an increase in the size of the Authority, filled by appointment of the council, which appointments may be for an initial term less than four years. Members shall take an appropriate oath of office and same shall be filed with the city clerk. Members shall elect on an annual basis one of their number as chairman and another as vice-chairman and shall also elect a secretary and treasurer for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer. The members shall make such rules, regulations and bylaws for their own government and procedure as they shall determine; they shall meet regularly at least once a month and may hold such special meetings as they deem necessary.

## **Chapter 544 Interstate 73 Corridor Development Fund and Program; created.**

An Act to amend the Code of Virginia by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered [33.2-3400](#) and [33.2-3401](#), and to repeal Chapter 23 (§§ [33.2-2300](#) and [33.2-2301](#)) of Title 33.2 of the Code of Virginia and the thirteenth

enactment of Chapter 766 of the Acts of Assembly of 2013, relating to the Interstate 73 Corridor Development Fund and Program.

[\[S 806\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered [33.2-3400](#) and [33.2-3401](#), as follows:

*CHAPTER 34.*

*INTERSTATE 73 CORRIDOR DEVELOPMENT FUND AND PROGRAM.*

§ [33.2-3400](#). *Interstate 73 Corridor Development Fund.*

*There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Interstate 73 Corridor Development Fund, referred to in this chapter as "the Fund," consisting of the first \$40 million of annual collections of the state recordation taxes imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1, provided, however, that this dedication shall not affect the local recordation taxes under subsection B of § [58.1-802](#) and § [58.1-814](#). The Fund shall also include such other funds as may be appropriated by the General Assembly and designated for the Fund and all interest, dividends, and appreciation that may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Allocations from the Fund may be paid to any authority, locality, or commission for the purposes specified in § [33.2-3401](#).*

§ [33.2-3401](#). *Interstate 73 Corridor Development Program.*

*A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of south-central and Southwest Virginia be addressed by the Fund. Moneys contained in the Fund shall be used for the costs of providing an adequate, modern, safe, and efficient highway system, generally along Virginia's southern boundary (the Program), including environmental and engineering studies, rights-of-way acquisition, construction, improvements, and financing costs.*

*B. Allocations from the Fund shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient highway system connecting the communities, businesses, places of employment, and residents of the*

*southwestern-most portion of the Commonwealth to the communities, businesses, places of employment, and residents of the southeastern-most portion of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, and mobility along such highway.*

*C. Allocations from the Fund shall not diminish or replace allocations made or planned to be made from other sources or diminish allocations to which any highway, project, facility, district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that highway resource improvements in the Interstate 73 Corridor may be accelerated and augmented. Notwithstanding any contrary provisions of this title, allocations from the Fund may be applied to highway projects in the Interstate System, primary or secondary state highway system, or urban highway system. Allocations under this subsection shall not be limited to projects involving only Interstate 73 but may be made to projects involving other highways, provided that the broader goal of creation of an adequate modern highway system generally along Virginia's southern boundary is served thereby.*

*D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection F. Any moneys expended from the Transportation Trust Fund for the Program, other than moneys contained in the Fund, may be reimbursed from the Fund, to the extent permitted by Article X, Section 9 of the Constitution of Virginia.*

*E. The Commonwealth Transportation Board is encouraged to utilize the existing four-lane divided highways, available rights-of-way acquired for additional four-laning, bypasses, connectors, and alternate routes.*

*F. To the extent permitted by Article X, Section 9 of the Constitution of Virginia, moneys contained in the Fund may be used to secure payment of bonds or other obligations, and the interest thereon, issued in furtherance of the purposes of this section. In addition, the Commonwealth Transportation Board is authorized to receive, dedicate, or use legally available Transportation Trust Fund revenues and any other available sources of funds to secure the payment of bonds or other obligations, including interest thereon, in furtherance of the Program. No bond or other obligations payable from revenues of the Fund shall be issued unless specifically approved by the General Assembly. No bond or other obligations, secured in whole or in part by revenues of the Fund, shall pledge the full faith and credit of the Commonwealth.*

*G. Forty million dollars shall be transferred annually to the Interstate 73 Corridor Development Fund. Such transfer shall be made by the issuance of a treasury loan at no*

*interest in the amount of \$40 million to the Fund to ensure that the Fund is fully funded on the first day of the fiscal year. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by § [33.2-3400](#). For each fiscal year following, the Secretary of Finance is authorized to make additional treasury loans in the amount of \$40 million on July 1 of such fiscal years, and such treasury loans shall be repaid in a like manner as provided in this subsection.*

2. That Chapter 23 (§§ [33.2-2300](#) and [33.2-2301](#)) of Title 33.2 of the Code of Virginia is repealed.

3. That the thirteenth enactment of Chapter 766 of the Acts of Assembly of 2013 is repealed.

4. That the provisions of the first, second, and third enactments of this act shall become effective upon the completion of the construction of and payments, including debt service payments, for all parts of the U.S. Route 58 Corridor Development Program. Such completion shall be determined by the Commissioner of Highways.

5. That the provisions of this act shall not become effective unless reenacted by the 2018 Session of the General Assembly.

## **Chapter 545 Reformulated gasoline; sale for farm use.**

An Act to seek an exemption from the federal reformulated gasoline program for gasoline sold for farm use.

[\[S 899\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality be directed to seek from the U.S. Environmental Protection Agency an exemption from the federal reformulated gasoline program for the on-farm sale and delivery of conventional, ethanol-free gasoline for use in farm motor vehicles used exclusively for farm use as defined in § [46.2-698](#) of the Code of Virginia. No ethanol-free gasoline sold pursuant to such exemption shall be sold or delivered to a non-farm customer or used in any road vehicle.*

## **Chapter 553 Statewide one-stop online portal for address changes; Secretary of Transportation to study.**

An Act to require the Secretary of Transportation to convene a task force to study the feasibility of establishing a statewide one-stop online portal for address changes for the purposes of developing a statewide address database; report.

[\[S 1363\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Secretary of Transportation or his designee shall convene a task force composed of representatives from the Division of Motor Vehicles, the Department of Elections, the Department of Taxation, the Department of Health, the Department of Medical Assistance Services, the Virginia Information Technologies Agency, the Clerks of Circuit Court and any other agencies deemed appropriate to study the feasibility of establishing a one-stop online portal for citizen address changes in order to develop a single statewide address database for utilization by state entities. The task force shall review issues related to the establishment of a statewide address database, including (i) the benefit to citizens and state entities, (ii) potential problems and possible misuse, (iii) costs related to its development and maintenance, and (iv) database security.*

*§ 2. The task force shall begin its work no later than May 1, 2017. The task force shall submit to the Governor and the General Assembly a report on its findings and recommendations by November 1, 2017.*

2. That the provisions of this act shall expire on July 1, 2018.

## **Chapter 557 Term limits; members of certain Authorities in City of Chesapeake limited to two terms.**

An Act to amend and reenact §§ [15.2-4904](#) and [36-11](#) of the Code of Virginia and to amend and reenact § 3, as amended, of Chapter 133 of the Acts of Assembly of 1966 and § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966, relating to term limits; certain public bodies in City of Chesapeake.

[\[S 1553\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ [15.2-4904](#) and [36-11](#) of the Code of Virginia are amended and reenacted as follows:

§ [15.2-4904](#). Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by the board of supervisors, the board of supervisors of Mathews County may appoint from five to seven members to serve on the board of the authority, the town council of the Town of Saint Paul may appoint 10 members to serve on the board of the authority, with terms staggered as agreed upon by the town council, however, the town council may at its option return to a seven member board by removing the last three members appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial development, with terms staggered as agreed upon by the board of supervisors and the town council of the Town of South Boston shall appoint two

at-large members, Page County may appoint nine members, with one member from each incorporated town, one member from each magisterial district, and one at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint five at-large members to serve on the board of the authority jointly created by the Town of South Boston and Halifax County pursuant to § [15.2-4916](#), with terms staggered as agreed upon by the governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions creating such authority, the town council of the Town of Coeburn may appoint five members to serve on the board of the authority, with terms staggered as agreed upon by the town council, the city council of Suffolk may appoint eight members to serve on the board of the authority, with one member from each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the city council, ~~and the~~; *however, in the City of Chesapeake, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Economic Development Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Economic Development Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Economic Development Authority member shall work for the Authority within one year after serving as a member. The city council of the City of Norfolk may appoint 11 members, with terms staggered as agreed upon by the city council. A member of the board of directors of the authority may be removed from office by the local governing body without limitation in the event that the board member is absent from any three consecutive meetings of the authority, or is absent from any four meetings of the authority within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.*

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § [49-1](#).

C. No director shall be an officer or employee of the locality except (i) in a town with a population of less than 3,500 where members of the town governing body may serve as directors provided they do not constitute a majority of the board, (ii) in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves, and (iii) in Frederick County where the board of supervisors may appoint one of its members to the Economic Development Authority of the County of Frederick, Virginia. Every director shall, at

the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § [30-140](#), it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Small Business and Supplier Diversity.

§ [36-11](#). Appointment and tenure of commissioners; compensation.

When the need for an authority to be activated in a city or county has been determined in the manner prescribed by law, the governing body of the city or county shall appoint not more than nine or less than five persons as commissioners of the authority created for such city or county. The governing body of the city or county may subsequently increase the number of commissioners of the authority to a maximum of nine. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and

five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed as aforesaid for a term of office of four years except that all vacancies shall be filled for the unexpired term. *Notwithstanding any special or general law to the contrary, after July 1, 2017, no member of the Chesapeake Redevelopment and Housing Authority shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Chesapeake Redevelopment and Housing Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Chesapeake Redevelopment and Housing Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Chesapeake Redevelopment and Housing Authority member shall work for the Authority within one year after serving as a member.* Except as may be otherwise expressly provided in the charter of a city or town specifically pertaining to such authority, no commissioner of any authority may be an officer or employee, of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive compensation as may be determined by a locality for each meeting of the authority attended by the commissioner. A commissioner shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

Any exercise of the powers of an authority by its commissioners after June 30, 1968, otherwise in compliance with applicable law, is hereby declared to be valid and effective in all respects, notwithstanding that the number of commissioners exercising the powers, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, may have exceeded the number appointed at the time the need for the authority to be activated had been determined in accordance with this section. No suit or action to vacate or set aside any exercise of said powers may be brought on the ground that the number of commissioners, though not exceeding seven from July 1, 1968, through June 30, 1978, and not exceeding nine thereafter, did exceed the number appointed at the time the need for the authority to be activated had been determined.

2. That § 3, as amended, of Chapter 133 of the Acts of Assembly of 1966 is amended and reenacted as follows:

§ 3. "Chesapeake Airport Authority."

There is hereby created and constituted a political subdivision of the Commonwealth to be known as the "Chesapeake Airport Authority". The exercise by the Authority of the

powers conferred by this act in the construction, operation and maintenance of the project authorized by this act shall be deemed and held to be the performance of an essential governmental function.

The Authority shall consist of seven members, all of whom shall be appointed by the council of the city of Chesapeake. Four of the members of the Authority first appointed shall continue in office for terms expiring on June thirty, nineteen hundred sixty-nine, and three for terms expiring on June thirty, nineteen hundred sixty-eight the term of each such member to be designated by said council and to continue until his successor shall be duly appointed and qualified. On and after July one, nineteen hundred seventy-five, the membership of the Authority shall increase to nine members and there shall be appointed by the city council two additional members, one of whom shall serve until June thirty, nineteen hundred seventy-nine and the other to serve until June thirty, nineteen hundred seventy-eight. The successor of each such member shall be appointed for a term of five years and until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any member of the Authority shall be eligible for reappointment; *however, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Authority member shall work for the Authority within one year after serving as a member.* Members of the Authority shall be subject to removal from office in like manner as are State, county, town and district officers under the provisions of §§ 15.1-63 to 15.1-66, inclusive, of the Code of Virginia. The Authority shall annually elect one of its members as chairman and another as vice-chairman and shall also elect annually a secretary-treasurer, who may or may not be a member of the Authority.

The secretary-treasurer shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority and of the minute book or journal of the Authority and of its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Authority and to give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates.

Five members of the Authority shall constitute a quorum and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the

membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any revenue bonds under the provisions of this act the secretary-treasurer of the Authority shall execute a surety bond in the penal sum of fifty thousand dollars, such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the Commonwealth as surety and to be approved by the Attorney General and filed in the office of the Secretary of the Commonwealth.

The members of the Authority shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the Authority or while otherwise engaged in the discharge of their duties. Each member shall also be paid the sum of twenty dollars per day for each day or portion thereof during which he is engaged in the performance of his duties, with the maximum payable to any one member in any one calendar year of fifteen hundred dollars.

3. That § 2, as amended, of Chapter 271 of the Acts of Assembly of 1966 is amended and reenacted as follows:

§ 2. The Authority shall be composed of eleven members, two of whom shall be licensed members of the medical profession, all of whom shall be appointed by the city council. The terms of the members shall be four years and staggered so that no more than four members shall be appointed in any one year; provided, however, that for terms which commence in 1999, the council shall appoint four members for four-year terms and two members for five-year terms, and for terms which commence in 2001, the council shall appoint four members for four-year terms and one member for a three-year term. Any member may be reappointed; *however, after July 1, 2017, no member shall serve more than two consecutive terms. Any person who has served more than one and one-half terms as a member of the Authority as of July 1, 2017, shall not be eligible for reappointment for another consecutive term. A member of the Authority shall serve at the pleasure of the city council of the City of Chesapeake. No Authority member shall work for the Authority within one year after serving as a member.* Members shall be compensated for their services in the amount of \$250 per attendance at each meeting, provided, however, that no member shall be compensated for participation in a meeting by electronic means when the member is not physically present at the meeting. The Authority shall adopt as part of its bylaws a definition of "compensable meeting" prior to compensating any member in accordance with this section. Members shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of

their duties. Each member shall continue to hold office until the earlier of the effective date of his resignation or the date on which his successor has been appointed and qualified. The council shall have the right to remove any member or officer, for malfeasance or misfeasance, incompetency or gross neglect of duty. Vacancies shall be filled by appointment of the council for unexpired terms, or in the case of an increase in the size of the Authority, filled by appointment of the council, which appointments may be for an initial term less than four years. Members shall take an appropriate oath of office and same shall be filed with the city clerk. Members shall elect on an annual basis one of their number as chairman and another as vice-chairman and shall also elect a secretary and treasurer for terms to be determined by them, who may or may not be one of the members. The same person may serve as both secretary and treasurer. The members shall make such rules, regulations and bylaws for their own government and procedure as they shall determine; they shall meet regularly at least once a month and may hold such special meetings as they deem necessary.

## **Chapter 568 Electric energy; consumption reduction goal, annual progress reports.**

An Act to amend and reenact the third enactment of Chapter 888 and the third enactment of Chapter 933 of the Acts of Assembly of 2007, relating to the Commonwealth's goal of reducing the consumption of electric energy.

[\[S 990\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That the third enactment of Chapter 888 and the third enactment of Chapter 933 of the Acts of Assembly of 2007 are amended and reenacted as follows:
3. That it is in the public interest, and is consistent with the energy policy goals in § [67-102](#) of the Code of Virginia, to promote cost-effective conservation of energy through fair and effective demand side management, conservation, energy efficiency, and load management programs, including consumer education. These programs may include activities by electric utilities, public or private organizations, or both electric utilities and public or private organizations. The Commonwealth shall have a stated goal of reducing the consumption of electric energy by retail customers through the implementation of such programs by the year 2022 by an amount equal to ~~ten~~ **10** percent of

the amount of electric energy consumed by retail customers in 2006. The State Corporation Commission (*the Commission*) shall conduct a proceeding to (i) determine whether the ~~ten~~ 10 percent electric energy consumption reduction goal can be achieved cost-effectively through the operation of such programs; and, if not, determine the appropriate goal for the year 2022 relative to *the* base year of 2006; (ii) identify the mix of programs that should be implemented in the Commonwealth to cost-effectively achieve the defined electric energy consumption reduction goal by 2022, including but not limited to demand side management, conservation, energy efficiency, load management, real-time pricing, and consumer education; (iii) develop a plan for the development and implementation of recommended programs, with incentives and alternative means of compliance to achieve such goals; (iv) determine the entity or entities that could most efficiently deploy and administer various elements of the plan; and (v) estimate the cost of attaining the energy consumption reduction goal. The Commission shall, on or before December 15, 2007, submit its findings and recommendations to the Governor and General Assembly, which shall include recommendations for any additional legislation necessary to implement the plan to meet the energy consumption reduction goal. In developing a plan to meet the goal, the Commission may consider providing for a public benefit fund and shall consider the fair and reasonable allocation by customer class of the incremental costs of meeting the goal that are recovered in accordance with subdivision A 5 b of § [56-585.1](#) of the Code of Virginia. *The Department of Mines, Minerals and Energy, in consultation with the staff of the Commission, shall submit, as part of the annual report required under § [67-202.1](#) of the Code of Virginia, an assessment of the progress the Commonwealth is making toward meeting the goal of reducing the consumption of electric energy by retail customers by the year 2022 by an amount equal to 10 percent of the amount of electric energy consumed by retail customers in 2006 through the implementation of demand side management, conservation, energy efficiency, and load management programs, including consumer education, and submit the report to the Governor's Executive Committee on Energy Efficiency and to the Governor and General Assembly as required by § [67-202.1](#) of the Code of Virginia.*

## **Chapter 602 Onsite sewage systems and private wells; VDH to take steps to eliminate site evaluation.**

An Act to require the Department of Health to take steps to begin eliminating site evaluation and design services for onsite sewage systems and private wells provided by the

Department.

[\[H 2477\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health shall take steps to begin eliminating site evaluation and design services for onsite sewage systems and private wells provided by the Department. In doing so, the Department shall:*

*1. Require, in cases in which site evaluations and design services for onsite sewage systems and private wells are provided by private sector service providers, that such site evaluation and design service providers disclose to the property owner when a conventional onsite sewage system is an option;*

*2. Revise agency regulations and policies to require Department staff to inspect all onsite sewage systems and private wells designed by private sector service providers;*

*3. Expand efforts to educate the public concerning the design, operation, and maintenance of onsite sewage systems and private wells;*

*4. Expand efforts to incorporate onsite sewage systems and private well data into community health assessments;*

*5. Enhance quality assurance checks and inspection procedures for the review of evaluations, designs, and installations by private sector service providers and update its quality assurance manual to reflect this change in the agency's business model;*

*6. Consider separating work unit functions regarding permitting and enforcement for onsite sewage systems and private wells to ensure that staff reviewing evaluations and designs for permitting purposes are separate and independent from staff performing enforcement functions;*

*7. Improve the collection and management of data about onsite sewage systems and private wells, including (i) creating a web-based reporting system for conventional onsite sewage system operation and maintenance, (ii) accepting applications and payments online, (iii) making onsite sewage system and private well records available online, (iv) creating a complete electronic record of all permitted onsite sewage systems and private wells in the Commonwealth, and (v) creating procedures for tracking Notices of Alleged Violations and corrective actions; and*

*8. Revise agency policies to allow the transfer of valid construction permits for onsite sewage systems and private wells to new property owners.*

2. That the Department of Health shall report on its progress in implementing the provisions of this act and any recommendations for statutory, regulatory, policy or budgetary changes that may be necessary to implement the provisions of this act to the Secretary of Health and Human Resources and the Chairmen of the House Committee on Health, Welfare and Institutions and Senate Committee on Education and Health by November 1, 2017.

## **Chapter 604 Child abuse or neglect; investigation of valid reports and complaints**

An Act to require local departments of social services to timely respond to complaints alleging abuse or neglect of a child under two years of age.

[\[S 868\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Social Services shall promulgate regulations that require local departments of social services to respond to valid reports and complaints alleging suspected abuse or neglect of a child under the age of two within 24 hours of receiving such reports or complaints.*

## **Chapter 611 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2017; created.**

An Act to authorize the Treasury Board to issue bonds pursuant to Article X, Section 9 (c) of the Constitution of Virginia in an amount up to \$13,637,000 plus financing costs to finance the costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 2250\]](#)

Approved March 16, 2017

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher learning of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2017."*

§ 2. *Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$13,637,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, con-*

*structing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>The College of William and Mary in Virginia</i>	<i>Renovate Dormitories</i>	<i>\$13,637,000</i>
<i>Total</i>		<i>\$13,637,000</i>

*§ 3. Application of proceeds.*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs) shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth. In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues.*

*The institution of higher learning named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required*

*by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A. Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of*

*the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

*§ 12. Defeasance.*

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b) of the Constitution of Virginia, as the case may be.*

*§ 13. Severability.*

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 614 Virginia State University; revenue-producing capital project.**

An Act to amend and reenact § 2 of the first enactment of Chapters 207 and 604 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, and § 2 of the first enactment of Chapters 11 and 550 of the Acts of Assembly of 2011, relating to modifications to prior revenue bond bills for institutions of higher education; Virginia State University.

[\[S 1370\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 2 of the first enactment of Chapter 207 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, is amended and reenacted as follows:

**§ 2. Authorization of bonds and BANs.**

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, con-

structuring, renovating, enlarging, improving and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
George Mason University	President's Park Phase II Renovation	17540	\$15,633,000
George Mason University	Smithsonian CRC Housing	17572	17,804,000
George Mason University	Housing VIII	17570	102,460,000
Old Dominion University	Construct Residence Hall, Phase II	17342	34,779,000
Radford University	Renovate Residence Halls	17565	36,000,000
The College of William and Mary in Virginia	Renovate Graduate Student Dormitories	17555	2,500,000
The College of William and Mary in Virginia	Renovate Campus Center and Trinkle Hall	17554	35,000,000
Virginia Polytechnic Institute and State University	Renovate Ambler Johnson Hall	17557	55,000,000
Virginia Polytechnic Institute and State University	Renovate Owens and West End Market Food Courts	17558	5,000,000
Virginia Polytechnic Institute and State University	New Residence Hall	16682	8,047,000
Virginia State University	Demolish Student Village and Dormitories, Construct Gateway-500, Phase II, and Improve Campus Residence Halls	17531	38,342,000
Total			\$350,565,000

2. That § 2 of the first enactment of Chapter 604 of the Acts of Assembly of 2008, as amended by Chapters 8 and 322 of the Acts of Assembly of 2013, is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9(c), Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$350,565,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
George Mason University	President's Park Phase II Renovation	17540	\$15,633,000
George Mason University	Smithsonian CRC - Housing	17572	17,804,000
George Mason University	Housing VIII	17570	102,460,000
Old Dominion University	Construct Residence Hall, Phase II	17342	34,779,000
Radford University	Renovate Residence Halls	17565	36,000,000
The College of William and Mary in Virginia	Renovate Graduate Student Dormitories	17555	2,500,000
The College of William and Mary in Virginia	Renovate Campus Center and Trinkle Hall	17554	35,000,000
Virginia Polytechnic Institute and State University	Renovate Ambler Johnson Hall	17557	55,000,000
Virginia Polytechnic Institute and State University	Renovate Owens and West End Market Food	17558	5,000,000

Institute and State University	Courts		
Virginia Polytechnic Institute and State University	New Residence Hall	16682	8,047,000
Virginia State University	Demolish Student Village and Dormitories, Construct Gateway-500, Phase II, and Improve Campus Residence Halls	17531	38,342,000
Total			\$350,565,000

3. That § 2 of the first enactment of Chapter 11 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
Virginia Commonwealth University	Construct West Grace Street Housing North	17896	\$33,763,000
Virginia State University	Construct Quad II, Phase II and Improve Campus Residence Halls	17895	\$30,816,000
Total			\$64,579,000

4. That § 2 of the first enactment of Chapter 550 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 2. Authorization of bonds and BANs.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Higher Educational Institutions Bonds, Series ....." in an aggregate principal amount not exceeding \$64,579,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of constructing revenue-producing capital projects at institutions of higher learning of the Commonwealth as follows:

Institution	Project Title	Project Code	Amount
Virginia Commonwealth University	Construct West Grace Street Housing North	17896	\$33,763,000
Virginia State University	Construct Quad II, Phase II and Improve Campus Residence Halls	17895	\$30,816,000
Total			\$64,579,000

5. That an emergency exists and this act is in force from its passage.

**Chapter 617 Relief; Keith Allen Harward.**

An Act for the relief of Keith Allen Harward.

[\[H 1650\]](#)

Approved March 16, 2017

Whereas, Keith Allen Harward (Mr. Harward) spent 33 years in prison for crimes he did not commit; and

Whereas, in the early morning hours of September 14, 1982, an unknown assailant broke into a Newport News, Virginia, home, bludgeoned the husband to death with a crowbar and repeatedly raped the wife while the children slept nearby; and

Whereas, the rape victim described her assailant as wearing a white Navy uniform and told police that the assailant had bitten her repeatedly on the legs; and  
Whereas, a Newport News Shipyard security guard who, following a suggestive photo array procedure conducted by police investigators, identified Mr. Harward as the sailor he had seen six months earlier entering the shipyard in a blood-spattered uniform during the early morning hours of the day of the crime; and  
Whereas, the shipyard security guard was the only individual to identify Mr. Harward at trial; and  
Whereas, the rape victim was not able to identify Mr. Harward either before or at trial; and  
Whereas, Mr. Harward did not know the rape victim and did not match the physical description of the assailant provided by the victim; and  
Whereas, no physical evidence linked Mr. Harward to the crime scene; and  
Whereas, a Virginia Department of Forensic Science (DFS) employee suppressed critical serological evidence excluding Mr. Harward as the source of body fluids found on the victim following the crime; and  
Whereas, the main evidence against Mr. Harward at trial was bite mark identification proffered by two forensic odontologists, a line of evidence that has been discredited as scientifically invalid and rejected by the American Board of Forensic Odontology; and  
Whereas, police investigators withheld critical information that the victim and the Newport News Shipyard security guard had been hypnotized and that certain key components of their respective testimonies changed after hypnosis; and  
Whereas, because defense counsel was not informed of the hypnosis of the witnesses, counsel was not able to object to the admission of the hypnotically enhanced recollections, which were considered to be unreliable and admissible only to the extent that they were consistent with a pre-hypnotic statement; and  
Whereas, on March 6, 1986, Mr. Harward was falsely convicted of first degree murder and sentenced to life in prison; and  
Whereas, in late 2015 and early 2016, DFS analyzed DNA evidence from a rape kit collected from the victim after the crime and excluded Mr. Harward as the perpetrator of the crime; and  
Whereas, the DNA evidence identified the real perpetrator of the crime as Jerry Crotty, a U.S. Navy sailor stationed on the same naval vessel as Mr. Harward at the time of the crime and a serial criminal who died in prison in Ohio in 2006; and

Whereas, on March 4, 2016, Mr. Harward submitted to the Supreme Court of Virginia a Petition for a Writ of Actual Innocence based on the DNA evidence excluding him as the perpetrator of the crime; and

Whereas, on April 6, 2016, Virginia Attorney General Mark Herring filed a response recommending that the Writ of Actual Innocence be granted as quickly as possible; and

Whereas, on April 7, 2016, the Supreme Court of Virginia granted Mr. Harward's Writ of Actual Innocence, formally exonerating him of all the crimes for which he had been convicted; and

Whereas, Mr. Harward has always maintained his innocence; and

Whereas, Mr. Harward, as a result of his wrongful conviction, suffers from numerous painful physical injuries, systemic health conditions, and severe mental anguish and emotional distress and has lost countless opportunities, including the opportunity to marry and have children; and

Whereas, Mr. Harward, as a further result of his wrongful conviction, is an impoverished man, with no job skills or career prospects and no savings or accumulated pension benefits, and does not qualify for social security benefits; and

Whereas, Mr. Harward has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$1,548,439 for the relief of Mr. Harward, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Mr. Harward may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$309,688 to be paid to Mr. Harward by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$1,238,751 to purchase an annuity no later than September 30, 2017, for the primary benefit of Mr. Harward, the terms of such annuity structured in Mr. Harward's best interests based on consultation among Mr. Harward or his representatives, the State Treasurer, and other necessary parties.*

*The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Harward's death.*

*§ 2. That Mr. Harward shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2022.*

## **Chapter 618 Women's right to vote; Va. Historical Society shall plan commemoration of centennial anniversary.**

An Act to commemorate the centennial anniversary of women's right to vote.

[\[H 2348\]](#)

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. With such funds as are appropriated by the General Assembly and with the agreement of the Virginia Historical Society (the Society), the Society shall plan and lead the Commonwealth in commemorating the centennial anniversary of women's right to vote in 2020.*

*§ 2. The Society shall have the powers and duties to:*

*1. Plan, develop, and perform programs and activities appropriate to commemorate the centennial of women's right to vote and the passage of the Nineteenth Amendment to the United States Constitution;*

*2. Collaborate with the Library of Virginia, the Department of Education, the Virginia Foundation for the Humanities and Public Policy, the Virginia Commonwealth University Libraries Special Collections and Archives, and other interested persons and civic and community organizations to plan, provide, and promote appropriate educational and cultural programs to commemorate the history and leaders of women's suffrage in the Commonwealth;*

3. Engage and encourage civic, historical, educational, and other organizations throughout the Commonwealth to organize and participate in activities to expand the understanding and appreciation of the significance of the centennial of women's right to vote;

4. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds received by the task force for the purpose of aiding or facilitating its work; and

5. Perform such other duties, functions, and activities as may be necessary to facilitate and implement the objectives of this act.

§ 2. To assist the Society in its work, a task force is hereby created consisting of 12 members as follows: five legislative members, five nonlegislative citizen members, and two ex officio members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of Delegates; two nonlegislative citizen members to be appointed by the Senate Committee on Rules; and one nonlegislative citizen member to be appointed by the Governor. The Librarian of Virginia or his designee and one representative of the Virginia Historical Society shall serve ex officio without voting privileges. Nonlegislative citizen members of the task force shall be citizens of the Commonwealth. Unless otherwise approved in writing by the chairman of the task force and the respective Clerk, nonlegislative citizen members shall be reimbursed only for travel originating and ending within the Commonwealth for the purpose of attending meetings.

Legislative members and ex officio members shall serve terms coincident with their terms of office. Vacancies shall be filled in the same manner as the original appointments.

The task force shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

§ 3. Quorum and meetings.

A majority of the members of the task force shall constitute a quorum. The task force shall meet no more than four times each year. The meetings of the task force shall be held at the call of the chairman or whenever the majority of the members so request.

§ 4. Compensation; expenses.

Legislative members shall receive such compensation as provided in the general appropriation act and the Society shall submit such attendance reports as necessary to the Clerk of the House of Delegates and the Clerk of the Senate to facilitate the payment of such compensation. From the appropriations to the Society as provided in the general

*appropriation act, the Society shall pay nonlegislative citizen members such compensation for the performance of their duties as provided in § [2.2-2813](#) of the Code of Virginia and shall reimburse all members for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ [2.2-2813](#) and [2.2-2825](#) of the Code of Virginia.*

§ 5. *The provisions of this act shall expire on January 1, 2021.*

## **Chapter 637 General Assembly Building replacement project; sale of surplus property.**

An Act to provide for the sale of surplus property from the General Assembly Building replacement project; emergency.

[\[H 1588\]](#)

Approved March 20, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other provision of law, the Department of General Services in cooperation with the Clerk of the Senate and the Clerk of the House of Delegates shall conduct public sales or auctions of the surplus property from the General Assembly Building replacement project. No provision of law shall be construed to restrict the purchase by any person of such surplus property at a public sale or auction. For purposes of this section, "surplus property" means any personal property including, but not limited to, all fixtures, furnishings, materials, supplies, equipment, and recyclable items that are determined to be salvageable surplus property as agreed to by the Clerk of the Senate and the Clerk of the House of Delegates.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 658 Relief; Keith Allen Harward.**

An Act for the relief of Keith Allen Harward.

[\[S 1479\]](#)

Approved March 20, 2017

Whereas, Keith Allen Harward (Mr. Harward) spent 33 years in prison for crimes he did not commit; and

Whereas, in the early morning hours of September 14, 1982, an unknown assailant broke into a Newport News, Virginia, home, bludgeoned the husband to death with a crowbar and repeatedly raped the wife while the children slept nearby; and

Whereas, the rape victim described her assailant as wearing a white Navy uniform and told police that the assailant had bitten her repeatedly on the legs; and

Whereas, a Newport News Shipyard security guard who, following a suggestive photo array procedure conducted by police investigators, identified Mr. Harward as the sailor he had seen six months earlier entering the shipyard in a blood-spattered uniform during the early morning hours of the day of the crime; and

Whereas, the shipyard security guard was the only individual to identify Mr. Harward at trial; and

Whereas the rape victim was not able to identify Mr. Harward either before or at trial; and

Whereas, Mr. Harward did not know the rape victim and did not match the physical description of the assailant provided by the victim; and

Whereas, no physical evidence linked Mr. Harward to the crime scene; and

Whereas, a Virginia Department of Forensic Science (DFS) employee suppressed critical serological evidence excluding Mr. Harward as the source of body fluids found on the victim following the crime; and

Whereas, the main evidence against Mr. Harward at trial was bite mark identification proffered by two forensic odontologists, a line of evidence that has been discredited as scientifically invalid and rejected by the American Board of Forensic Odontology; and

Whereas, police investigators withheld critical information that the victim and the Newport News Shipyard security guard had been hypnotized and that certain key components of their respective testimonies changed after hypnosis; and

Whereas, because defense counsel was not informed of the hypnosis of the witnesses, counsel was not able to object to the admission of the hypnotically enhanced recollections, which were considered to be unreliable and admissible only to the extent that they were consistent with a pre-hypnotic statement; and

Whereas, on March 6, 1986, Mr. Harward was falsely convicted of first degree murder and sentenced to life in prison; and

Whereas, in late 2015 and early 2016, DFS analyzed DNA evidence from a rape kit collected from the victim after the crime and excluded Mr. Harward as the perpetrator of the crime; and

Whereas, the DNA evidence identified the real perpetrator of the crime as Jerry Crotty, a U.S. Navy sailor stationed on the same naval vessel as Mr. Harward at the time of the crime and a serial criminal who died in prison in Ohio in 2006; and

Whereas, on March 4, 2016, Mr. Harward submitted to the Supreme Court of Virginia a Petition for a Writ of Actual Innocence based on the DNA evidence excluding him as the perpetrator of the crime; and

Whereas, on April 6, 2016, Virginia Attorney General Mark Herring filed a response recommending that the Writ of Actual Innocence be granted as quickly as possible; and

Whereas, on April 7, 2016, the Supreme Court of Virginia granted Mr. Harward's Writ of Actual Innocence, formally exonerating him of all the crimes for which he had been convicted; and

Whereas, Mr. Harward has always maintained his innocence; and

Whereas, Mr. Harward, as a result of his wrongful conviction, suffers from numerous painful physical injuries, systemic health conditions, and severe mental anguish and emotional distress and has lost countless opportunities, including the opportunity to marry and have children; and

Whereas, Mr. Harward, as a further result of his wrongful conviction, is an impoverished man, with no job skills or career prospects and no savings or accumulated pension benefits, and does not qualify for social security benefits; and

Whereas, Mr. Harward has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$1,548,439 for the relief of Mr. Harward, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Mr. Harward may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$309,688 to be paid to Mr. Harward by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$1,238,751 to purchase an annuity no later than September 30, 2017, for the primary benefit of Mr. Harward, the terms of such annuity structured in Mr. Harward's best interests based on consultation among Mr. Harward or his representatives, the State Treasurer, and other necessary parties.*

*The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Harward's death.*

*§ 2. That Mr. Harward shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2022.*

## **Chapter 660 Housing crisis; extension of sunset date of land use approvals.**

An Act to amend and reenact § [15.2-2209.1](#) of the Code of Virginia and to amend and reenact the second enactment of Chapter 509 of the Acts of Assembly of 2013, relating to extension of certain local approvals.

[\[H 1697\]](#)

Approved March 20, 2017

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-2209.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [15.2-2209.1](#). Extension of approvals to address housing crisis.

A. Notwithstanding the time limits for validity set out in § [15.2-2260](#) or [15.2-2261](#), or the provisions of subsection F of § [15.2-2260](#), any subdivision plat valid under § [15.2-2260](#) and outstanding as of January 1, ~~2014~~ 2017, and any recorded plat or final site plan valid under § [15.2-2261](#) and outstanding as of January 1, ~~2014~~ 2017, shall remain valid until July 1, ~~2017~~2020, or such later date provided for by the terms of the locality's approval, local ordinance, resolution or regulation, or for a longer period as agreed to by the locality. Any other plan or permit associated with such plat or site plan extended by this subsection shall likewise be extended for the same time period.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit outstanding as of January 1, ~~2014~~ 2017, and related to new residential or commercial development, any deadline in the

exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, shall be extended until July 1, ~~2017~~2020, or longer as agreed to by the locality. The provisions of this subsection shall not apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit, or other agreement or zoning action be terminated or ended by a certain date or within a set number of years.

C. Notwithstanding any other provision of this chapter, for any rezoning action approved pursuant to § [15.2-2297](#), [15.2-2298](#), or [15.2-2303](#), valid and outstanding as of January 1, ~~2014~~ 2017, and related to new residential or commercial development, any proffered condition that requires the landowner or developer to incur significant expenses upon an event related to a stage or level of development shall be extended until July 1, ~~2017~~2020, or longer as agreed to by the locality. However, the extensions in this subsection shall not apply (i) to land or right-of-way dedications pursuant to § [15.2-2297](#), [15.2-2298](#), or [15.2-2303](#), (ii) when completion of the event related to the stage or level of development has occurred, or (iii) to events required to occur on a specified date certain or within a specified time period. Any proffered condition included in a special exception, special use permit, or conditional use permit shall only be extended if it satisfies the provisions of this subsection.

D. The extension of validity provided in subsection A and the extension of certain deadlines as provided in subsection B shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force; however, if the locality has enacted a bonding moratorium or deferral option, the performance bonds and agreements or other financial guarantees of completion may be waived or modified by the locality, in which case the extension of validity provided in subsection A and the extension of certain deadlines provided in subsection B shall apply. The landowner or developer must comply with the terms of any bonding moratorium or deferral agreement with the locality in order for the extensions referred to in this subsection to be effective.

2. That the second enactment of Chapter 509 of the Acts of Assembly of 2013 is amended and reenacted as follows:

**2. That Chapter 508 of the Acts of Assembly of 2012 is amended by adding a third enactment as follows:**

**3. That extensions of validity effective pursuant to § [15.2-2209.1](#) of the Code of**

~~Virginia and the second enactment of Chapter 193 of the Acts of Assembly of 2009 as of June 30, 2012~~ 2017, shall continue to be valid pursuant to this act until the extension date provided in this act.

## **Chapter 698 Virginia Alcoholic Beverage Control Authority; changes effective date for creation of Authority.**

An Act to amend and reenact §§ [4.1-101.01](#), [4.1-101.02](#), [4.1-101.05](#), [4.1-101.07](#), [4.1-101.010](#), [4.1-103](#), and [4.1-103.1](#), as they shall become effective, [4.1-225](#), and [4.1-227](#) of the Code of Virginia and to amend and reenact the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015; to amend the Code of Virginia by adding a section numbered [4.1-103.03](#); and to repeal the sixth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015, relating to the Virginia Alcoholic Beverage Control Authority.

[\[H 2359\]](#)

Approved March 24, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ [4.1-101.01](#), [4.1-101.02](#), [4.1-101.05](#), [4.1-101.07](#), [4.1-101.010](#), [4.1-103](#), and [4.1-103.1](#), as they shall become effective, [4.1-225](#), and [4.1-227](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [4.1-103.03](#) as follows:

§ [4.1-101.01](#). (Effective July 1, 2018) Board of Directors; membership; terms; compensation.

*A. ~~The Beginning January 15, 2018, until July 1, 2018, the Authority shall be governed by a Board of Directors, which shall initially consist of the members of the Alcoholic Beverage Control Board, in accordance with § [4.1-102](#), and two nonlegislative citizen members appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years immediately preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#).~~*

*Notwithstanding the provisions of § [4.1-102](#), the provisions of subsection F shall apply to such members. The terms of the members of the Board of Directors of the Authority shall be staggered as follows:*

*1. For the three members who are members of the Alcoholic Beverage Control Board, their original terms shall continue and upon expiration of such terms, if reappointed, one member shall serve a term of five years, one member shall serve a term of four years, and one member shall serve a term of three years; and*

*2. For the two nonlegislative citizen members, one member shall serve a term of two years, and one member shall serve a term of one year.*

*B. Beginning July 1, 2018, the Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#).*

~~B-C.~~ After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.

~~C-D.~~ The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business,

and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

~~D.~~*E.* The Board shall meet at least every 60 days for the transaction of its business. Special meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.

~~E.~~*F.* Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth in the general appropriation act for members of the House of Delegates when the General Assembly is not in session, except that the chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of his official duties as set forth in the general appropriation act for a member of the Senate of Virginia when the General Assembly is not in session.

~~F.~~*G.* The provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.

§ [4.1-101.02](#). (Effective July 1, 2018) Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer.

A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree in business or a related field of study; and shall possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive such compensation as determined by the Board and approved by the Governor, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § [4.1-101.03](#). The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved by the Governor. The Chief Executive Officer may be removed from office by the Governor for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board and approved by the Governor, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.

B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.

D. The Chief Executive Officer shall:

1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;

2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;

3. ~~Appoint a chief financial officer and employ~~ *Employ* or retain such *special* agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and

4. Make recommendations to the Board for legislative and regulatory changes.

E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

F. To assist the Chief Executive Officer in the performance of his duties, the Governor shall also appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.

§ [4.1-101.05](#). (Effective July 1, 2018) Employees of the Authority.

A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System *or other retirement plan as authorized by Article 4 (§ [51.1-125 et seq.](#)) of Chapter 1 of Title 51.1* and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability. *Notwithstanding any other provision of law, the Board shall develop, implement, and administer a paid leave program, which may include annual, personal, and sick leave or any combination thereof. All other leave*

*benefits shall be administered in accordance with Chapter 11 (§ [51.1-1100](#) et seq.) of Title 51.1, except as otherwise provided in this section.*

B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to *special agents and* employees of the ~~former~~ Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the ~~former~~ Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." *In order to facilitate an orderly and efficient transition and ensure the continuation of operations during the transition from the Department of Alcoholic Beverage Control (the Department) to the Authority, the Authority shall have discretion, subject to the time limitations contained herein, to determine the date upon which any employee's employment with the Department will end or be transferred to the Authority. This date shall be stated in the written notice and shall be referred to herein as the "Transition Date." No Transition Date shall occur prior to July 1, 2018, without the mutual agreement of the employee and the Authority. No Transition Date shall be set beyond December 31, 2018.* Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the ~~former~~ Department of Alcoholic Beverage Control who (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act. *Any eligibility for such severance benefits shall be contingent on the continued employment through an employee's Transition Date.*

C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.

D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the

Virginia Retirement System or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.

*E. Notwithstanding any other provision of law, any person whose employment is transferred to the Authority as a result of this section and who was subjected to a criminal history background check as a condition of employment with the Department of Alcoholic Beverage Control shall not be subject to the requirements of § [4.1-103.1](#), unless the Authority deems otherwise.*

§ [4.1-101.07](#). (Effective July 1, 2018) Forms of accounts and records; audit; annual report.

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before ~~November 1~~ *December 15* of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.

*B. Notwithstanding any other provision of law, in exercising any power conferred under this title, the Authority may implement and maintain independent payroll and nonpayroll disbursement systems. These systems and related procedures shall be subject to review and approval by the State Comptroller. Upon agreement with the State Comptroller, the Authority may report summary level detail on both payroll and nonpayroll transactions to the State Comptroller through the Department of Accounts' financial management system or its successor system. Such reports shall be made in accordance with policies, procedures, and directives as prescribed by the State Comptroller. A nonpayroll disbursement system shall include all disbursements and expenditures, other than payroll. Such disbursements and expenditures shall include travel reimbursements, revenue refunds, disbursements for vendor payments, petty cash, and interagency payments.*

§ [4.1-101.010](#). (Effective July 1, 2018) Exemption of Authority from personnel and procurement procedures; information systems; etc.

A. The provisions of the Virginia Personnel Act (§ [2.2-2900](#) et seq.) and the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 or Article 2 (§ [51.1-1104](#) et seq.) of Chapter 11 of Title 51.1 apply to the Authority in the exercise of any power conferred under this title.

*B. To effect its implementation, the Authority's procurement of goods, services, insurance, and construction and the disposition of surplus materials shall be exempt from:*

*1. State agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials under §§ [2.2-1124](#) and [2.2-1125](#);*

*2. The requirement to purchase from the Department for the Blind and Vision Impaired under § [2.2-1117](#); and*

*3. Any other state statutes, rules, regulations, or requirements relating to the procurement of goods, services, insurance, and construction, including Article 3 (§ [2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities, and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§ [2.2-1129](#) et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Department of General Services of contracts for the construction of the Authority's capital projects and construction-related professional services under § [2.2-1132](#).*

*C. The Authority (i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services; (ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system subject to the terms and conditions agreed upon between the Authority and the Department of General Services; and (iii) shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Authority's procurement opportunities on one website.*

§ [4.1-103](#). (Effective July 1, 2018) General powers of Board.

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;

3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;

4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;

5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and *special* agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ [2.2-500](#) et seq.) of Title 2.2;

6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. *The Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. The Board shall remain responsible for the performance of any such duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by written guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;*

8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;

9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;
10. Develop policies and procedures consistent with Article 4 (§ [2.2-4347](#) et seq.) of Chapter 43 of Title 2.2;
11. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;
12. Buy and sell any mixers;
13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass), and 25 (clothing);
14. Control the possession, sale, transportation and delivery of alcoholic beverages;
15. Determine, subject to § [4.1-121](#), the localities within which government stores shall be established or operated and the location of such stores;
16. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;
17. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;
18. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;
19. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

20. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon; however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline alcohol;

21. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

22. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder.

The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and ~~make summary decisions~~ *decide cases*, subject to final decision by the Board, on application of any party aggrieved. *The Board may enter into consent agreements and may request and accept from any applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may include an admission or a finding of a violation. A consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial review under the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), but may be considered by the Board in future disciplinary proceedings;*

23. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

24. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and § [4.1-111](#);

25. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;

26. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;

27. Maintain actions to enjoin common nuisances as defined in § [4.1-317](#);

28. Establish minimum food sale requirements for all retail licensees;

29. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate;

30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement activities undertaken to enforce the provisions of this title; and

31. Do all acts necessary or advisable to carry out the purposes of this title.

[§ 4.1-103.03](#). *Additional powers; mediation; alternative dispute resolution; confidentiality.*

A. *As used in this section:*

*"Appropriate case" means any alleged license violation or objection to the application for a license in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest.*

*"Dispute resolution proceeding" means the same as that term is defined in [§ 8.01-576.4](#).*

*"Mediation" means the same as that term is defined in [§ 8.01-576.4](#).*

*"Neutral" means the same as that term is defined in [§ 8.01-576.4](#).*

B. *The Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve underlying issues or reach a consensus or compromise on contested issues. Mediation and other dispute resolution proceedings as authorized by this section shall be voluntary procedures that supplement, rather than limit, other dispute resolution techniques available to the Board. Mediation or a dispute resolution proceeding may be used for an objection to the issuance of a license only with the consent of, and participation by, the applicant for licensure and shall be terminated at the request of such applicant.*

C. *Any resolution of a contested issue accepted by the Board under this section shall be considered a consent agreement as provided in subdivision 22 of [§ 4.1-103](#). The decision to use mediation or a dispute resolution proceeding is in the Board's sole discretion and shall not be subject to judicial review.*

D. *The Board may adopt rules and regulations, in accordance with the Administrative Process Act ([§ 2.2-4000](#) et seq.), for the implementation of this section. Such rules and regulations may include (i) standards and procedures for the conduct of mediation and dispute resolution proceedings, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work products, or other materials.*

E. *The provisions of [§ 8.01-576.10](#) concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Board uses or relies on information obtained in the course of such*

*proceeding in granting a license, suspending or revoking a license, or accepting payment of a civil penalty or investigative costs. However, a consent agreement signed by the parties shall not be confidential.*

§ [4.1-103.1](#). (Effective July 1, 2018) Criminal history records check required on certain employees; reimbursement of costs.

All persons hired by the Authority whose job duties involve access to or handling of the Authority's funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

~~No person who has~~ *The Board shall develop policies regarding the employment of persons who have been convicted of a felony or a crime involving moral turpitude shall be employed or appointed by the Authority.*

The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section.

§ [4.1-225](#). Grounds for which Board may suspend or revoke licenses.

The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § [4.1-227](#), if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:
  - a. Has misrepresented a material fact in applying to the Board for such license;
  - b. Within the five years immediately preceding the date of the hearing held in accordance with § [4.1-227](#), has (i) been convicted of a violation of any law, ordinance or regulation of the Commonwealth, of any county, city or town in the Commonwealth, of any state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ [4.1-300](#) et seq.); (iii) committed a violation of the Wine Franchise Act (§ [4.1-400](#) et seq.) or the Beer Franchise Act (§ [4.1-500](#) et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;
  - c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;

- d. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;
- e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;
- f. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;
- g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § [18.2-46.1](#) or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;
- h. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;
- i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;
- j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;
- k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;
- l. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;
- m. Has allowed any obscene literature, pictures or materials upon the licensed premises;
- n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;
- o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ [54.1-](#)

[3400](#) et seq.); (ii) laundered money in violation of § [18.2-246.3](#); or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ [18.2-247](#) et seq.) of Title 18.2 or the Drug Control Act (§ [54.1-3400](#) et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein; or

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ [18.2-30](#) et seq.), 2 (§ [18.2-38](#) et seq.), 2.1 (§ [18.2-46.1](#) et seq.), 2.2 (§ [18.2-46.4](#) et seq.), 3 (§ [18.2-47](#) et seq.), 4 (§ [18.2-51](#) et seq.), 5 (§ [18.2-58](#) et seq.), 6 (§ [18.2-59](#) et seq.), or 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2; Article 2 (§ [18.2-266](#) et seq.) of Chapter 7 of Title 18.2; Article 3 (§ [18.2-344](#) et seq.) or 5 (§ [18.2-372](#) et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ [18.2-404](#) et seq.), 2 (§ [18.2-415](#)), or 3 (§ [18.2-416](#) et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety; or

*q. Has failed to take reasonable measures to prevent an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises.*

2. The place occupied by the licensee:

a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § [18.2-258](#); or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

7. Any other cause authorized by this title.

§ [4.1-227](#). Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § [2.2-4020](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.).

Notwithstanding the provisions of § [2.2-4022](#), the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § [4.1-103](#) shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § [4.1-103](#).

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any

items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § [8.01-676.1](#), the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both *and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for the second violation occurring within five years immediately preceding the date of the second violation. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated, or interdicted persons, the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years immediately preceding the date of the violation and \$6,000 for a second violation occurring within five years immediately preceding the date of the second violation in lieu of such suspension or any portion thereof, or both. Upon making a finding that aggravating circumstances exist, the Board may also impose a requirement that the licensee pay for the cost incurred by the Board not exceeding \$10,000 in investigating the licensee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.*

C. Following notice to *(i) the licensee of a hearing which that may result in the suspension or revocation of his license or (ii) the applicant of a hearing to resolve a contested application*, the Board may accept from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation a consent agreement as authorized in subdivision 22 of § [4.1-103](#). The notice shall advise the licensee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Virginia Administrative Process Act (§ [2.2-4000](#) et seq.); and (c) (1) accept the proposed restrictions for operating under the license, (2) accept the period of suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. In case of an offense by the holder of a brewery license, the Board may require that such holder pay the costs incurred by the Board in investigating the licensee, and it may impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation or written order:

1. Designate those *(i) objections to an application or (ii) alleged violations that will proceed to an initial hearing*;
2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;
- ~~2-3.~~ Provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server or seller training certified in advance by the Board;
- ~~3-4.~~ Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and
- ~~4-5.~~ Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding

the date of the violation. No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this title or Board regulations.

~~F. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of subsection E shall be advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing.~~

2. That the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015 are amended and reenacted as follows:

4. That the provisions of this act shall become effective on ~~July 1~~ *January 15, 2018*, except that the provisions of the *(i) thirteenth, fourteenth, and fifteenth enactments of this act shall become effective on July 1, 2015; (ii) third enactment of this act shall become effective on July 1, 2018; and (iii) eleventh enactment of this act shall become effective on January 1, 2019.*

5. That the Alcoholic Beverage Control Board or its successor in interest shall continue to receive IT infrastructure and security services pursuant to Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 of the Code of Virginia until ~~July 1, 2019~~, unless otherwise provided for as part of the Commonwealth's disentanglement plan pursuant to the Comprehensive Infrastructure Agreement with Northrop Grumman. However, in no event shall the Virginia Alcoholic Beverage Control Authority be disentangled prior to ~~October 1, 2018~~ *such time as the Alcoholic Beverage Control Board or its successor in interest elects to no longer receive such services. However, any such departure from services provided under Chapter 20.1 (§ [2.2-2005](#) et seq.) of the Code of Virginia shall not be made prior to October 1, 2018. The Alcoholic Beverage Control Board or its successor in interest may determine to continue to receive all or partial services pursuant to Chapter 20.1 (§ [2.2-2005](#) et seq.) of the Code of Virginia based on mutual agreement between it and the Virginia Information Technologies Agency.*

12. That any ~~accrued~~ *accumulated* sick leave, *personal leave*, or annual leave of any employee of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee. *Notwithstanding subsection D of § [4.1-101.05](#) of the Code of Virginia, as created by this act, any accrued sick leave of any employee of the Department of Alcoholic Beverage Control participating in the Traditional Sick Leave Program who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall be paid out to the employee in accordance with applicable policies and procedures adopted by the Department of Human*

***Resource Management. Notwithstanding subsections B and D of § [51.1-1103](#) of the Code of Virginia, all employees of the Department of Alcoholic Beverage Control participating in the Traditional Sick Leave Program who transfer to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall, upon such transfer, (i) participate in the Virginia Sickness and Disability Program and (ii) be eligible for nonwork related disability benefits without meeting the one-year waiting period required under subsection D of § [51.1-1103](#) of the Code of Virginia.***

3. That the sixth enactment of Chapters 38 and 730 of the Acts of Assembly of 2015 is repealed effective January 15, 2018.

4. That, beginning January 15, 2018, special agents and employees of the Alcoholic Beverage Control Board (the Board) shall be considered employees and special agents of the Department of Alcoholic Beverage Control (the Department) for the purpose of maintaining continued employment. The Department, including such special agents and employees, shall continue in existence through December 31, 2018. The Board shall continue in existence until July 1, 2018. During the period of January 1, 2018, through December 31, 2018, (i) the Department and the Virginia Alcoholic Beverage Control Authority (the Authority) shall exist simultaneously for the purpose of transferring special agents and employees and transitioning operations of the Department to the Authority in accordance with § [4.1-101.05](#) of the Code of Virginia, as amended by this act, and (ii) the Board of Directors of the Authority shall carry out the duties and responsibilities of the Board, notwithstanding elimination of the Board on July 1, 2018, for the purpose of transferring special agents and employees and facilitating the transition of operations from the Board and Department to the Authority.

5. That prior to July 1, 2018, the Alcoholic Beverage Control Authority (the Authority) and the Department of Alcoholic Beverage Control (the Department) shall enter into an operating agreement whereby employees and special agents of the Department are authorized to exercise the powers and duties conferred by the Alcoholic Beverage Control Board that are incidental to their employment or agency with the Department and conferred upon the Board of Directors of the Authority in accordance with § [4.1-103](#) of the Code of Virginia, as amended by this act.

6. That any agent or employee of the Department of Alcoholic Beverage Control vested with any powers or duties assigned or delegated by the Alcoholic Beverage Control Board shall be authorized to continuously exercise the same powers and duties con-

ferred upon him as if designated the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

7. That the provisions of § [4.1-101.01](#) of the Code of Virginia, as amended by this act, shall expire on July 1, 2018.

8. That a current member of the Alcoholic Beverage Control Board is eligible for reappointment in accordance with the provisions of this act, provided that such member meets the qualifications set forth in § [4.1-101.01](#) of the Code of Virginia, as amended by this act.

## **Chapter 707 Virginia Alcoholic Beverage Control Authority; changes effective date for creation of Authority.**

An Act to amend and reenact §§ [4.1-101.01](#), [4.1-101.02](#), [4.1-101.05](#), [4.1-101.07](#), [4.1-101.010](#), [4.1-103](#), and [4.1-103.1](#), as they shall become effective, [4.1-225](#), and [4.1-227](#) of the Code of Virginia and to amend and reenact the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015; to amend the Code of Virginia by adding a section numbered [4.1-103.03](#); and to repeal the sixth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015, relating to the Virginia Alcoholic Beverage Control Authority.

[\[S 1287\]](#)

Approved March 24, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ [4.1-101.01](#), [4.1-101.02](#), [4.1-101.05](#), [4.1-101.07](#), [4.1-101.010](#), [4.1-103](#), and [4.1-103.1](#), as they shall become effective, [4.1-225](#), and [4.1-227](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered [4.1-103.03](#) as follows:

§ [4.1-101.01](#). (Effective July 1, 2018) Board of Directors; membership; terms; compensation.

*A. ~~The Beginning January 15, 2018, until July 1, 2018, the Authority shall be governed by a Board of Directors, which shall initially consist of the members of the Alcoholic Beverage Control Board, in accordance with § [4.1-102](#), and two nonlegislative citizen members appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have~~*

*been a resident of the Commonwealth for a period of at least three years immediately preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#). Notwithstanding the provisions of § [4.1-102](#), the provisions of subsection F shall apply to such members. The terms of the members of the Board of Directors of the Authority shall be staggered as follows:*

*1. For the three members who are members of the Alcoholic Beverage Control Board, their original terms shall continue and upon expiration of such terms, if reappointed, one member shall serve a term of five years, one member shall serve a term of four years, and one member shall serve a term of three years; and*

*2. For the two nonlegislative citizen members, one member shall serve a term of two years, and one member shall serve a term of one year.*

*B. Beginning July 1, 2018, the Authority shall be governed by a Board of Directors, which shall consist of five citizens at large appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Each appointee shall (i) have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office; (ii) hold, at a minimum, a baccalaureate degree in business or a related field of study; and (iii) possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. Appointees shall be subject to a background check in accordance with § [4.1-101.03](#).*

*B-C. After the initial staggering of terms, members shall be appointed for a term of five years. All members shall serve until their successors are appointed. Any appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members of the Board may be removed from office by the Governor for cause, including the improper use of its police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.*

~~C-D.~~ The Governor shall appoint the chairman and vice-chairman of the Board from among the membership of the Board. The Board may elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board. A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

~~D-E.~~ The Board shall meet at least every 60 days for the transaction of its business. Special meetings may be held at any time upon the call of the chairman of the Board or the Chief Executive Officer or upon the written request of a majority of the Board members.

~~E-F.~~ Members of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of their official duties as set forth in the general appropriation act for members of the House of Delegates when the General Assembly is not in session, except that the chairman of the Board shall receive annually such salary, compensation, and reimbursement of expenses for the performance of his official duties as set forth in the general appropriation act for a member of the Senate of Virginia when the General Assembly is not in session.

~~F-G.~~ The provisions of the State and Local Government Conflict of Interests Act (§ [2.2-3100](#) et seq.) shall apply to the members of the Board, the Chief Executive Officer of the Authority, and the employees of the Authority.

§ [4.1-101.02](#). (Effective July 1, 2018) Appointment, salary, and powers of Chief Executive Officer; appointment of confidential assistant to the Chief Executive Officer.

A. The Chief Executive Officer of the Authority shall be appointed by the Governor and confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. The Chief Executive Officer shall not be a member of the Board; shall hold, at a minimum, a baccalaureate degree in business or a related field of study; and shall possess a minimum of seven years of demonstrated experience or expertise in the direct management, supervision, or control of a business or legal affairs. The Chief Executive Officer shall receive such compensation as determined by the Board and approved by the Governor, including any performance bonuses or incentives as the Board deems advisable. The Chief Executive Officer shall be subject to a background check in accordance with § [4.1-101.03](#). The Chief Executive Officer shall (i) carry out the powers and duties conferred upon him by the Board or imposed upon him by law and (ii) meet performance measures or targets set by the Board and approved by the Governor. The

Chief Executive Officer may be removed from office by the Governor for cause, including the improper use of the Authority's police powers, malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to meet performance measures or targets as set by the Board and approved by the Governor, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor.

B. The Chief Executive Officer shall devote his full time to the performance of his official duties and shall not be engaged in any other profession or occupation.

C. The Chief Executive Officer shall supervise and administer the operations of the Authority in accordance with this title.

D. The Chief Executive Officer shall:

1. Serve as the secretary to the Board and keep a true and full record of all proceedings of the Authority and preserve at the Authority's general office all books, documents, and papers of the Authority;

2. Exercise and perform such powers and duties as may be delegated to him by the Board or as may be conferred or imposed upon him by law;

3. ~~Appoint a chief financial officer and employ~~ *Employ* or retain such *special* agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval; and

4. Make recommendations to the Board for legislative and regulatory changes.

E. Neither the Chief Executive Officer nor the spouse or any member of the immediate family of the Chief Executive Officer shall make any contribution to a candidate for office or officeholder at the local or state level or cause such a contribution to be made on his behalf.

F. To assist the Chief Executive Officer in the performance of his duties, the Governor shall also appoint one confidential assistant for administration who shall be deemed to serve on an employment-at-will basis.

§ [4.1-101.05](#). (Effective July 1, 2018) Employees of the Authority.

A. Employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be eligible for membership in the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1 and participation in all health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt policies and

procedures that afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability. *Notwithstanding any other provision of law, the Board shall develop, implement, and administer a paid leave program, which may include annual, personal, and sick leave or any combination thereof. All other leave benefits shall be administered in accordance with Chapter 11 (§ [51.1-1100](#) et seq.) of Title 51.1, except as otherwise provided in this section.*

B. Notwithstanding any other provision of law, the Authority shall give preference in hiring to *special agents and* employees of the ~~former~~ Department of Alcoholic Beverage Control. The Authority shall issue a written notice to all persons whose employment at the ~~former~~ Department of Alcoholic Beverage Control will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." *In order to facilitate an orderly and efficient transition and ensure the continuation of operations during the transition from the Department of Alcoholic Beverage Control (the Department) to the Authority, the Authority shall have discretion, subject to the time limitations contained herein, to determine the date upon which any employee's employment with the Department will end or be transferred to the Authority. This date shall be stated in the written notice and shall be referred to herein as the "Transition Date." No Transition Date shall occur prior to July 1, 2018, without the mutual agreement of the employee and the Authority. No Transition Date shall be set beyond December 31, 2018.* Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the ~~former~~ Department of Alcoholic Beverage Control who (i) ~~elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission, or agency of the Commonwealth;~~ (ii) is not offered the opportunity to transfer to employment by the Authority; or ~~(iii)~~ (ii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ [2.2-3200](#) et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act. *Any eligibility for such severance benefits shall be contingent on the continued employment through an employee's Transition Date.*

C. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ [2.2-2800](#) et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions as if no transfer had occurred.

D. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this section and who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ [51.1-125](#) et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred.

*E. Notwithstanding any other provision of law, any person whose employment is transferred to the Authority as a result of this section and who was subjected to a criminal history background check as a condition of employment with the Department of Alcoholic Beverage Control shall not be subject to the requirements of § [4.1-103.1](#), unless the Authority deems otherwise.*

§ [4.1-101.07](#). (Effective July 1, 2018) Forms of accounts and records; audit; annual report.

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives shall annually examine the accounts and books of the Authority. The Authority shall submit an annual report to the Governor and General Assembly on or before ~~November 1~~ *December 15* of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The Authority shall also submit a six-year plan detailing its assumed revenue forecast, assumed operating costs, number of retail facilities, capital costs, including lease payments, major acquisitions of services and tangible or intangible property, any material changes to the policies and procedures issued by the Authority related to procurement or personnel, and any proposed marketing activities.

*B. Notwithstanding any other provision of law, in exercising any power conferred under this title, the Authority may implement and maintain independent payroll and nonpayroll disbursement systems. These systems and related procedures shall be subject to review and approval by the State Comptroller. Upon agreement with the State Comptroller, the Authority may report summary level detail on both payroll and nonpayroll transactions to*

*the State Comptroller through the Department of Accounts' financial management system or its successor system. Such reports shall be made in accordance with policies, procedures, and directives as prescribed by the State Comptroller. A nonpayroll disbursement system shall include all disbursements and expenditures, other than payroll. Such disbursements and expenditures shall include travel reimbursements, revenue refunds, disbursements for vendor payments, petty cash, and interagency payments.*

[§ 4.1-101.010](#). (Effective July 1, 2018) Exemption of Authority from personnel and procurement procedures; information systems; etc.

A. The provisions of the Virginia Personnel Act ([§ 2.2-2900](#) et seq.) and the Virginia Public Procurement Act ([§ 2.2-4300](#) et seq.) shall not apply to the Authority in the exercise of any power conferred under this title. Nor shall the provisions of Chapter 20.1 ([§ 2.2-2005](#) et seq.) of Title 2.2 or Article 2 ([§ 51.1-1104](#) et seq.) of Chapter 11 of Title 51.1 apply to the Authority in the exercise of any power conferred under this title.

B. To effect its implementation, the Authority's procurement of goods, services, insurance, and construction and the disposition of surplus materials shall be exempt from:

1. State agency requirements regarding disposition of surplus materials and distribution of proceeds from the sale or recycling of surplus materials under §§ [2.2-1124](#) and [2.2-1125](#);

2. The requirement to purchase from the Department for the Blind and Vision Impaired under [§ 2.2-1117](#); and

3. Any other state statutes, rules, regulations, or requirements relating to the procurement of goods, services, insurance, and construction, including Article 3 ([§ 2.2-1109](#) et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities, and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 ([§ 2.2-1129](#) et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Department of General Services of contracts for the construction of the Authority's capital projects and construction-related professional services under [§ 2.2-1132](#).

C. The Authority (i) may purchase from and participate in all statewide contracts for goods and services, including information technology goods and services; (ii) shall use directly or by integration or interface the Commonwealth's electronic procurement system subject to the terms and conditions agreed upon between the Authority and the Department of General Services; and (iii) shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for

*Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Authority's procurement opportunities on one website.*

§ [4.1-103](#). (Effective July 1, 2018) General powers of Board.

The Board shall have the power to:

1. Sue and be sued, implead and be impleaded, and complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority;
4. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this title, including agreements with any person or federal agency;
5. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and *special* agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ [2.2-500](#) et seq.) of Title 2.2;
6. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state and any municipality, county, or other political subdivision thereof or from any other source aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law, and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;
7. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. *The Board may delegate or assign any duty or task to be performed by the Authority to any officer or employee of the Authority. The Board shall remain responsible for the performance of any such duties or tasks. Any delegation pursuant to this subdivision shall, where appropriate, be accompanied by written*

*guidelines for the exercise of the duties or tasks delegated. Where appropriate, the guidelines shall require that the Board receive summaries of actions taken. Such delegation or assignment shall not relieve the Board of the responsibility to ensure faithful performance of the duties and tasks;*

8. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;

9. Develop policies and procedures generally applicable to the procurement of goods, services, and construction, based upon competitive principles;

10. Develop policies and procedures consistent with Article 4 (§ [2.2-4347](#) et seq.) of Chapter 43 of Title 2.2;

11. Buy, import and sell alcoholic beverages other than beer and wine not produced by farm wineries, and to have alcoholic beverages other than beer and wine not produced by farm wineries in its possession for sale;

12. Buy and sell any mixers;

13. Buy and sell products licensed by the Virginia Tourism Corporation that are within international trademark classes 16 (paper goods and printer matters), 18 (leather goods), 21 (housewares and glass), and 25 (clothing);

14. Control the possession, sale, transportation and delivery of alcoholic beverages;

15. Determine, subject to § [4.1-121](#), the localities within which government stores shall be established or operated and the location of such stores;

16. Maintain warehouses for alcoholic beverages and control the storage and delivery of alcoholic beverages to and from such warehouses;

17. Acquire, purchase, hold, use, lease, or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board; lease as lessor to any person any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board; sell, transfer, or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board; and occupy and improve any land or building required for the purposes of this title;

18. Purchase or otherwise acquire title to any land or building required for the purposes of this title and sell and convey the same by proper deed, with the consent of the Governor;

19. Purchase, lease or acquire the use of, by any manner, any plant or equipment which may be considered necessary or useful in carrying into effect the purposes of this title, including rectifying, blending and processing plants. The Board may purchase, build, lease, and operate distilleries and manufacture alcoholic beverages;

20. Determine the nature, form and capacity of all containers used for holding alcoholic beverages to be kept or sold under this title, and prescribe the form and content of all labels and seals to be placed thereon; however, no container sold in or shipped into the Commonwealth shall include powdered or crystalline alcohol;

21. Appoint every agent and employee required for its operations; require any or all of them to give bonds payable to the Commonwealth in such penalty as shall be fixed by the Board; and engage the services of experts and professionals;

22. Hold and conduct hearings; issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before the Board or any agent of the Board; and administer oaths and take testimony thereunder.

The Board may authorize any Board member or agent of the Board to hold and conduct hearings, issue subpoenas, administer oaths and take testimony thereunder, and ~~make summary decisions~~ *decide cases*, subject to final decision by the Board, on application of any party aggrieved. *The Board may enter into consent agreements and may request and accept from any applicant or licensee a consent agreement in lieu of proceedings on (i) objections to the issuance of a license or (ii) disciplinary action. Any such consent agreement shall include findings of fact and may include an admission or a finding of a violation. A consent agreement shall not be considered a case decision of the Board and shall not be subject to judicial review under the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), but may be considered by the Board in future disciplinary proceedings;*

23. Make a reasonable charge for preparing and furnishing statistical information and compilations to persons other than (i) officials, including court and police officials, of the Commonwealth and of its subdivisions if the information requested is for official use and (ii) persons who have a personal or legal interest in obtaining the information requested if such information is not to be used for commercial or trade purposes;

24. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) and § [4.1-111](#);

25. Grant, suspend, and revoke licenses for the manufacture, bottling, distribution, importation, and sale of alcoholic beverages;
26. Assess and collect civil penalties and civil charges for violations of this title and Board regulations;
27. Maintain actions to enjoin common nuisances as defined in § [4.1-317](#);
28. Establish minimum food sale requirements for all retail licensees;
29. Review and approve any proposed legislative or regulatory changes suggested by the Chief Executive Officer as the Board deems appropriate;
30. Report quarterly to the Secretary of Public Safety and Homeland Security on the law-enforcement activities undertaken to enforce the provisions of this title; and
31. Do all acts necessary or advisable to carry out the purposes of this title.

§ [4.1-103.03](#). *Additional powers; mediation; alternative dispute resolution; confidentiality.*

*A. As used in this section:*

*"Appropriate case" means any alleged license violation or objection to the application for a license in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest.*

*"Dispute resolution proceeding" means the same as that term is defined in § [8.01-576.4](#).*

*"Mediation" means the same as that term is defined in § [8.01-576.4](#).*

*"Neutral" means the same as that term is defined in § [8.01-576.4](#).*

*B. The Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve underlying issues or reach a consensus or compromise on contested issues. Mediation and other dispute resolution proceedings as authorized by this section shall be voluntary procedures that supplement, rather than limit, other dispute resolution techniques available to the Board. Mediation or a dispute resolution proceeding may be used for an objection to the issuance of a license only with the consent of, and participation by, the applicant for licensure and shall be terminated at the request of such applicant.*

*C. Any resolution of a contested issue accepted by the Board under this section shall be considered a consent agreement as provided in subdivision 22 of § [4.1-103](#). The decision to use mediation or a dispute resolution proceeding is in the Board's sole discretion and shall not be subject to judicial review.*

*D. The Board may adopt rules and regulations, in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.), for the implementation of this section. Such rules and regulations may include (i) standards and procedures for the conduct of mediation and*

*dispute resolution proceedings, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work products, or other materials.*

*E. The provisions of § [8.01-576.10](#) concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Board uses or relies on information obtained in the course of such proceeding in granting a license, suspending or revoking a license, or accepting payment of a civil penalty or investigative costs. However, a consent agreement signed by the parties shall not be confidential.*

§ [4.1-103.1](#). (Effective July 1, 2018) Criminal history records check required on certain employees; reimbursement of costs.

All persons hired by the Authority whose job duties involve access to or handling of the Authority's funds or merchandise shall be subject to a criminal history records check before, and as a condition of, employment.

~~No person who has~~ *The Board shall develop policies regarding the employment of persons who have been convicted of a felony or a crime involving moral turpitude shall be employed or appointed by the Authority.*

The Department of State Police shall be reimbursed by the Authority for the cost of investigations conducted pursuant to this section.

§ [4.1-225](#). Grounds for which Board may suspend or revoke licenses.

The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in § [4.1-227](#), if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

- a. Has misrepresented a material fact in applying to the Board for such license;
- b. Within the five years immediately preceding the date of the hearing held in accordance with § [4.1-227](#), has (i) been convicted of a violation of any law, ordinance or regulation of the Commonwealth, of any county, city or town in the Commonwealth, of any

- state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages; (ii) violated any provision of Chapter 3 (§ [4.1-300](#) et seq.); (iii) committed a violation of the Wine Franchise Act (§ [4.1-400](#) et seq.) or the Beer Franchise Act (§ [4.1-500](#) et seq.) in bad faith; (iv) violated or failed or refused to comply with any regulation, rule or order of the Board; or (v) failed or refused to comply with any of the conditions or restrictions of the license granted by the Board;
- c. Has been convicted in any court of a felony or of any crime or offense involving moral turpitude under the laws of any state, or of the United States;
- d. Is not the legitimate owner of the business conducted under the license granted by the Board, or other persons have ownership interests in the business which have not been disclosed;
- e. Cannot demonstrate financial responsibility sufficient to meet the requirements of the business conducted under the license granted by the Board;
- f. Has been intoxicated or under the influence of some self-administered drug while upon the licensed premises;
- g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § [18.2-46.1](#) or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;
- h. Knowingly employs in the business conducted under such license, as agent, servant, or employee, other than a busboy, cook or other kitchen help, any person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages;
- i. Subsequent to the granting of his original license, has demonstrated by his police record a lack of respect for law and order;
- j. Has allowed the consumption of alcoholic beverages upon the licensed premises by any person whom he knew or had reason to believe was (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated, or has allowed any person whom he knew or had reason to believe was intoxicated to loiter upon such licensed premises;
- k. Has allowed any person to consume upon the licensed premises any alcoholic beverages except as provided under this title;
- l. Is physically unable to carry on the business conducted under such license or has been adjudicated incapacitated;

- m. Has allowed any obscene literature, pictures or materials upon the licensed premises;
  - n. Has possessed any illegal gambling apparatus, machine or device upon the licensed premises;
  - o. Has upon the licensed premises (i) illegally possessed, distributed, sold or used, or has knowingly allowed any employee or agent, or any other person, to illegally possess, distribute, sell or use marijuana, controlled substances, imitation controlled substances, drug paraphernalia or controlled paraphernalia as those terms are defined in Articles 1 and 1.1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2 and the Drug Control Act (§ [54.1-3400](#) et seq.); (ii) laundered money in violation of § [18.2-246.3](#); or (iii) conspired to commit any drug-related offense in violation of Articles 1 and 1.1 of Chapter 7 (§ [18.2-247](#) et seq.) of Title 18.2 or the Drug Control Act (§ [54.1-3400](#) et seq.). The provisions of this subdivision shall also apply to any conduct related to the operation of the licensed business which facilitates the commission of any of the offenses set forth herein; ~~or~~
  - p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ [18.2-30](#) et seq.), 2 (§ [18.2-38](#) et seq.), 2.1 (§ [18.2-46.1](#) et seq.), 2.2 (§ [18.2-46.4](#) et seq.), 3 (§ [18.2-47](#) et seq.), 4 (§ [18.2-51](#) et seq.), 5 (§ [18.2-58](#) et seq.), 6 (§ [18.2-59](#) et seq.), or 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2; Article 2 (§ [18.2-266](#) et seq.) of Chapter 7 of Title 18.2; Article 3 (§ [18.2-344](#) et seq.) or 5 (§ [18.2-372](#) et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ [18.2-404](#) et seq.), 2 (§ [18.2-415](#)), or 3 (§ [18.2-416](#) et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety; *or*
  - q. *Has failed to take reasonable measures to prevent an act of violence resulting in death or serious bodily injury, or a recurrence of such acts, from occurring on (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that is owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises.*
2. The place occupied by the licensee:
- a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;

b. Has been adjudicated a common nuisance under the provisions of this title or § [18.2-258](#); or

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

3. The licensee or any employee of the licensee discriminated against any member of the armed forces of the United States by prices charged or otherwise.

4. The licensee, his employees, or any entertainer performing on the licensed premises has been convicted of a violation of a local public nudity ordinance for conduct occurring on the licensed premises and the licensee allowed such conduct to occur.

5. Any cause exists for which the Board would have been entitled to refuse to grant such license had the facts been known.

6. The licensee is delinquent for a period of 90 days or more in the payment of any taxes, or any penalties or interest related thereto, lawfully imposed by the locality where the licensed business is located, as certified by the treasurer, commissioner of the revenue, or finance director of such locality, unless (i) the outstanding amount is de minimis; (ii) the licensee has pending a bona fide application for correction or appeal with respect to such taxes, penalties, or interest; or (iii) the licensee has entered into a payment plan approved by the same locality to settle the outstanding liability.

7. Any other cause authorized by this title.

§ [4.1-227](#). Suspension or revocation of licenses; notice and hearings; imposition of penalties.

A. Except for temporary licenses, before the Board may impose a civil penalty against a brewery licensee or suspend or revoke any license, reasonable notice of such proposed or contemplated action shall be given to the licensee in accordance with the provisions of § [2.2-4020](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.).

Notwithstanding the provisions of § [2.2-4022](#), the Board shall, upon written request by the licensee, permit the licensee to inspect and copy or photograph all (i) written or recorded statements made by the licensee or copies thereof or the substance of any oral statements made by the licensee or a previous or present employee of the licensee to any law-enforcement officer, the existence of which is known by the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee, and (ii) designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession,

custody, or control of the Board and upon which the Board intends to rely as evidence in any adversarial proceeding under this chapter against the licensee. In addition, any subpoena for the production of documents issued to any person at the request of the licensee or the Board pursuant to § [4.1-103](#) shall provide for the production of the documents sought within ten working days, notwithstanding anything to the contrary in § [4.1-103](#).

If the Board fails to provide for inspection or copying under this section for the licensee after a written request, the Board shall be prohibited from introducing into evidence any items the licensee would have lawfully been entitled to inspect or copy under this section.

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding § [8.01-676.1](#), the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case.

B. In suspending any license the Board may impose, as a condition precedent to the removal of such suspension or any portion thereof, a requirement that the licensee pay the cost incurred by the Board in investigating the licensee and in holding the proceeding resulting in such suspension, or it may impose a civil penalty not to exceed \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation in lieu of such suspension or any portion thereof, or both. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated or interdicted persons, the Board may impose a civil penalty not to exceed \$2,500 for the first violation and \$5,000 for a subsequent violation in lieu of such suspension or any portion thereof, or both *and collect such civil penalties as it deems appropriate. In no event shall the Board impose a civil penalty exceeding \$2,000 for the first violation occurring within five years immediately preceding the date of the violation or \$5,000 for the second violation occurring within five years immediately preceding the date of the second violation. However, if the violation involved selling alcoholic beverages to a person prohibited from purchasing alcoholic beverages or allowing consumption of alcoholic beverages by underage, intoxicated, or interdicted persons, the Board may impose a civil penalty not to exceed \$3,000 for the first violation occurring within five years*

*immediately preceding the date of the violation and \$6,000 for a second violation occurring within five years immediately preceding the date of the second violation in lieu of such suspension or any portion thereof, or both. Upon making a finding that aggravating circumstances exist, the Board may also impose a requirement that the licensee pay for the cost incurred by the Board not exceeding \$10,000 in investigating the licensee and in holding the proceeding resulting in the violation in addition to any suspension or civil penalty incurred.*

C. Following notice to (i) the licensee of a hearing ~~which~~ *that* may result in the suspension or revocation of his license or (ii) the applicant of a hearing to resolve a contested application, the Board may accept ~~from the licensee an offer in compromise to pay a civil charge not exceeding \$5,000, either in lieu of suspension or in addition thereto, or in lieu of revocation~~ a consent agreement as authorized in subdivision 22 of § [4.1-103](#). The notice shall advise the licensee or applicant of the option to (a) admit the alleged violation or the validity of the objection; (b) waive any right to a hearing or an appeal under the Virginia Administrative Process Act (§ [2.2-4000](#) et seq.); and (c) (1) accept the proposed restrictions for operating under the license, (2) accept the period of suspension of the licensed privileges within the Board's parameters, (3) pay a civil penalty in lieu of the period of suspension, or any portion of the suspension as applicable, or (4) proceed to a hearing.

D. In case of an offense by the holder of a brewery license, the Board may (i) require that such holder pay the costs incurred by the Board in investigating the licensee, ~~and it may~~ (ii) suspend or revoke the on-premises privileges of the brewery, and (iii) impose a civil penalty not to exceed \$25,000 for the first violation, \$50,000 for the second violation, and for the third or any subsequent violation, suspend or revoke such license or, in lieu of any suspension or portion thereof, impose a civil penalty not to exceed \$100,000. Such suspension or revocation shall not prohibit the licensee from manufacturing or selling beer manufactured by it to the owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and to persons outside the Commonwealth.

E. The Board shall, by regulation or written order:

1. Designate those (i) objections to an application or (ii) alleged violations that will proceed to an initial hearing;
2. Designate the violations for which a waiver of a hearing and payment of a civil charge in lieu of suspension may be accepted for a first offense occurring within three years immediately preceding the date of the violation;

~~2-3.~~ Provide for a reduction in the length of any suspension and a reduction in the amount of any civil penalty for any retail licensee where the licensee can demonstrate that it provided to its employees alcohol server or seller training certified in advance by the Board;

~~3-4.~~ Establish a schedule of penalties for such offenses, prescribing the appropriate suspension of a license and the civil charge acceptable in lieu of such suspension; and

~~4-5.~~ Establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation. No waiver shall be granted by the Board, however, for a licensee's willful and knowing violation of this title or Board regulations.

~~F. A licensee receiving notice of a hearing on an alleged violation meeting the requirements of subsection E shall be advised of the option of (a) accepting the suspension authorized by the Board's schedule, (b) paying a civil charge authorized by the Board's schedule in lieu of suspension, or (c) proceeding to a hearing.~~

2. That the fourth, fifth, and twelfth enactments of Chapters 38 and 730 of the Acts of Assembly of 2015 are amended and reenacted as follows:

**4. That the provisions of this act shall become effective on ~~July 1~~ *January 15, 2018*, except that the provisions of the (i) thirteenth, fourteenth, and fifteenth enactments of this act shall become effective on July 1, 2015; (ii) *third enactment of this act shall become effective on July 1, 2018; and (iii) eleventh enactment of this act shall become effective on January 1, 2019.***

5. That the Alcoholic Beverage Control Board or its successor in interest shall continue to receive IT infrastructure and security services pursuant to Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2 of the Code of Virginia until ~~July 1, 2019~~, unless otherwise provided for as part of the Commonwealth's disentanglement plan pursuant to the Comprehensive Infrastructure Agreement with Northrop Grumman. However, in no event shall the Virginia Alcoholic Beverage Control Authority be disentangled prior to ~~October 1, 2018~~ *such time as the Alcoholic Beverage Control Board or its successor in interest elects to no longer receive such services. However, any such departure from services provided under Chapter 20.1 (§ [2.2-2005](#) et seq.) of the Code of Virginia shall not be made prior to October 1, 2018. The Alcoholic Beverage Control Board or its successor in interest may determine to continue to receive all or partial services pursuant to Chapter 20.1 (§ [2.2-2005](#) et seq.) of the Code of Virginia based on mutual agreement between it and the Virginia Information Technologies Agency.*

12. That any accumulated sick leave, personal leave, or annual leave of any employee

of the Department of Alcoholic Beverage Control who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall transfer with the employee.

Notwithstanding subsection D of § [4.1-101.05](#) of the Code of Virginia, as created by this act, any accrued sick leave of any employee of the Department of Alcoholic Beverage Control participating in the Traditional Sick Leave Program who transfers to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall be paid out to the employee in accordance with applicable policies and procedures adopted by the Department of Human Resource Management. Notwithstanding subsections B and D of § [51.1-1103](#) of the Code of Virginia, all employees of the Department of Alcoholic Beverage Control participating in the Traditional Sick Leave Program who transfer to the Virginia Alcoholic Beverage Control Authority in accordance with the provisions of this act shall, upon such transfer, (i) participate in the Virginia Sickness and Disability Program and (ii) be eligible for nonwork related disability benefits without meeting the one-year waiting period required under subsection D of § [51.1-1103](#) of the Code of Virginia.

3. That the sixth enactment of Chapters 38 and 730 of the Acts of Assembly of 2015 is repealed effective January 15, 2018.

4. That, beginning January 15, 2018, special agents and employees of the Alcoholic Beverage Control Board (the Board) shall be considered employees and special agents of the Department of Alcoholic Beverage Control (the Department) for the purpose of maintaining continued employment. The Department, including such special agents and employees, shall continue in existence through December 31, 2018. The Board shall continue in existence until July 1, 2018. During the period of January 1, 2018, through December 31, 2018, (i) the Department and the Virginia Alcoholic Beverage Control Authority (the Authority) shall exist simultaneously for the purpose of transferring special agents and employees and transitioning operations of the Department to the Authority in accordance with § [4.1-101.05](#) of the Code of Virginia, as amended by this act, and (ii) the Board of Directors of the Authority shall carry out the duties and responsibilities of the Board, notwithstanding elimination of the Board on July 1, 2018, for the purpose of transferring special agents and employees and facilitating the transition of operations from the Board and Department to the Authority.

5. That prior to July 1, 2018, the Alcoholic Beverage Control Authority (the Authority) and the Department of Alcoholic Beverage Control (the Department) shall enter into an operating agreement whereby employees and special agents of the Department are

authorized to exercise the powers and duties conferred by the Alcoholic Beverage Control Board that are incidental to their employment or agency with the Department and conferred upon the Board of Directors of the Authority in accordance with § [4.1-103](#) of the Code of Virginia, as amended by this act.

6. That any agent or employee of the Department of Alcoholic Beverage Control vested with any powers or duties assigned or delegated by the Alcoholic Beverage Control Board shall be authorized to continuously exercise the same powers and duties conferred upon him as if designated the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

7. That the provisions of § [4.1-101.01](#) of the Code of Virginia, as amended by this act, shall expire on July 1, 2018.

8. That a current member of the Alcoholic Beverage Control Board is eligible for reappointment in accordance with the provisions of this act, provided that such member meets the qualifications set forth in § [4.1-101.01](#) of the Code of Virginia, as amended by this act.

## **Chapter 715 Capital outlay plan; revises six-year plan for projects.**

An Act to create a six-year capital outlay plan for projects to be funded entirely or partially from general fund-supported resources and to repeal Chapters 499 and 500 of the Acts of Assembly of 2015.

[\[H 2248\]](#)

Approved March 24, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the following capital outlay projects and descriptive information shall constitute the Commonwealth's capital outlay plan, pursuant to § [2.2-1518](#) of the Code of Virginia, for the capital projects supported entirely or partially from the general fund for the six-year period beginning July 1, 2017. These projects do not include projects that were previously funded and authorized to proceed to construction.*

<i>Agency Code/Agency</i>	<i>Priority</i>	<i>Project Name</i>	<i>Cost Category</i>
<i>123–Department of Military</i>	<i>1</i>	<i>Renovate Roanoke Readiness</i>	<i>\$0 to</i>

Uncodified Acts of Assembly - 2017

<i>Affairs</i>		<i>Center</i>	<i>\$10,000,000</i>
	<i>2</i>	<i>Acquire Land for Readiness Centers</i>	<i>\$0 to</i>
			<i>\$10,000,000</i>
	<i>3</i>	<i>Renovate Troutville Readiness</i>	<i>\$0 to</i>
		<i>Center</i>	<i>\$10,000,000</i>
	<i>4</i>	<i>Construct Army Aviation Facility</i>	<i>\$0 to</i>
		<i>(Sitework)</i>	<i>\$10,000,000</i>
	<i>5</i>	<i>Upgrade Fire Safety Systems</i>	<i>\$0 to</i>
		<i>Statewide</i>	<i>\$10,000,000</i>
<i>146–Science Museum of Vir-</i>	<i>1</i>	<i>Install Danville Science Center</i>	<i>\$0 to</i>
<i>ginia</i>		<i>Exhibits</i>	<i>\$10,000,000</i>
<i>156–Department of State</i>	<i>1</i>	<i>Construct Division Six Headquarters</i>	<i>\$10,000,001</i>
<i>Police</i>			<i>to</i>
			<i>\$25,000,000</i>
	<i>2</i>	<i>Replace Training Academy</i>	<i>\$25,000,001</i>
			<i>to</i>
			<i>\$50,000,000</i>
	<i>3</i>	<i>Upgrade STARS Radio System</i>	<i>Above</i>
			<i>\$100,000,000</i>
<i>194–Department of General</i>	<i>1</i>	<i>Replace Critical Systems in the Mon-</i>	<i>\$10,000,001</i>
<i>Services</i>		<i>roe Building</i>	<i>to</i>
			<i>\$25,000,000</i>
	<i>2</i>	<i>Expand Molecular Lab of Con-</i>	<i>\$0 to</i>
		<i>solidated Lab</i>	<i>\$10,000,000</i>
	<i>3</i>	<i>Renovate the Supreme Court Build-</i>	<i>Above</i>
		<i>ing</i>	<i>\$100,000,000</i>
	<i>4</i>	<i>Renovate Morson Row</i>	<i>\$0 to</i>
			<i>\$10,000,000</i>
<i>199–Department of Con-</i>	<i>1</i>	<i>Construct Widewater State Park,</i>	<i>\$0 to</i>
<i>servation and Recreation</i>		<i>Phase II A</i>	<i>\$10,000,000</i>
<i>203–Wilson Workforce and</i>	<i>1</i>	<i>Renovate Watson Theater and Activ-</i>	<i>\$0 to</i>
<i>Rehabilitation Center</i>		<i>ities Building, Phase 3</i>	<i>\$10,000,000</i>
<i>204–The College of William</i>	<i>1</i>	<i>Construct Integrated Science</i>	<i>\$50,000,001</i>
<i>and Mary in Virginia</i>		<i>Center, Phase IV</i>	<i>to</i>
			<i>\$75,000,000</i>
<i>207–University of Virginia</i>	<i>1</i>	<i>Renovate Physics Building</i>	<i>\$25,000,001</i>

			to
			\$50,000,000
	2	Renovate Alderman Library	Above
			\$100,000,000
208–Virginia Polytechnic Insti-1		Construct Undergraduate Lab Build-	\$50,000,001
tute and State University		ing	to
			\$75,000,000
212–Virginia State University 1		Demolish/Replace Daniel Gym and	\$25,000,001
		Harris Hall	to
			\$50,000,000
216–James Madison 1		Renovate Jackson Hall	\$10,000,001
University			to
			\$25,000,000
218–Virginia School for the 1		Renovate Main Hall/Repair Chapel	\$25,000,001
Deaf and the Blind			to
			\$50,000,000
221–Old Dominion University 1		Construct Health Sciences Building	\$50,000,001
			to
			\$75,000,000
236–Virginia Commonwealth 1		Construct STEM Class Laboratory	\$75,000,001
University		Building	to
			\$100,000,000
239–Frontier Culture Museum 1		Install New Gallery	\$10,000,001
			to
			\$25,000,000
241–Richard Bland College 1		Construct Center for Innovation and	\$10,000,001
		Educational Development	to
			\$25,000,000
246–University of Virginia's 1		Renovate/Convert Wyllie Library	\$10,000,001
College at Wise			to
			\$25,000,000
	2	Renovate Academic Build-	\$10,000,001
		ings/Technology Infra-	to
		structure/Campus Improvements	\$25,000,000
247–George Mason University1		Improve Telecommunications Infra-	\$0 to
		structure	\$10,000,000

260–Virginia Community College System	1	Replace Godwin Building, Annandale Campus, Northern Virginia	\$25,000,001 to \$50,000,000
	2	Replace French Slaughter Building, Locust Grove Campus, Germanna	\$25,000,001 to \$50,000,000
	3	Renovate Diggs/Moore/Harrison Complex, Hampton Campus, Thomas Nelson	\$25,000,001 to \$50,000,000
	4	Construct Advanced Technical Training Center, Hampton Campus, Thomas Nelson	\$25,000,001 to \$50,000,000
	5	Renovate Amherst/Campbell Hall, Central Virginia	\$10,000,001 to \$25,000,000
	6	Construct Center for Advanced Technology and Workforce, Mountain Empire	\$10,000,001 to \$25,000,000
268–Virginia Institute of Marine Science	1	Replace Oyster Hatchery	\$10,000,001 to \$25,000,000
702–Department for the Blind and Vision Impaired	1	Renovate Departmental Headquarters Building	\$0 to \$10,000,000
720–Department of Behavioral Health and Developmental Services	1	Repair or Replace Infrastructure	\$0 to \$10,000,000
	2	Replace Central State Hospital	Above \$100,000,000
777–Department of Juvenile Justice	1	Renovate or Construct Juvenile Correctional Center	\$25,000,001 to \$50,000,000
799–Department of Corrections	1	Replace Powhatan Correctional Center	Above \$100,000,000
	2	Renovate Buckingham Wastewater Treatment Plant	\$0 to \$10,000,000
999–Department of Alcoholic	1	Acquire or Construct ABC Central	\$75,000,001



			\$25,000,000
	2	Replace Training Academy	\$25,000,001 to \$50,000,000
	3	Upgrade STARS Radio System	Above \$100,000,000
194–Department of General Services	1	Replace Critical Systems in the Monroe Building	\$10,000,001 to \$25,000,000
	2	Expand Molecular Lab of Consolidated Lab	\$0 to \$10,000,000
	3	Renovate the Supreme Court Building	Above \$100,000,000
	4	Renovate Morson Row	\$0 to \$10,000,000
199–Department of Conservation and Recreation	1	Construct Widewater State Park, Phase II A	\$0 to \$10,000,000
203–Wilson Workforce and Rehabilitation Center	1	Renovate Watson Theater and Activities Building, Phase 3	\$0 to \$10,000,000
204–The College of William and Mary in Virginia	1	Construct Integrated Science Center, Phase IV	\$50,000,001 to \$75,000,000
207–University of Virginia	1	Renovate Physics Building	\$25,000,001 to \$50,000,000
	2	Renovate Alderman Library	Above \$100,000,000
208–Virginia Polytechnic Institute and State University	1	Construct Undergraduate Lab Building	\$50,000,001 to \$75,000,000
212–Virginia State University	1	Demolish/Replace Daniel Gym and Harris Hall	\$25,000,001 to \$50,000,000
216–James Madison University	1	Renovate Jackson Hall	\$10,000,001 to \$25,000,000

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218–Virginia School for the Deaf and the Blind	1	Renovate Main Hall/Repair Chapel	\$25,000,001 to \$50,000,000
221–Old Dominion University	1	Construct Health Sciences Building	\$50,000,001 to \$75,000,000
236–Virginia Commonwealth University	1	Construct STEM Class Laboratory Building	\$75,000,001 to \$100,000,000
239–Frontier Culture Museum	1	Install New Gallery	\$10,000,001 to \$25,000,000
241–Richard Bland College	1	Construct Center for Innovation and Educational Development	\$10,000,001 to \$25,000,000
246–University of Virginia's College at Wise	1	Renovate/Convert Wyllie Library	\$10,000,001 to \$25,000,000
	2	Renovate Academic Buildings/Technology Infrastructure/Campus Improvements	\$10,000,001 to \$25,000,000
247–George Mason University	1	Improve Telecommunications Infrastructure	\$0 to \$10,000,000
260–Virginia Community College System	1	Replace Godwin Building, Annandale Campus, Northern Virginia	\$25,000,001 to \$50,000,000
	2	Replace French Slaughter Building, Locust Grove Campus, Germanna	\$25,000,001 to \$50,000,000
	3	Renovate Diggs/Moore/Harrison Complex, Hampton Campus, Thomas Nelson	\$25,000,001 to \$50,000,000
	4	Construct Advanced Technical Training Center, Hampton Campus, Thomas Nelson	\$25,000,001 to \$50,000,000
	5	Renovate Amherst/Campbell Hall,	\$10,000,001

		<i>Central Virginia</i>	<i>to</i>
			<i>\$25,000,000</i>
	6	<i>Construct Center for Advanced Technology and Workforce, Mountain Empire</i>	<i>\$10,000,001 to \$25,000,000</i>
<i>268–Virginia Institute of Marine Science</i>	1	<i>Replace Oyster Hatchery</i>	<i>\$10,000,001 to \$25,000,000</i>
<i>702–Department for the Blind and Vision Impaired</i>	1	<i>Renovate Departmental Headquarters Building</i>	<i>\$0 to \$10,000,000</i>
<i>720–Department of Behavioral Health and Developmental Services</i>	1	<i>Repair or Replace Infrastructure</i>	<i>\$0 to \$10,000,000</i>
	2	<i>Replace Central State Hospital</i>	<i>Above \$100,000,000</i>
<i>777–Department of Juvenile Justice</i>	1	<i>Renovate or Construct Juvenile Correctional Center</i>	<i>-\$25,000,001 to \$50,000,000</i>
<i>799–Department of Corrections</i>	1	<i>Replace Powhatan Correctional Center</i>	<i>Above \$100,000,000</i>
	2	<i>Renovate Buckingham Wastewater Treatment Plant</i>	<i>\$0 to \$10,000,000</i>
<i>999–Department of Alcoholic Beverage Control</i>	1	<i>Acquire or Construct ABC Central Office and Warehouse Facility</i>	<i>\$75,000,001 to \$100,000,000</i>

2. That Chapters 499 and 500 of the Acts of Assembly of 2015 are repealed.

## **Chapter 731 Uniform Statewide Building Code; notice to residents of code violations.**

An Act to direct the Department of Housing and Community Development to consider revision to the Uniform Statewide Building Code, relating to notice to residents of manufactured home parks of building code violations by the park owner.

[\[H 2203\]](#)

Approved March 24, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Housing and Community Development shall consider including in the current revision of the Uniform Statewide Building Code a provision designed to ensure that localities provide appropriate notice to residents of manufactured home parks of any Building Code violation by a park owner that jeopardizes the health and safety of those residents and shall report to the General Assembly regarding the status of such efforts no later than November 1, 2017.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 769 Constitutional amendment; powers of General Assembly, etc.**

HOUSE JOINT RESOLUTION NO. 545

Proposing an amendment to Section 14 of Article IV of the Constitution of Virginia, relating to powers of the General Assembly; suspension or nullification of administrative rule or regulation.

Agreed to by the House of Delegates, February 22, 2017

Agreed to by the Senate, February 20, 2017

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 14 of Article IV of the Constitution of Virginia as follows:

ARTICLE IV

LEGISLATURE

Section 14. Powers of General Assembly; limitations.

The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted; and a specific grant of authority in this Constitution upon a

subject shall not work a restriction of its authority upon the same or any other subject.

The omission in this Constitution of specific grants of authority heretofore conferred shall not be construed to deprive the General Assembly of such authority, or to indicate a change of policy in reference thereto, unless such purpose plainly appear.

The General Assembly shall confer on the courts power to grant divorces, change the names of persons, and direct the sales of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction.

The General Assembly may regulate the exercise by courts of the right to punish for contempt.

*The General Assembly may suspend or nullify any or all portions of any administrative rule or regulation by a joint resolution agreed to by a majority of the members elected to each house. The General Assembly may by general law authorize a legislative committee or legislative committees acting jointly or a legislative commission to suspend any or all portions of any administrative rule or regulation while the General Assembly is not in a regular session, within such restrictions and upon such conditions as may be prescribed. An administrative rule or regulation suspended by such committee or commission shall be suspended until the end of the next regular session.*

The General Assembly's power to define the accrual date for a civil action based on an intentional tort committed by a natural person against a person who, at the time of the intentional tort, was a minor shall include the power to provide for the retroactive application of a change in the accrual date. No natural person shall have a constitutionally protected property right to bar a cause of action based on intentional torts as described herein on the ground that a change in the accrual date for the action has been applied retroactively or that a statute of limitations or statute of repose has expired.

The General Assembly shall not enact any local, special, or private law in the following cases:

- (1) For the punishment of crime.
- (2) Providing a change of venue in civil or criminal cases.
- (3) Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in any judicial proceedings or inquiry before the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments or prescribing the effect of judicial sales of real estate.
- (4) Changing or locating county seats.
- (5) For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.

- (6) Extending the time for the assessment or collection of taxes.
- (7) Exempting property from taxation.
- (8) Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association to the Commonwealth or to any political subdivision thereof.
- (9) Refunding money lawfully paid into the treasury of the Commonwealth or the treasury of any political subdivision thereof.
- (10) Granting from the treasury of the Commonwealth, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.
- (11) For registering voters, conducting elections, or designating the places of voting.
- (12) Regulating labor, trade, mining, or manufacturing, or the rate of interest on money.
- (13) Granting any pension.
- (14) Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.
- (15) Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.
- (16) Affecting or regulating fencing or the boundaries of land, or the running at large of stock.
- (17) Creating private corporations, or amending, renewing, or extending the charters thereof.
- (18) Granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.
- (19) Naming or changing the name of any private corporation or association.
- (20) Remitting the forfeiture of the charter of any private corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and the laws passed in pursuance thereof.

## **Chapter 770 Constitutional amendment; real property tax exemption for spouse of disabled veteran.**

HOUSE JOINT RESOLUTION NO. 562

Proposing an amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

Agreed to by the House of Delegates, February 6, 2017

Agreed to by the Senate, February 17, 2017

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action.

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this section, so long as the surviving spouse does not remarry ~~and continues to occupy the real property as his or her principal place of residence~~. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.*

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not

be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

## **Chapter 771 Constitutional amendment; Transportation Funds (first reference).**

HOUSE JOINT RESOLUTION NO. 693

Proposing an amendment to the Constitution of Virginia by adding in Article X a section numbered 7-B, relating to special funds for transportation purposes.

Agreed to by the House of Delegates, February 25, 2017

Agreed to by the Senate, February 22, 2017

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article X a section numbered 7-B as follows:

ARTICLE X

TAXATION AND FINANCE

*Section 7-B. Transportation Funds.*

*(a) The General Assembly shall maintain permanent and separate Transportation Funds. The Commonwealth Transportation Fund, Transportation Trust Fund, Highway Maintenance and Operating Fund, any other Fund established by general law for transportation, and all subsidiary accounts and parts thereof, shall be deemed Transportation Funds for purposes of this section.*

*(b) There shall be deposited to the Transportation Funds all revenues dedicated to the Transportation Funds under provisions of general law, but excluding a general*

*appropriation law, in effect on January 1, 2018. However, the General Assembly may by general law, but excluding a general appropriation law, make changes to the revenues dedicated and paid into the Transportation Funds. Money in the Transportation Funds may be invested as authorized by law.*

*(c) The General Assembly shall appropriate Transportation Funds only for purposes of (i) financing, acquiring, constructing, improving, maintaining, and operating transportation systems in the Commonwealth, and all purposes incidental thereto; (ii) furthering the interests of the Commonwealth in highways, public transportation, railways, seaports, and airports; and (iii) providing for the operations of state agencies related to transportation.*

*(d) The General Assembly may borrow from Transportation Funds for other purposes only by an affirmative vote of two-thirds of the members elected to each house. The name of each member voting and how he voted shall be recorded in the journal of each house. Any amount borrowed shall be repaid to the Transportation Funds, with reasonable interest, not later than the end of the fourth full fiscal year following the effective date of the borrowing.*

## **Chapter 772 Constitutional amendment; legislative review of administrative rules (first reference).**

SENATE JOINT RESOLUTION NO. 295

Proposing an amendment to the Constitution of Virginia by adding in Article IV a section numbered 19, relating to legislative review of administrative rules.

Agreed to by the Senate, February 7, 2017

Agreed to by the House of Delegates, February 20, 2017

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article IV a section numbered 19 as follows:

ARTICLE IV

LEGISLATURE

*Section 19. Legislative review of administrative rules.*

*The General Assembly may review any administrative rule to ensure it is consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement, or enforce. After that review, the General Assembly may approve or reject, in whole or in part, any rule as provided by law. The approval or rejection of a rule by the General Assembly shall not be subject to gubernatorial veto under Article V, Section 6 of this Constitution.*

**Chapter 773 Constitutional amendment; property tax, exemption for flooding remediation, abatement, etc.**

SENATE JOINT RESOLUTION NO. 331

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax; exemption for flooding remediation, abatement, and resiliency.

Agreed to by the Senate, February 6, 2017

Agreed to by the House of Delegates, February 21, 2017

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to

exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

*(k) The General Assembly may by general law authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.*

## Chapter 781 Widewater Beach Subdivision; DCR to convey certain real property.

An Act to authorize the Department of Conservation and Recreation to convey certain real property to the Widewater Beach Subdivision Citizens Association, Inc.

[\[H 1691\]](#)

Approved April 5, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Conservation and Recreation, with approval of the Governor pursuant to § [10.1-109](#) of the Code of Virginia, is hereby authorized to convey two parcels of land located in or related to Widewater Beach Subdivision, Stafford County, Virginia, one parcel bounded by Woodrow Drive, Lake Drive, Mynell Street, and Hollywood Avenue and described as "A Portion of Tax Map 41, Parcel 2, 17.370 acres," and a portion of abandoned Hollywood Avenue, described as "Parcel 'A' .5134 acres" on that certain plat of survey labeled "PLAT SHOWING PARCEL 'A' ~ 0.5134 ACRES A PORTION OF HOLLYWOOD AVENUE AND THE ROAD RIGHTS-OF-WAY AT WIDEWATER BEACH SUBDIVISION," prepared by Marsh and Legge Land Surveyors, dated March 29, 2013, and recorded with the quitclaim deed dated November 19, 2013, and recorded in the Clerk's Office of the Stafford County Circuit Court as Instrument Number P0024040, to the Widewater Beach Subdivision Citizens Association, Inc., its successors and assigns. This conveyance shall be made without consideration and shall be for the purpose of conveying rights in certain parcels associated with Widewater Beach Subdivision that may have been conveyed to the Department of Conservation and Recreation as part of a larger transfer of land related to the future Widewater State Park by Instrument Number 060008150 in the aforesaid Clerk's Office.*

*§ 2. The conveyance shall comply with the requirements of the federal Land and Water Conservation Fund Act, 16 U.S.C. § 4601-4 et seq., and shall be subject to the approval of the National Park Service. Pursuant to Item 365 I and notwithstanding the provisions of Item C-25 and § 4-13.00 of the 2017 Appropriation Act, the Department of Conservation and Recreation is authorized to accept donated parcels of land contiguous to Widewater State Park as needed in order to meet the requirements of the Land and Water Conservation Fund Act and to obtain the approval of the National Park Service.*

*§ 3. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

## **Chapter 803 Renewable energy power purchase agreements; expands pilot program, sunset provision.**

An Act to amend and reenact § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, relating to pilot programs for third party power purchase agreements; institutions of higher education.

[\[H 2390\]](#)

Approved April 5, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 1. That the State Corporation Commission (Commission) shall conduct ~~a pilot program~~ *programs* under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § [56-594](#) of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement), subject to the following terms, conditions, and restrictions:

a. ~~The A pilot program shall be conducted within the certificated service territory of an each investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, which utility is hereafter referred to as the other than a utility described in subsection G of § [56-580](#) of the Code of Virginia ("Pilot Utility"), provided that within the certificated service territory of an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, nonprofit, private institutions of higher education as defined in § [23.1-100](#) of the Code of Virginia that are not being served by generation provided under subdivision A 5 of § [56-577](#) of the Code~~

*of Virginia shall be deemed to be customer-generators eligible to participate in the pilot program;*

b. The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 50 megawatts *for an investor-owned utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, or seven megawatts for an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.* Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of one percent of the *each* Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § [56-594](#) of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions of § [56-594](#), the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § [56-594](#) or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § [56-594](#), provided that an election not to net meter under § [56-594](#) shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act that incorporate provisions of § [56-594](#);

c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than one megawatt shall be eligible for a third party power purchase agreement under the pilot program; however, if the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of one megawatt shall not affect the limits on the capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts for non-residential customers set forth in subsection B of § [56-594](#) of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;

d. A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;

e. The customer under a third party power purchase agreement under the pilot program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § [56-594](#) of the Code of Virginia, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;

f. A third party power purchase agreement under the pilot program shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and

g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.

2. That the provisions of this act relating to a pilot program conducted within the certificated service territory of an investor-owned utility that was not bound by a rate case settlement adopted by the State Corporation Commission that extended in its application beyond January 1, 2002, shall expire on July 1, 2022. Such expiration shall not affect any power purchase agreement entered into by such a utility during the term of its pilot program.

## **Chapter 817 Coal combustion residuals unit; closure permit, assessments required.**

An Act to require evaluation of closure of coal combustion residuals units.

[\[S 1398\]](#)

Approved April 5, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That every owner or operator of a coal combustion residuals (CCR) surface impoundment, as that term is defined at 40 C.F.R. § 257.53, that is located within the Chesapeake Bay watershed shall conduct an assessment of each such CCR surface impoundment (CCR unit) regarding the closure of any such unit. At a minimum, an assessment shall, for each CCR unit:*

- 1. Identify and describe any groundwater or surface water pollution located at or stemming from the CCR unit, including pollution identified through past monitoring, and evaluate corrective measures to resolve such pollution. Any such evaluation shall address the issues set forth in 40 C.F.R. § 257.96(c) and shall describe and demonstrate how the proposed corrective measures will restore groundwater or surface water quality.*
- 2. Evaluate the clean closure of the CCR unit through excavation and responsible recycling or reuse of coal ash residuals by incorporating them into concrete or other products in a manner that prevents the release into the environment of the pollutants contained within the coal ash residuals. Such evaluation shall consider the feasibility of the onsite processing of a CCR unit for cementitious purposes as well as the feasibility of creating a processing facility or facilities to serve multiple CCR units, including offsite CCR units.*
- 3. Evaluate the clean closure of the CCR unit through the excavation and removal of coal ash residuals to dry, lined storage in an appropriately permitted and monitored landfill, including an analysis of the impact that any responsible recycling or reuse options would have on such excavation and removal.*
- 4. Demonstrate the long-term safety of the CCR unit, addressing any long-term risks posed by the proposed closure plan and siting, including risks related to extreme weather events, flooding, hurricanes, storm surges, and erosive forces.*

2. That no later than December 1, 2017, the owner or operator of any coal combustion residuals surface impoundment (CCR unit) subject to the assessment requirement of the first enactment of this act shall transmit such assessment to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources and to the Departments of Environmental Quality and Conservation and Recreation.

3. That notwithstanding the provisions of this act, the Director of the Department of Environmental Quality (the Director) shall suspend, delay, or defer the issuance of any permit to provide for the closure of any CCR unit until May 1, 2018, or the effective date of any legislation adopted during the 2018 Regular Session of the General Assembly that addresses the closure of a CCR unit in Virginia, whichever occurs later. In deciding whether to issue any such permit, the Director need not include or rely upon his review of any such assessment.

## Chapter 826 Combined sewer overflow outfalls; DEQ to identify owner of outfall discharging into Chesapeake Bay.

An Act to direct compliance with regulations of certain combined sewer overflow outfalls; Chesapeake Bay Watershed.

[\[H 2383\]](#)

Approved April 26, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality (DEQ) shall identify the owner or operator of any combined sewer overflow (CSO) outfall that discharges into the Chesapeake Bay Watershed.*

*§ 2. For any owner or operator not under a state order or decree related to the CSO as of January 1, 2017, DEQ shall, by July 1, 2018, determine what actions by the owner or operator are necessary to bring the CSO outfall into compliance with Virginia law, the federal Clean Water Act (33 U.S.C. § 1251 et seq.), and the Presumption Approach described in the CSO Control Policy adopted by the U.S. Environmental Protection Agency (EPA) at 59 F.R. 18688, unless a higher level of control is necessary to comply with a Total Maximum Daily Load (TMDL), and shall inform the owner or operator of the actions necessary.*

*§ 3. Any owner of a CSO outfall that discharges into the Chesapeake Bay Watershed not under a state order or decree related to the CSO as of January 1, 2017, shall, by July 1, 2023, initiate construction activities necessary to bring the CSO outfall into compliance and shall, by July 1, 2025, bring the CSO outfall into compliance with Virginia law, the federal Clean Water Act, and the Presumption Approach described in the EPA CSO Control Policy, unless a higher level of control is necessary to comply with a TMDL.*

*§ 4. Any owner of a CSO outfall that discharges into the Chesapeake Bay Watershed not under a state order or decree related to the CSO as of January 1, 2017, shall report annually to DEQ on its progress pursuant to § 3. No later than January 1 of each year, DEQ shall transmit, with any additional information the Director of DEQ determines to be appropriate, the CSO outfall progress reports to the Chairmen of the Senate Committee on Finance, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the House Committee on Agriculture,*

*Chesapeake and Natural Resources; the Virginia delegation to the Chesapeake Bay Commission; the Secretary of Natural Resources; and the Governor.*

## **Chapter 827 Combined sewer overflow outfalls; DEQ to identify owner of outfall discharging into Chesapeake Bay.**

An Act to direct compliance with regulations of certain combined sewer overflow outfalls; Chesapeake Bay Watershed.

[\[S 898\]](#)

Approved April 26, 2017

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality (DEQ) shall identify the owner or operator of any combined sewer overflow (CSO) outfall that discharges into the Chesapeake Bay Watershed.*

*§ 2. For any owner or operator not under a state order or decree related to the CSO as of January 1, 2017, DEQ shall, by July 1, 2018, determine what actions by the owner or operator are necessary to bring the CSO outfall into compliance with Virginia law, the federal Clean Water Act (33 U.S.C. § 1251 et seq.), and the Presumption Approach described in the CSO Control Policy adopted by the U.S. Environmental Protection Agency (EPA) at 59 F.R. 18688, unless a higher level of control is necessary to comply with a Total Maximum Daily Load (TMDL), and shall inform the owner or operator of the actions necessary.*

*§ 3. Any owner of a CSO outfall that discharges into the Chesapeake Bay Watershed not under a state order or decree related to the CSO as of January 1, 2017, shall, by July 1, 2023, initiate construction activities necessary to bring the CSO outfall into compliance and shall, by July 1, 2025, bring the CSO outfall into compliance with Virginia law, the federal Clean Water Act, and the Presumption Approach described in the EPA CSO Control Policy, unless a higher level of control is necessary to comply with a TMDL.*

*§ 4. Any owner of a CSO outfall that discharges into the Chesapeake Bay Watershed not under a state order or decree related to the CSO as of January 1, 2017, shall report annually to DEQ on its progress pursuant to § 3. No later than January 1 of each year, DEQ shall transmit, with any additional information the Director of DEQ determines to be appropriate, the CSO outfall progress reports to the Chairmen of the Senate Committee*

*on Finance, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the House Committee on Agriculture, Chesapeake and Natural Resources; the Virginia delegation to the Chesapeake Bay Commission; the Secretary of Natural Resources; and the Governor.*

## **Chapter 836 Budget Bill.**

### VIRGINIA ACTS OF ASSEMBLY - CHAPTER 836

An Act for all amendments to Chapter 780 of the 2016 Acts of Assembly, which appropriated funds for the [2016-18](#) Biennium, and to provide a portion of revenues for the two years ending respectively, on the thirtieth day of June 2017, and the thirtieth day of June, 2018, submitted by the Governor of Virginia to the presiding officer of each house of the General Assembly of Virginia in accordance with the provisions of § [2.2-1509](#), Code of Virginia.

[\[H 1500\]](#)

Approved April 28, 2017

Be it enacted by the General Assembly of Virginia:

1. That Items 1, 2, 4, 6, 7, 18, 24, 26, 27, 30, 32, 33, 36, 40, 42, 43, 44, 45, 47, 53, 59, 61, 63, 66, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 95, 97, 99, 100, 101, 105, 106, 108, 110, 114, 115, 116, 118, 119, 120, 121, 123, 124, 125, 129, 131, 132, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 146, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, 215, 216, 217, 219, 220, 221, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 239, 240, 242, 243, 244, 246, 247, 249, 250, 251, 252, 253, 254, 255, 256, 257, 261, 267, 269, 271, 273, 274, 275, 276, 277, 278, 279, 281, 284, 285, 287, 288, 289, 291, 292, 293, 294, 295, 296, 297, 298, 300, 302, 303, 304, 305, 306, 308, 309, 310, 311, 312, 313, 314, 315, 318, 319, 320, 324, 325, 327, 328, 329, 330, 331, 332, 333, 336, 337, 339, 340, 341, 342, 343, 345, 346, 348, 349, 350, 353, 354, 355, 356, 357, 359, 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 376, 378, 379, 380, 381, 382, 383, 386, 387, 391, 393, 394, 395, 396, 398, 401, 402, 405, 409, 410, 417, 419, 422, 423, 426, 428, 431, 432, 433, 434, 435, 436, 437, 438, 442, 447, 448, 449, 450, 451, 452, 453, 454,

455, 456, 457, 458, 465, 468, 469, 470, 471, 472, 475, 476, 478.20, 479, 480, 484, 486, 487, 488, 489, 490, 491, 493, § 2-0, C-6, C-25, C-26, C-44, C-50, C-52, C-52.10, C-53, C-54, § 3-1.01, § 3-2.03, § 3-5.03, § 3-5.06, § 3-5.11, § 4-0.01, § 4-1.02, § 4-2.03, § 4-4.01, § 4-5.01, § 4-5.02, § 4-5.03, §4-5.04, § 4-5.07, § 4-6.01, § 4-6.06, § 4-8.01, § 4-8.02, § 4-9.01, § 4-9.02, § 4-9.04, and § 4-14.00, of Chapter 780 of the 2016 Acts of Assembly be hereby amended and reenacted and that the cited chapter be further amended by adding Items 255.10, 472.05, 475.10, 475.20, 478.30, C-1.50, C-2.50, C-2.60, C-5.10, C-5.20, C-10.20, C-13.10, C-14.50, C-14.80, C-22.10, C-22.20, C-22.30, C-22.60, C-22.70, C-22.80, C-22.85, C-22.90, C-24.50, C-34.10, C-34.20, C-34.30, C-34.40, C-34.50, C-35.20, C-41.10, C-43.50, C-45.10, C-48.10, C-48.50, C-49.20, C-52.40, C-52.45, C-52.50, C-52.60, C-52.70, and § 3-3.02, § 3-3.03, § 3-5.15, § 3-5.17, § 3-5.18, § 3-5.19, § 4-8.03, and that the cited chapter be further amended by striking therefrom Items 24, 27, 472.10, and C-35.10.

42. §1. The following are hereby appropriated, for the current biennium, as set forth in succeeding parts, sections and items, for the purposes stated and for the years indicated:

A. The balances of appropriations made by previous acts of the General Assembly which are recorded as unexpended, as of the close of business on the last day of the previous biennium, on the final records of the State Comptroller; and

B. The public taxes and arrears of taxes, as well as moneys derived from all other sources, which shall come into the state treasury prior to the close of business on the last day of the current biennium. The term "moneys" means nontax revenues of all kinds, including but not limited to fees, licenses, services and contract charges, gifts, grants, and donations, and projected revenues derived from proposed legislation contingent upon General Assembly passage.

§ 2. Such balances, public taxes, arrears of taxes, and monies derived from all other sources as are not segregated by law to other funds, which funds are defined by the State Comptroller, pursuant to § [2.2-803](#), Code of Virginia, shall establish and constitute the general fund of the state treasury.

§ 3. The appropriations made in this act from the general fund are based upon the following:

## Uncodified Acts of Assembly - 2018

## **Chapter 1 Hospital licenses, certain; effective date.**

An Act to make certain hospital licenses effective until December 1, 2018.

[\[H 175\]](#)

Approved February 16, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, any license issued to an acute care hospital located in Patrick County that was valid on September 1, 2017, and remained valid on December 31, 2017, despite the closure of such hospital prior to December 31, 2017, shall continue to remain valid until December 31, 2018.*

*§ 2. That, notwithstanding the requirements of § [32.1-102.3](#) of the Code of Virginia and regulations of the Board of Health, the recommencement of any project by an acute care hospital located in Patrick County that occurs as the result of the closure of an existing licensed hospital for which a certificate was previously issued or for which no certificate was required at the time at which the project was first commenced, and the subsequent sale and reestablishment of such hospital where such recommencement of such project occurs within one year of the date on which such hospital closed, shall not constitute a project for the purposes of issuance of a certificate of public need, and no certificate of public need shall be required for the recommencement of such project. However, any conditions imposed on any such certificate issued to the existing licensed hospital prior to its closure, sale, or reestablishment shall continue to be in effect until such time as the conditions are satisfied or a new certificate is issued for the hospital.*

2. That the provisions of this act shall be effective retroactively to December 31, 2017.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 2 Hospital licenses, certain; effective date.**

An Act to make certain hospital licenses effective until December 1, 2018.

[\[S 866\]](#)

Approved February 16, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any other provision of law, any license issued to an acute care hospital located in Patrick County that was valid on September 1, 2017, and remained valid on December 31, 2017, despite the closure of such hospital prior to December 31, 2017, shall continue to remain valid until December 31, 2018.*

*§ 2. That, notwithstanding the requirements of § [32.1-102.3](#) of the Code of Virginia and regulations of the Board of Health, the recommencement of any project by an acute care hospital located in Patrick County that occurs as the result of the closure of an existing licensed hospital for which a certificate was previously issued or for which no certificate was required at the time at which the project was first commenced, and the subsequent sale and reestablishment of such hospital where such recommencement of such project occurs within one year of the date on which such hospital closed, shall not constitute a project for the purposes of issuance of a certificate of public need, and no certificate of public need shall be required for the recommencement of such project. However, any conditions imposed on any such certificate issued to the existing licensed hospital prior to its closure, sale, or reestablishment shall continue to be in effect until such time as the conditions are satisfied or a new certificate is issued for the hospital.*

2. That the provisions of this act shall be effective retroactively to December 31, 2017.

3. That an emergency exists and this act is in force from its passage.

## **Chapter 7 License plates, special; BELIEVING IN THE FUTURE OF AGRICULTURE SINCE 1927.**

An Act to authorize the issuance of special license plates for members and supporters of the Virginia FFA Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA; fees.

[\[H 761\]](#)

Approved February 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for members and supporters of the Virginia Future Farmers of*

*America (FFA) Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for members and supporters of the Virginia FFA Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia FFA Foundation Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia FFA Foundation and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 8 Delegate Lacey E. Putney Memorial Highway; designating certain portion of U.S. Route 221.**

An Act to designate a portion of U.S. Route 221 the "Delegate Lacey E. Putney Memorial Highway."

[\[H 1007\]](#)

Approved February 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 221 between the corporate limits of the Town of Bedford and the corporate limits of the City of Lynchburg is hereby designated the "Delegate Lacey E. Putney Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this*

*highway or any portions thereof.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 111 Battlefields; entry into an agreement to transfer certain easements.**

An Act to direct the entry into an agreement to transfer certain battlefield easements.

[\[H 61\]](#)

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Secretary of Natural Resources, on behalf of the Commonwealth, shall endeavor to enter into a memorandum of understanding, memorandum of agreement, or similar protocol with the United States to accomplish and expedite the transfer or assignment, in such instances and upon such terms as the Secretary may deem appropriate, of the Commonwealth's easement interests in battlefield lands located within the boundaries of federal battlefield parks. By October 1, 2018, the Secretary shall report on the status of this protocol to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources.*

## **Chapter 121 Sgt. Lawrence G. Sprader, Jr., Memorial Bridge; designating as the Middle Road over Interstate 295.**

An Act to designate the bridge on Middle Road over Interstate 295 in Prince George County the "Sgt. Lawrence G. Sprader, Jr., Memorial Bridge."

[\[H 1159\]](#)

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The bridge on Middle Road over Interstate 295 in Prince George County is hereby*

*designated the "Sgt. Lawrence G. Sprader, Jr., Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 146 Child care providers; criminal history background check, sunset and contingency.**

An Act to amend and reenact the fourth and fifth enactments of Chapter 189 and the fourth and fifth enactments of Chapter 751 of the Acts of Assembly of 2017, relating to child care providers; criminal history background check; sunset and contingency.

[\[H 873\]](#)

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1. That the fourth and fifth enactments of Chapter 189 of the Acts of Assembly of 2017 are amended and reenacted as follows:
- 4. That the provisions of this act shall expire on July 1, ~~2018~~ 2020.**
- 5. That if any provision of the federal Child Care and Development Block Grant Act of 2014 establishing requirements for national fingerprint-based criminal history background checks for (i) employees, applicants for employment, volunteers at or applicants to serve as volunteers at any licensed family day system, registered family day home, family day home approved by a family day system, child day center exempt from licensure pursuant to § [63.2-1716](#) of the Code of Virginia; (ii) applicants for licensure as a family day system, registration as a family day home or approval as a family day home by a family day system, agents of such applicants, and adults living in such family day homes; and (iii) individuals who apply for or enter into a contract with the Department of Social Services under which a child day center, family day home, or child day program will provide child care services funded by the Child Care and Development Block Grant Act is repealed prior to July 1, ~~2018~~ 2020, the provisions of this act enacting such requirement shall expire upon the date such provision is repealed.**
2. That the fourth and fifth enactments of Chapter 751 of the Acts of Assembly of 2017 are amended and reenacted as follows:
- 4. That the provisions of this act shall expire on July 1, ~~2018~~ 2020.**

5. That if any provision of the federal Child Care and Development Block Grant Act of 2014 establishing requirements for national fingerprint-based criminal history background checks for (i) employees, applicants for employment, volunteers at or applicants to serve as volunteers at any licensed family day system, registered family day home, family day home approved by a family day system, child day center exempt from licensure pursuant to § [63.2-1716](#) of the Code of Virginia; (ii) applicants for licensure as a family day system, registration as a family day home or approval as a family day home by a family day system, agents of such applicants, and adults living in such family day homes; and (iii) individuals who apply for or enter into a contract with the Department of Social Services under which a child day center, family day home, or child day program will provide child care services funded by the Child Care and Development Block Grant Act is repealed prior to July 1, ~~2018~~ 2020, the provisions of this act enacting such requirement shall expire upon the date such provision is repealed.

## Chapter 157 License plates, special; KEEPING THE LIGHTS ON.

An Act to authorize the issuance of special license plates for supporters of Virginia's electric cooperatives bearing the legend KEEPING THE LIGHTS ON; fees.

[\[H 1535\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of Virginia's electric cooperatives bearing the legend KEEPING THE LIGHTS ON; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of Virginia's electric cooperatives bearing the legend KEEPING THE LIGHTS ON.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia, Maryland & Delaware*

*Association of Electric Cooperatives (VMDAEC) Education Scholarship Fund established within the Department of Accounts. These funds shall be paid annually to the VMDAEC Scholarship Foundation and used to support its activities and programs to award scholarships to students from the member electric cooperatives in Virginia to attend trade school or an institution of higher education. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 159 License plates, special; Va. FFA.**

An Act to authorize the issuance of special license plates for members and supporters of the Virginia FFA Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA; fees.

[\[S 446\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for members and supporters of the Virginia Future Farmers of America (FFA) Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for members and supporters of the Virginia FFA Foundation bearing the legend WE ARE THE BIRTHPLACE OF THE FFA.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia FFA Foundation Fund established within the Department of Accounts. These funds shall be paid annually to*

*the Virginia FFA Foundation and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 162 License plates, special; ALZHEIMER'S ASSOCIATION.**

An Act to authorize the issuance of special license plates for supporters of the Alzheimer's Association bearing the legend ALZHEIMER'S ASSOCIATION; fees.

[\[S 701\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of the Alzheimer's Association bearing the legend ALZHEIMER'S ASSOCIATION; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Alzheimer's Association bearing the legend ALZHEIMER'S ASSOCIATION.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Alzheimer's Association Fund established within the Department of Accounts. These funds shall be paid annually to the Alzheimer's Association and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

## **Chapter 163 Trooper Berke Bates Bridge; designating as bridge on Route 612 over I-64 in New Kent County.**

An Act to designate the bridge on Route 612 (Airport Road) over Interstate 64 at mile marker 209 in the County of New Kent the "Trooper Pilot Berke Bates Memorial Bridge."

[\[S 941\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The bridge on Route 612 (Airport Road) over Interstate 64 at mile marker 209 in the County of New Kent is hereby designated the "Trooper Pilot Berke Bates Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.*

## **Chapter 164 Venue in criminal cases; concurrent jurisdiction, obsolete provisions.**

An Act to amend and reenact §§ [16.1-69.8](#), [16.1-69.31](#), [16.1-69.46](#), [17.1-515.1](#), [19.2-45](#), and [19.2-244](#) of the Code of Virginia and to repeal § [16.1-69.13](#), Chapter 5 (§§ [16.1-70](#) through [16.1-75](#)) of Title 16.1, and § [17.1-515.2](#) of the Code of Virginia, Chapter 117 of the Acts of Assembly of 1946, and Chapter 199 of the Acts of Assembly of 1960, relating to venue in criminal cases; concurrent jurisdiction; obsolete provisions.

[\[H 77\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ [16.1-69.8](#), [16.1-69.31](#), [16.1-69.46](#), [17.1-515.1](#), [19.2-45](#), and [19.2-244](#) of the Code of Virginia are amended and reenacted as follows:

§ [16.1-69.8](#). Existing courts continued and redesignated; exception.

The present system of courts not of record is continued as follows on and after July 1, 1973:

(a) The county court in each county shall continue as the general district court of such county with the same powers and with territorial jurisdiction over such county and over any city within the county for which a municipal court with general civil or criminal jurisdiction or separate general district court has not been established.

(b) The municipal court or courts in each city, ~~excluding courts of limited jurisdiction established pursuant to Chapter 5 (§ [16.1-70](#) et seq.) of this title and~~ juvenile and domestic relations courts, shall continue as the general district court of the city with the same powers and territorial jurisdiction over such city; provided that in the case of more than one such municipal court in operation in any city, all such courts shall be merged on July 1, 1973, and their powers and territorial jurisdiction merged in the general district court.

(c) The juvenile and domestic relations court of each county and city shall continue as the juvenile and domestic relations district court of the county or city with the same powers and territorial jurisdiction as heretofore provided.

(d) The municipal court of any town and/or other court of any town having general civil and criminal jurisdiction however called shall be abolished and all jurisdiction and power conferred upon any such court shall pass to and be exercised by the district courts having jurisdiction over the county wherein the town is located.

§ [16.1-69.31](#). The duties of the Judicial Council.

The duties of the Judicial Council with respect to the district court system shall include those set forth in §§ [16.1-69.6](#) through [16.1-69.13](#) [16.1-69.12](#), and such other duties as may be assigned to the Council by law.

§ [16.1-69.46](#). How salaries payable.

All salaries determined according to the provisions of §§ [16.1-69.44](#) and [16.1-69.45](#) and any salary payment required by § [16.1-69.13](#) ~~or~~ [16.1-69.37](#) shall be payable by the Commonwealth, except any supplements paid to district court employees. All annual salaries shall be paid in semimonthly installments within the limits fixed by the Committee.

§ [17.1-515.1](#). Territorial jurisdiction of the Circuit Court for the City of Lynchburg.

The territorial jurisdiction of the Circuit Court for the City of Lynchburg ~~shall be the same with that of the Corporation Court for the city and~~ shall extend to the corporate limits of the city and to a space of one mile without and around the city limits, except that the same shall not extend further into the County of Amherst than the corporate limits. Any judgment, order, or decree of the Circuit Court for the City of Lynchburg heretofore made

in any case in which the court would have had jurisdiction had this section then been in operation shall have the same effect as if it had been at that time in force.

§ [19.2-45](#). Powers enumerated.

A magistrate shall have the following powers only:

- (1) To issue process of arrest in accord with the provisions of §§ [19.2-71](#) to [19.2-82](#) of the Code;
- (2) To issue search warrants in accord with the provisions of §§ [19.2-52](#) to [19.2-60](#) of the Code;
- (3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;
- (4) The same power to issue warrants and subpoenas as is conferred upon district courts and as limited by the provisions of §§ [19.2-71](#) through [19.2-82](#). A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court ~~or any court of limited jurisdiction continued in operation pursuant to § [16.1-70.1](#)~~;
- (5) To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § [16.1-80](#);
- (6) To administer oaths and take acknowledgments;
- (7) To act as conservators of the peace;
- (8), (9) [Repealed.]
- (10) To perform such other acts or functions specifically authorized by law.

§ [19.2-244](#). Venue in general.

A. Except as otherwise provided by law, the prosecution of a criminal case shall be had in the county or city in which the offense was committed. Except as to motions for a

change of venue, all other questions of venue must be raised before verdict in cases tried by a jury and before the finding of guilty in cases tried by the court without a jury.

B. If an offense has been committed within the Commonwealth and it cannot readily be determined within which county or city the offense was committed, venue for the prosecution of the offense may be had in the county or city (i) in which the defendant resides; (ii) if the defendant is not a resident of the Commonwealth, in which the defendant is apprehended; or (iii) if the defendant is not a resident of the Commonwealth and is not apprehended in the Commonwealth, in which any related offense was committed.

C. *The courts of a locality shall have concurrent jurisdiction with the courts of any other locality adjoining such locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department thereof that are located in the adjoining locality.*

2. That § [16.1-69.13](#), Chapter 5 (§§ [16.1-70](#) through [16.1-75](#)) of Title 16.1, and § [17.1-515.2](#) of the Code of Virginia are repealed.

3. That Chapter 117 of the Acts of Assembly of 1946 and Chapter 199 of the Acts of Assembly of 1960 are repealed.

## **Chapter 206 Hydroelectric plant; revenue sharing agreement among certain localities.**

An Act to require a hydroelectric plant revenue sharing agreement among certain localities.

[\[S 780\]](#)

Approved March 5, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise, and the City of Norton shall enter into a revenue sharing agreement pursuant to the provisions of § [15.2-1301](#) of the Code of Virginia, for any electric storage or generation facility constructed pursuant to clause (v) of subdivision A 6 of § [56-585.1](#) of the Code of Virginia whereby the host locality's revenue from such facility shall be distributed to the other localities on the basis of the following formula: Each respective locality shall receive a percentage of the revenue as follows: (i) 16 percent each for the Counties of*

*Tazewell and Wise; (ii) 12 percent each for the Counties of Buchanan, Lee, Russell, and Scott; (iii) 10 percent for Dickenson County; and (iv) four percent for the City of Norton. In addition, the host locality shall receive an additional share of six percent. The agreement shall provide that any direct costs of infrastructure improvements incurred by the host locality for purposes of the facility shall be allocated among the localities in the same proportion as the revenues from the facility. Notwithstanding the provisions of subsection A of § [15.2-1301](#), the term of such an agreement shall be perpetual.*

## **Chapter 232 Hydroelectric plant; revenue sharing agreement among certain localities.**

An Act to require a hydroelectric plant revenue sharing agreement among certain localities.

[\[H 1555\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Counties of Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise, and the City of Norton shall enter into a revenue sharing agreement pursuant to the provisions of § [15.2-1301](#) of the Code of Virginia, for any electric storage or generation facility constructed pursuant to clause (v) of subdivision A 6 of § [56-585.1](#) of the Code of Virginia whereby the host locality's revenue from such facility shall be distributed to the other localities on the basis of the following formula: Each respective locality shall receive a percentage of the revenue as follows: (i) 16 percent each for the Counties of Tazewell and Wise; (ii) 12 percent each for the Counties of Buchanan, Lee, Russell, and Scott; (iii) 10 percent for Dickenson County; and (iv) four percent for the City of Norton. In addition, the host locality shall receive an additional share of six percent. The agreement shall provide that any direct costs of infrastructure improvements incurred by the host locality for purposes of the facility shall be allocated among the localities in the same proportion as the revenues from the facility. Notwithstanding the provisions of subsection A of § [15.2-1301](#), the term of such an agreement shall be perpetual.*

## **Chapter 235 Delegate Lacey E. Putney Memorial Highway; designating certain portion of U.S. Route 221.**

An Act to designate a portion of U.S. Route 221 the "Delegate Lacey E. Putney Memorial Highway."

[\[S 363\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That portion of U.S. Route 221 between the corporate limits of the Town of Bedford and the corporate limits of the City of Lynchburg is hereby designated the "Delegate Lacey E. Putney Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 248 Assisted living facilities; regulations governing staff.**

An Act to require the State Board of Social Services to amend certain regulations related to staffing of assisted living facilities providing care for adults with serious cognitive impairments.

[\[H 1439\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Social Services shall amend regulations governing staffing of assisted living facilities that provide care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare to allow an exception to the requirements that at least two direct care staff members who are awake, on*

*duty, and responsible for the care and supervision of residents be in each building at all times when residents are present for assisted living facilities that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments.*

**2. That an emergency exists and this act is in force from its passage.**

**3. That the Board of Social Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

**4. That the Commissioner of Social Services shall not enforce the provisions of 22VAC40-73-1020, as it shall become effective, in cases involving assisted living facilities that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments.**

## **Chapter 249 Workers' compensation; Uninsured Employer's Fund, financing tax.**

An Act to repeal the second enactment of Chapter 219 of the Acts of Assembly of 2009, as amended by Chapter 647 of the Acts of Assembly of 2012 and by Chapter 449 of the Acts of Assembly of 2015, relating to financing the Uninsured Employer's Fund established under the Virginia Workers' Compensation Act.

[\[H 82\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 219 of the Acts of Assembly of 2009, as amended by Chapter 647 of the Acts of Assembly of 2012 and by Chapter 449 of the Acts of Assembly of 2015, is repealed.

## **Chapter 251 Businesses; central filing of assumed or fictitious name, etc.**

An Act to amend and reenact the second enactment of Chapter 594 of the Acts of Assembly of 2017, relating to transacting business under an assumed name; central filing of assumed or fictitious name certificates; effective date.

[\[H 170\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 594 of the Acts of Assembly of 2017 is amended and reenacted as follows:
2. That the provisions of this act shall become effective on ~~May 1, 2019~~ *January 1, 2020*.

### **Chapter 253 State Corporation Commission; electronic registration system.**

An Act to amend and reenact § 2 of Chapter 311 of the Acts of Assembly of 2014, relating to the duties of the Clerk of the State Corporation Commission; electronic registration system.

[\[H 238\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 2 of Chapter 311 of the Acts of Assembly of 2014 is amended and reenacted as follows:
- § 2. Beginning not later than ~~July 1, 2018~~ *January 1, 2020*, the Commission shall limit the submission of data and documents on behalf of a business entity through its eFile electronic registration system to any user (i) designated to make such submissions on behalf of the business entity and (ii) whose identity has been established satisfactorily through a verification process.

### **Chapter 278 Child care providers; criminal history background check, sunset and contingency.**

An Act to amend and reenact the fourth and fifth enactments of Chapter 189 and the fourth and fifth enactments of Chapter 751 of the Acts of Assembly of 2017, relating to child care providers; criminal history background check; sunset and contingency.

[\[S 121\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That the fourth and fifth enactments of Chapter 189 of the Acts of Assembly of 2017 are amended and reenacted as follows:

4. That the provisions of this act shall expire on July 1, ~~2018~~ 2020.

5. That if any provision of the federal Child Care and Development Block Grant Act of 2014 establishing requirements for national fingerprint-based criminal history background checks for (i) employees, applicants for employment, volunteers at or applicants to serve as volunteers at any licensed family day system, registered family day home, family day home approved by a family day system, child day center exempt from licensure pursuant to § [63.2-1716](#) of the Code of Virginia; (ii) applicants for licensure as a family day system, registration as a family day home or approval as a family day home by a family day system, agents of such applicants, and adults living in such family day homes; and (iii) individuals who apply for or enter into a contract with the Department of Social Services under which a child day center, family day home, or child day program will provide child care services funded by the Child Care and Development Block Grant Act is repealed prior to July 1, ~~2018~~ 2020, the provisions of this act enacting such requirement shall expire upon the date such provision is repealed.

2. That the fourth and fifth enactments of Chapter 751 of the Acts of Assembly of 2017 are amended and reenacted as follows:

4. That the provisions of this act shall expire on July 1, ~~2018~~ 2020.

5. That if any provision of the federal Child Care and Development Block Grant Act of 2014 establishing requirements for national fingerprint-based criminal history background checks for (i) employees, applicants for employment, volunteers at or applicants to serve as volunteers at any licensed family day system, registered family day home, family day home approved by a family day system, child day center exempt from licensure pursuant to § [63.2-1716](#) of the Code of Virginia; (ii) applicants for licensure as a family day system, registration as a family day home or approval as a family day home by a family day system, agents of such applicants, and adults living in such family day homes; and (iii) individuals who apply for or enter into a contract with the Department of Social Services under which a child day center, family day home, or child day program will provide child care services funded by the Child Care and Development Block Grant Act is repealed prior to July 1, ~~2018~~ 2020, the provisions of this

act enacting such requirement shall expire upon the date such provision is repealed.

## **Chapter 285 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2018; created.**

An Act to authorize the issuance of bonds, in an amount up to \$21,000,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[H 766\]](#)

Approved March 9, 2018

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2018."*

*§ 2. Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$21,000,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>Norfolk State University</i>	<i>Construct Residence Housing</i>	<i>\$10,000,000</i>
<i>The College of William and Mary in Virginia</i>	<i>Renovate Dormitories: Green &amp; Gold Phase</i>	<i>\$11,000,000</i>
<i>Total</i>		<i>\$21,000,000</i>

*§ 3. Application of proceeds*

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

*§ 4. Details, sale of bonds and BANs.*

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs*

*shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such*

*delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues*

*Each institution of higher education named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A*

*Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by*

*the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

**§ 9. Security for bonds and BANs.**

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

**§ 10. Exemption of interest from tax.**

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may*

*be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

**§ 11. Refunding bonds and BANs.**

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia.*

*Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12. Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability**

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 296 Electric utility regulation; grid modernization, energy efficiency.**

An Act to amend and reenact §§ [56-234](#), [56-265.1](#), [56-466.2](#), [56-576](#), [56-585.1](#), [56-585.1:1](#), [56-585.1:2](#), [56-599](#), and [56-600](#) of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-585.1:4, relating to electric utility regulation; grid modernization; energy efficiency programs; schedule for rate review proceedings; Transitional Rate Period; energy storage facilities; electric distribution grid transformation projects; wind and solar generation facilities; coal combustion by-product management; pilot programs; undergrounding electrical transmission lines; fuel factor; bill

credits; rate reductions attributable to changes in federal tax law; relocation of cable facilities; integrated resource planning; natural gas utility efficiency programs.

[\[S 966\]](#)

Approved March 9, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ [56-234](#), [56-265.1](#), [56-466.2](#), [56-576](#), [56-585.1](#), [56-585.1:1](#), [56-585.1:2](#), [56-599](#), and [56-600](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-585.1:4 as follows:

§ [56-234](#). Duty to furnish adequate service at reasonable and uniform rates.

A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding any other provision of law:

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. *The Commission's final order regarding any petition filed by an investor-owned electric utility for approval of a voluntary rate or rate design test or experiment shall be entered the earlier of not more than six months after the filing of the petition or not more than three months after the date of any evidentiary hearing concerning such petition.* The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § [56-236](#). But, subject to the provisions of § [56-232.1](#), nothing contained herein or in § [56-481.1](#) shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any municipal corporation or to the state or federal government. The provisions hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any such proceeding.

C. The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.

§ [56-265.1](#). Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § [56-265.4:4](#).

(b) "Public utility" means any company ~~which~~ *that* owns or operates facilities within the Commonwealth of Virginia for the generation, transmission, *storage*, or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; ~~however.~~ *As used in this definition, a facility for the storage of electric energy for sale includes one or more pumped hydroelectricity generation and storage facilities located in the coalfield region of Virginia as described in § [15.2-6002](#).* However, the term "public utility" ~~shall~~ *does* not include any of the following:

(1) Except as otherwise provided in § [56-265.3:1](#), any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ [56-232](#) et seq.) and 17 (§ [56-509](#) et seq.) ~~of this title~~ and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a

certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § [56-265.4:5](#), are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § [56-265.4:5](#). Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ [15.2-5100](#) et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff

may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § [13.1-620](#) and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means

any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

(11) A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § [56-265.4:6](#).

(12) *A company, other than an entity organized as a public service company, that provides storage of electric energy that is not for sale to the public.*

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § [45.1-179.2](#), § [56-466.2](#). Undergrounding existing overhead distribution lines; relocation of facilities of cable operator.

When an investor-owned incumbent electric utility proposes to improve electric service reliability pursuant to clause (iv) of subdivision A 6 of § [56-585.1](#) by installing new underground facilities to replace the utility's existing overhead distribution tap lines, if the utility owns the poles from which the existing overhead distribution tap lines are to be relocated and any cable operator of a cable television system, as those terms are defined in § [15.2-2108.19](#), has also attached its facilities to such poles, the utility shall provide written notice to the cable operator of the utility's intention to relocate the overhead distribution tap lines ~~and to abandon or remove such poles~~ not less than 90 days prior to relocating the utility's overhead distribution lines. The cable operator shall notify the utility within 45 days of the notice of relocation whether the cable operator will relocate its facilities underground *or request to remain overhead in accordance with the provisions set forth herein*. If the cable operator elects to relocate its facilities underground, in such notice the cable operator may request that the utility use commercially reasonable efforts to negotiate a common shared underground easement for the facilities to be located underground of the utility and the cable operator. The cable operator shall be responsible to negotiate any additional easements that it may require. If the cable operator elects to relocate its facilities underground, the cable operator may participate with the utility in a joint relocation of the overhead lines to underground or may engage its own contractors to undertake its relocation work if it deems it appropriate to do so. ~~If the cable operator may legally retain the poles that the utility intends to abandon and the cable operator wishes for its facilities to remain attached to the poles, the utility may convey such poles "as-is" and "where-is" to the cable operator at its depreciated cost less the estimated cost of removal, provided the cable operator assumes all liability for the pole and obtains an easement from the property owner for the use thereof on or before the date the poles are conveyed to the cable operator. In all cases, the cable operator shall~~

~~be responsible for all costs related to the relocation of cable facilities and, unless otherwise agreed between the utility and the cable operator, the cable operator shall cease all use of such poles and shall relocate or remove its facilities from the poles on or before 90 days after the utility gives written notice to the cable operator that it has relocated its distribution tap lines underground. The utility shall not abandon or remove the poles that the utility owns until the cable operator completes the relocation or removal of its facilities or 90 days after the completion of the relocation of the utility overhead distribution lines, whichever first occurs. *If the cable operator does not elect to relocate its facilities underground and requests to maintain its facilities overhead, the utility may either (i) convey such poles "as-is" and "where-is" to the cable operator at its depreciated cost less the estimated cost of removal, provided that the cable operator may legally retain the poles that the utility intends to abandon and assumes all liability for the poles conveyed or (ii) retain ownership of its poles and allow the cable operator's existing overhead facilities to remain attached, in which case the utility shall maintain the pole in accordance with prudent utility standards, provided that the cable operator shall continue to pay its pole attachment fees and otherwise comply with its contractual obligations pursuant to the applicable pole attachment agreement. In all cases, the cable operator shall be responsible for all costs related to the relocation or maintenance of its facilities.*~~

*In instances in which an investor-owned incumbent electric utility continues to own and maintain its utility poles after the overhead distribution lines of the utility formerly on such poles have been placed underground pursuant to the foregoing provisions, then for purposes of any agreement or ordinance with respect to a cable franchise under § [15.2-2108.20](#) or [15.2-2108.21](#), the utility shall not be deemed to have converted to underground.*

§ [56-576](#). Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing

educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § [56-585](#); (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § [56-587](#), which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ [56-231.15](#) et seq.).

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Curtailment" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

*"Electric distribution grid transformation project" means a project associated with electric distribution infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate the integration of utility-owned or customer-owned renewable electric generation resources with the utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric distribution grid security, customer*

*service, or energy efficiency and conservation, including advanced metering infrastructure; intelligent grid devices for real time system and asset information; automated control systems for electric distribution circuits and substations; communications networks for service meters; intelligent grid devices and other distribution equipment; distribution system hardening projects for circuits, other than the conversion of overhead tap lines to underground service, and substations designed to reduce service outages or service restoration times; physical security measures at key distribution substations; cyber security measures; energy storage systems and microgrids that support circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED street light conversions; and new customer information platforms designed to provide improved customer access, greater service options, and expanded access to energy usage information.*

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be

connected to a customer's wiring on the customer's side of the inter-connection without the customer's expressed consent.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

"Independent system operator" means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if, ~~among other factors,~~ *the Commission determines that the net present value of the benefits exceeds the net present value of the costs as determined by the Commission upon consideration not less than any three* of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall ~~not be rejected based solely on the results of a single test~~ *approved if the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the four tests*. In addition, an energy efficiency program may be deemed to be "in the public interest" if the program provides measurable and verifiable energy savings to low-income customers or elderly customers.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Municipality" means a city, county, town, authority, or other political subdivision of the Commonwealth.

"New underground facilities" means facilities to provide underground distribution service. "New underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted devices, connections at customer meters, and transition terminations from existing overhead distribution sources.

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power.

Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

"Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined heat and power generation facility that is (a) constructed, or renovated and improved, after January 1, 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water or air for residential, commercial, institutional, or industrial purposes.

"Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial, institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per megawatt hour.

"Renovated and improved facility" means a facility the components of which have been upgraded to enhance its operating efficiency.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Revenue reductions related to energy efficiency programs" means reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less the amount by which such non-fuel reductions in total revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.

*"Rooftop solar installation" means a distributed electric generation facility, storage facility, or generation and storage facility utilizing energy derived from sunlight, with a rated capacity of not less than 50 kilowatts, that is installed on the roof structure of an incumbent electric utility's commercial or industrial class customer, including host sites on commercial buildings, multifamily residential buildings, school or university buildings, and buildings of a church or religious body.*

"Solar energy system" means a system of components that produces heat or electricity, or both, from sunlight.

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

§ [56-585.1](#). Generation, distribution, and transmission rates after capped rates terminate or expire.

A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ [56-232](#) et seq.), except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such

return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average. The peer group of the utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct ~~biennial~~ reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. ~~The first such review shall utilize~~ Pursuant to subsection A of § [56-585.1:1](#), the

*Commission shall conduct a review for a Phase I Utility in 2020, utilizing the ~~two~~ three successive 12-month test periods beginning January 1, 2017, and ending December 31, ~~2010~~ 2019. However, the Commission may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31, 2011, Thereafter, reviews for a Phase II Utility, will be on a triennial basis with subsequent proceedings utilizing the ~~two~~ three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. Pursuant to subsection A of § [56-585.1:1](#), the Commission shall conduct a review for a Phase II Utility in 2021, utilizing the four successive 12-month test periods beginning January 1, 2017, and ending December 31, 2020, with subsequent reviews on a triennial basis utilizing the three successive 12-month test periods ending December 31 immediately preceding the year in which such review proceeding is conducted. All such reviews occurring after December 31, 2017, shall be referred to as triennial reviews.* For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

2. Subject to the provisions of subdivision 6, *the fair rates-rate* of return on common equity applicable separately to the generation and distribution services of such utility, and for the two such services combined, *and for any rate adjustment clauses approved under subdivision 5 or 6*, shall be determined by the Commission during each such ~~biennial~~ triennial review, as follows:

a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such ~~biennial~~ triennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

b. In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a

majority of the utilities remaining in such peer group. In its final order regarding such ~~biennial~~-*triennial* review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission and distribution services whose facilities and operations are subject to state public utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such ~~biennial~~-*triennial* review, and (iv) it is not an affiliate of the utility subject to such ~~biennial~~-*triennial* review.

c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's combined rate of return based on the Commission's consideration of the utility's performance.

d. In any Current Proceeding, the Commission shall determine whether the Current Return has increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. If so, the Commission may conduct an additional analysis of whether it is in the public interest to utilize such Current Return for the Current Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall be made without regard to any enhanced rate of return on common equity awarded pursuant to the provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration of overall economic conditions, the level of interest rates and cost of capital with respect to business and industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods and services, the effect on the utility's ability to provide adequate service and to attract capital if less than the Current Return were utilized for the Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the Current Return for the Current Proceeding then pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a

percentage at least equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. For purposes of this subdivision:

"Current Proceeding" means any proceeding conducted under any provisions of this subsection that require or authorize the Commission to determine a fair combined rate of return on common equity for a utility and that will be concluded after the date on which the Commission determined the Initial Return for such utility.

"Current Return" means the minimum fair combined rate of return on common equity required for any Current Proceeding by the limitation regarding a utility's peer group specified in subdivision 2 a.

"Initial Return" means the fair combined rate of return on common equity determined for such utility by the Commission on the first occasion after July 1, 2009, under any provision of this subsection pursuant to the provisions of subdivision 2 a.

e. In addition to other considerations, in setting the return on equity within the range allowed by this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

f. The determination of such returns shall be made by the Commission on a stand-alone basis, and specifically without regard to any return on common equity or other matters determined with regard to facilities described in subdivision 6.

g. If the combined rate of return on common equity earned by the generation and distribution services is no more than 50 basis points above or below the return as so determined or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points above or below the return as so determined, such combined return shall not be considered either excessive or insufficient, respectively. However, for any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return as so determined, whether or not such combined return is within 70 basis points of the return as so determined, the utility may petition the Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this section. *The provisions of this subdivision are subject to the provisions of subdivision 8.*

h. Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant to this section shall not be considered for the purpose of determining the utility's earnings in any subsequent ~~biennial~~ *triennial* review.

3. Each such utility shall make a ~~biennial~~ *triennial* filing by March 31 of every ~~other~~ *third* year, ~~beginning in 2011, with such filings commencing for a Phase I Utility in 2020, and such filings commencing for a Phase II Utility in 2021,~~ consisting of the schedules contained in the Commission's rules governing utility rate increase applications; ~~however, if the Commission elects to stagger the dates of the biennial reviews of utilities as provided in subdivision 1, then each Phase I Utility shall commence biennial filings in 2011 and each Phase II Utility shall commence biennial filings in 2012.~~ Such filing shall encompass the ~~two~~ *three* successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, *except that the filing for a Phase II Utility in 2021 shall encompass the four successive 12-month test periods ending December 31, 2020,* and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing. If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented ~~pursuant to subdivision 5 or those~~ related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future ~~biennial~~ *triennial* review proceedings. ~~A Phase I Utility shall delay for one year the filing of its biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books for future recovery any costs incurred during calendar year 2011, other than as provided in subdivision 7 or § 56-249.6, and its subsequent biennial filing shall be made by March 31, 2016, and every two years thereafter.~~

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission

entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

a. Incremental costs described in clause (vi) of subsection B of § [56-582](#) incurred between July 1, 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such costs consistent with an order of the Commission entered under clause (vi) of subsection B of § [56-582](#). The Commission shall approve such a petition allowing the recovery of such costs that comply with the requirements of clause (vi) of subsection B of § [56-582](#);

b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs. The Commission shall approve such a petition if it finds that the program is in the public interest; provided that the Commission shall allow the recovery of such costs as it finds are reasonable;

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision 2. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § [56-249.6](#) that are directly attributable to energy efficiency programs.

None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any *large general service* customer that has a verifiable history of having used more than 10 megawatts of demand from a single-meter of delivery. Nor shall any of the costs of new energy efficiency programs of an

electric utility, including recovery of revenue reductions, be incurred by any large general service customer as defined herein that has notified the utility of non-participation in such energy efficiency program or programs. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery. Non-participation in energy efficiency programs shall be allowed by the Commission if the large general service customer has, at the customer's own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009, promulgate rules and regulations to accommodate the process under which such large general service customers shall file notice for such an exemption and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility. In promulgating such rules and regulations, the Commission may also specify the timing as to when a utility shall accept and act on such notice, taking into consideration the utility's integrated resource planning process as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission. The notice of non-participation by a large general service customer, to be given by March 1 of a given year, shall be for the duration of the service life of the customer's energy efficiency program. The Commission on its own motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement. A utility shall not charge such large general service customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth;

d. Projected and actual costs of participation in a renewable energy portfolio standard program pursuant to § [56-585.2](#) that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs as are provided for in a program approved pursuant to § [56-585.2](#);

e. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall

approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations; and

f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate programs approved by the Commission that accelerate the vegetation management of distribution rights-of-way. No costs shall be allocated to or recovered from customers that are served within the large general service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or take delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility.

The Commission shall have the authority to determine the duration or amortization period for any adjustment clause approved under this subdivision.

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth as described in § [15.2-6002](#), regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, including the costs of any system or equipment upgrade, system or equipment replacement, or other cost reasonably appropriate to extend the combined operating license for or the operating life of one or more generation facilities utilizing nuclear power, (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth, ~~or~~ (v) one or more pumped hydroelectricity generation and storage facilities that utilize on-site or off-site renewable energy resources as all or a portion of their power source and such facilities and associated resources are located in the coalfield region of the Commonwealth as described in § [15.2-6002](#), regardless of whether such facility is located within or without the utility's service territory, *or (vi) one or more electric distribution grid transformation projects*; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest ~~biennial~~ review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed

under clause (iv) or (vi), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv) or (vi), *as applicable*. *As of December 1, 2028, any costs recovered by a utility pursuant to clause (iv) shall be limited to any remaining costs associated with conversions of overhead distribution facilities to underground facilities that have been previously approved or are pending approval by the Commission through a petition by the utility under this subdivision.* Such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs or makes modifications to any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below; however, in determining the amounts recoverable under a rate adjustment clause for new underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities being replaced or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval to construct or purchase a generating facility described in clause (i) or (ii) shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process. The costs of the facility, other than return on projected construction work in

progress and allowance for funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and described in clause (i), (ii), ~~or (iii)~~ or (v) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), ~~or (iii)~~ or (v) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities or *new electric distribution grid transformation projects* are classified by the utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) or (v) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The construction or

purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed ~~500-~~ *5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts*, that use energy derived from sunlight *or from wind* and are located in the Commonwealth *or off the Commonwealth's Atlantic shoreline*, regardless of whether any of such facilities are located within or without the utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility. The replacement of any subset of a utility's existing overhead distribution tap lines that have, in the aggregate, an average of nine or more total unplanned outage events-per-mile over a preceding 10-year period with new underground facilities in order to improve electric service reliability is in the public interest. In determining whether to approve petitions for rate adjustment clauses for such new underground facilities that meet this criteria, and in determining the level of costs to be recovered thereunder, the Commission shall liberally construe the provisions of this title. ~~There shall be a rebuttable presumption that the~~ *The conversion of any such facilities will on or after September 1, 2016, is deemed to provide local and system-wide benefits, that such new underground facilities are and to be cost beneficial, and that the costs associated with such new underground facilities are deemed to be reasonably and prudently incurred and, notwithstanding the provisions of subsection C or D, shall be approved for recovery by the Commission pursuant to this subdivision, provided that the total costs associated with the replacement of any subset of existing overhead distribution tap lines proposed by the utility with new underground facilities, exclusive of financing costs, shall not exceed an average cost per customer of \$20,000, with such customers, including those served directly by or downline of the tap lines proposed for conversion, and, further, such total costs shall not exceed an average cost per mile of tap lines converted, exclusive of financing costs, of \$750,000. A utility shall, without regard for whether it has petitioned for any rate adjustment clause pursuant to clause (vi), petition the Commission, not more than once annually, for approval of a plan for electric distribution grid transformation projects. Any plan for electric distribution grid transformation projects shall include both measures to facilitate integration of distributed energy resources and measures to enhance physical electric distribution grid reliability and security. In ruling upon such a petition, the Commission shall consider whether the utility's plan for such projects, and the projected costs associated therewith, are reasonable*

*and prudent. Such petition shall be considered on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility; without regard to whether the costs associated with such projects will be recovered through a rate adjustment clause under this subdivision or through the utility's rates for generation and distribution services; and without regard to whether such costs will be the subject of a customer credit offset, as applicable, pursuant to subdivision 8 d. The Commission's final order regarding any such petition for approval of an electric distribution grid transformation plan shall be entered by the Commission not more than six months after the date of filing such petition. The Commission shall likewise enter its final order with respect to any petition by a utility for a certificate to construct and operate a generating facility or facilities utilizing energy derived from sunlight, pursuant to subsection D of § [56-580](#), within six months after the date of filing such petition.* The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
Coalbed methane gas powered	150	Between 5 and 15 years
Landfill gas powered	200	Between 5 and 15 years
Conventional coal or combined-cycle combustion turbine	100	Between 10 and 20 years

For generating facilities other than those utilizing nuclear power constructed pursuant to clause (ii) or those utilizing energy derived from offshore wind, as of July 1, 2013, only those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such facilities shall continue to be eligible for an enhanced rate of return on common equity during the construction phase of the facility and the approved first portion of its service life of between 12 and 25 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1, 2013, the enhanced return for such facilities constructed pursuant to clause (ii) shall be 100 basis points, which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next ~~biennial~~ review filed after July 1, 2014.

Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next ~~biennial~~ review filed after July 1, 2014.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § [56-598](#), planning and development activities for a new nuclear generation facility or facilities are in the public interest.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § [56-598](#), planning and development activities for a new utility-owned and utility-operated

generating facility or facilities utilizing energy derived from sunlight ~~with an aggregate capacity of 500 megawatts~~, or from *onshore* or offshore wind; are in the public interest. *Construction, purchasing, or leasing activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight or from wind with an aggregate capacity of 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, together with a new test or demonstration project for a utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 16 megawatts, are in the public interest. To the extent that a utility elects to recover the costs of any such new generation facility or facilities through its rates for generation and distribution services and does not petition and receive approval from the Commission for recovery of such costs through a rate adjustment clause described in clause (ii), the Commission shall, upon the request of the utility in a triennial review proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission in a proceeding pursuant to subsection D of § [56-580](#) or in a triennial review proceeding.*

*Electric distribution grid transformation projects are in the public interest. To the extent that a utility elects to recover the costs of such electric distribution grid transformation projects through its rates for generation and distribution services, and does not petition and receive approval from the Commission for recovery of such costs through a rate adjustment clause described in clause (vi), the Commission shall, upon the request of the utility in a triennial review proceeding, provide for a customer credit reinvestment offset, as applicable, pursuant to subdivision 8 d with respect to all costs deemed reasonable and prudent by the Commission in a proceeding for approval of a plan for electric distribution grid transformation projects pursuant to subdivision 6 or in a triennial review proceeding.*

Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new underground facilities shall receive an enhanced rate of return on common equity as described herein, but instead shall receive the utility's general rate of return during the construction phase of the facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or improvements in the usual course of business under the provisions of [§ 56-265.2](#).

As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § [45.1-361.1](#), produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by methane or other combustible gas produced by the anaerobic digestion or decomposition of biodegradable materials in a solid waste management facility licensed by the Waste Management Board. A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the solid waste management facility where it is collected to the generation facility where it is combusted.

For purposes of this subdivision, "general rate of return" means the fair combined rate of return on common equity as it is determined by the Commission ~~from time to time for~~ such utility pursuant to subdivision 2. ~~In any proceeding under this subdivision conducted prior to the conclusion of the first biennial review for such utility, the Commission shall determine a general rate of return for such utility in the same manner as it would in a biennial review proceeding.~~

Notwithstanding any other provision of this subdivision, if the Commission finds during the ~~biennial~~ *triennial* review conducted for a Phase II Utility in ~~2018-2021~~ that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith efforts to construct one or more such facilities that will provide such additional total capacity within a reasonable time after obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common equity previously applied to any such facility to no less than the general rate of return for such utility and may apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

*Notwithstanding any other provision of this subdivision, if a Phase II utility obtains approval from the Commission of a rate adjustment clause pursuant to subdivision 6 associated with a test or demonstration project involving a generation facility utilizing energy from offshore wind, and such utility has not, as of July 1, 2023, commenced construction as defined for federal income tax purposes of an offshore wind generation facility or facilities with a minimum aggregate capacity of 250 megawatts, then the Commission, if it finds it in the public interest, may direct that the costs associated with*

*any such rate adjustment clause involving said test or demonstration project shall thereafter no longer be recovered through a rate adjustment clause pursuant to subdivision 6 and shall instead be recovered through the utility's rates for generation and distribution services, with no change in such rates for generation and distribution services as a result of the combination of such costs with the other costs, revenues, and investments included in the utility's rates for generation and distribution services. Any such costs shall remain combined with the utility's other costs, revenues, and investments included in its rates for generation and distribution services until such costs are fully recovered.*

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later.

Except as otherwise provided in subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to facilities and projects described in clause (ii) or clause (iii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61,012 (2004). A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in which

such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with respect to ~~biennial~~-*triennial* filings under subdivision 3 made on and after July 1, 2014, and (b) pursuant to § [56-245](#) or the Commission's rules governing utility rate increase applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

8. In any ~~biennial~~-*triennial* review proceeding, *for the purposes of reviewing earnings on the utility's rates for generation and distribution services*, the following utility generation and distribution costs not proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility for financial reporting purposes and accrued against income, shall be attributed to the test periods under review *and deemed fully recovered in the period recorded*: costs associated with asset impairments related to early retirement determinations made by the utility ~~prior to December 31, 2012~~, for utility generation-plant facilities fueled by coal, natural gas, or oil or for automated meter reading electric distribution service meters; costs associated with projects necessary to comply with state or federal environmental laws, regulations, or judicial or administrative orders relating to coal combustion by-product management that the utility does not petition to recover through a rate adjustment clause pursuant to subdivision 5 e; costs associated with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered from customers through rates for generation and distribution services in effect during the test periods under review unless such costs, individually or in the aggregate, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, result in the utility's earned return on its generation and distribution services for the

combined test periods under review to fall more than 50 basis points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the Commission shall, in such ~~biennial~~-*triennial* review proceeding, authorize deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, cause the utility's earned return on its generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.), including specifically § [56-235.2](#), following the review of combined test period earnings of the utility in a ~~biennial~~-*triennial* review, for normalization of nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

If the Commission determines as a result of such ~~biennial~~-*triennial* review that:

a. The utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary. However, *in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, the Commission may not order a rate increase, and in all triennial reviews of a Phase I or Phase II utility, the Commission may not order such rate increase unless it finds that the*

resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate increase under the standards of this sentence, and the amount thereof; *and provided that, solely in connection with making its determination concerning the necessity for such a rate increase or the amount thereof, the Commission shall, in any triennial review proceeding conducted prior to July 1, 2028, exclude from this most recently ended 12-month test period any remaining investment levels associated with a prior customer credit reinvestment offset pursuant to subdivision d.*

b. The utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of ~~subdivision~~ *subdivisions 8 d and 9*, direct that 60 percent of the amount of such earnings that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more than 70 basis points, above such fair combined rate of return for the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates; or

c. ~~Such biennial~~ *In any triennial review is the second consecutive biennial review proceeding conducted after January 1, 2020, for a Phase I Utility or after January 1, 2021, for a Phase II Utility* in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period

commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, *and the combined aggregate level of capital investment that the Commission has approved other than those capital investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test periods under review in that triennial review proceeding in new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, and in electric distribution grid transformation projects, as determined pursuant to subdivision 8 d, does not equal or exceed 100 percent of the earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation and distribution services for the combined test periods under review in that triennial review proceeding*, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, *in the first triennial review proceeding conducted after January 1, 2021, for a Phase II Utility, any reduction to the utility's rates ordered by the Commission pursuant to this subdivision shall not exceed \$50 million in annual revenues, with any reduction allocated to the utility's rates for generation services, and in each triennial review of a Phase I or Phase II Utility, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof; and*

*d. In any triennial review proceeding conducted after December 31, 2017, upon the request of the utility, the Commission shall determine, prior to directing that 70 percent of earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation and distribution services for the test period or periods under review be credited to customer bills pursuant to subdivision 8 b, the aggregate level of prior capital investment that the Commission has approved other than those capital investments that the Commission has approved for recovery pursuant to a rate adjustment clause pursuant to subdivision 6 made by the utility during the test period or periods under review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight, or*

*from onshore or offshore wind, and (ii) electric distribution grid transformation projects, as determined by the utility's plant in service and construction work in progress balances related to such investments as recorded per books by the utility for financial reporting purposes as of the end of the most recent test period under review. Any such combined capital investment amounts shall offset any customer bill credit amounts, on a dollar for dollar basis, up to the aggregate level of invested or committed capital under clauses (i) and (ii). The aggregate level of qualifying invested or committed capital under clauses (i) and (ii) is referred to in this subdivision as the customer credit reinvestment offset, which offsets the customer bill credit amount that the utility has invested or will invest in new solar or wind generation facilities or electric distribution grid transformation projects for the benefit of customers, in amounts up to 100 percent of earnings that are more than 70 basis points above the utility's fair rate of return on its generation and distribution services, and thereby reduce or eliminate otherwise incremental rate adjustment clause charges and increases to customer bills, which is deemed to be in the public interest. If 100 percent of the amount of earnings that are more than 70 basis points above the utility's fair combined rate of return on its generation and distribution services, as determined in subdivision 2, exceeds the aggregate level of invested capital in new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, and electric distribution grid transformation projects, as provided in clauses (i) and (ii), during the test period or periods under review, then 70 percent of the amount of such excess shall be credited to customer bills as provided in subdivision 8 b in connection with the triennial review proceeding. The portion of any costs associated with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is the subject of any customer credit reinvestment offset pursuant to this subdivision shall not thereafter be recovered through the utility's rates for generation and distribution services over the service life of such facilities and shall not thereafter be included in the utility's costs, revenues, and investments in future triennial review proceedings conducted pursuant to subdivision 2 and shall not be the subject of a rate adjustment clause petition pursuant to subdivision 6. The portion of any costs associated with new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation projects that is not the subject of any customer credit reinvestment offset pursuant to this subdivision may be recovered through the utility's rates for generation and distribution services over the service life of such facilities and shall be included in the utility's costs, revenues, and investments in future triennial review proceedings conducted pursuant to subdivision 2 until such costs are fully recovered, and if such costs are recovered through the utility's*

*rates for generation and distribution services, they shall not be the subject of a rate adjustment clause petition pursuant to subdivision 6. Only the portion of such costs of new utility-owned generation facilities utilizing energy derived from sunlight, or from wind, or electric distribution grid transformation projects that has not been included in any customer credit reinvestment offset pursuant to this subdivision, and not otherwise recovered through the utility's rates for generation and distribution services, may be the subject of a rate adjustment clause petition by the utility pursuant to subdivision 6.*

The Commission's final order regarding such ~~biennial~~-*triennial* review shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. The fair combined rate of return on common equity determined pursuant to subdivision 2 in such ~~biennial~~-*triennial* review shall apply, for purposes of reviewing the utility's earnings on its rates for generation and distribution services, to the entire ~~two~~-*three* successive 12-month test periods ending December 31 immediately preceding the year of the utility's subsequent ~~biennial~~-*triennial* review filing under subdivision 3 *and shall apply to applicable rate adjustment clauses under subdivisions 5 and 6 prospectively from the date the Commission's final order in the triennial review proceeding, utilizing rate adjustment clause true-up protocols as the Commission in its discretion may determine.*

9. If, as a result of a ~~biennial~~-*triennial* review required under this subsection and conducted with respect to any test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the most ~~recently ended~~ *recently ended* 12-month test period exceeded the annual increases in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to the

biennial-review conducted for the base period, the Commission shall, unless it finds that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test period or periods under review, considered as a whole that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions 8 b and c, *provided that no credits shall be provided pursuant to this subdivision in connection with any triennial review unless such bill credits would be payable pursuant to the provisions of subdivision 8 d, and any credits under this subdivision shall be calculated net of any customer credit reinvestment offset amounts under subdivision 8 d.* Any such credits shall be amortized and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this subdivision: "Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period with respect to which credits have been applied to customers' bills under the provisions of this subdivision, whichever is later.

"Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § [56-249.6](#), except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § [56-249.6](#); (ii) rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated. In particular, and without limitation, the Commission shall determine the federal and state income tax

costs for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § [56-245](#) or the Commission's rules governing utility rate increase applications; however, in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § [56-249.6](#).

C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation, transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.), including specifically § [56-235.2](#).

D. The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ [56-232](#) et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ [67-101](#) and [67-102](#), and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by ~~consumers~~ *customers*.

E. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section.

§ [56-585.1:1](#). Transitional Rate Period: review of rates, terms and conditions for utility generation facilities.

~~Notwithstanding the provisions of §§ [56-249.6](#) and [56-585.1:](#)~~

A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as defined in § [56-585.1](#), shall be conducted at any time by the ~~State Corporation~~ Commission for the ~~four~~ *three* successive 12-month test periods beginning January 1, 2014, and ending December 31, ~~2017~~ *2016*. No biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § [56-585.1](#), shall be conducted at any time by the ~~State Corporation~~ Commission for the ~~five~~ *two* successive 12-month test periods beginning January 1, 2015, and ending December 31, ~~2019~~ *2016*. Such test periods beginning January 1, 2014, and ending December 31, 2017, for a Phase I Utility, and beginning January 1, 2015, and ending December 31, ~~2019~~ *2016*, for a Phase II Utility, are collectively referred to herein as the "Transitional Rate Period." Review of recovery of fuel and purchase power costs shall continue during the Transitional Rate Period in accordance with § [56-249.6](#). Any biennial review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation and distribution services for the two 12-month test periods ending December 31, 2014, and a determination of whether any credits to customers are due for such test periods pursuant to subdivision A 8 b of § [56-585.1](#). After the conclusion of the Transitional Rate Period, ~~biennial reviews of the utility's rates for generation and distribution services~~ shall resume for a Phase I Utility in 2020, with the first such proceeding utilizing the ~~two~~ *three* successive 12-month test periods beginning January 1, ~~2018~~ *2017*, and ending December 31, 2019. After the conclusion of the Transitional Rate Period, ~~biennial reviews of the utility's rates for generation and distribution services~~ shall resume for a Phase II Utility, ~~as defined in § [56-585.1](#)~~, in ~~2022~~ *2021*, with the first such proceeding utilizing the ~~two~~ *four* successive 12-month test periods beginning January 1, ~~2020~~ *2017*, and ending December 31, ~~2021~~ *2020*. Consistent with this provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric utility in the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned incumbent electric utility's existing tariff rates, including any rates adopted pursuant to § [56-235.2](#), shall be made between the beginning of the Transitional Rate Period and the conclusion of the first ~~biennial~~ review after the conclusion of the Transitional Rate Period, except as may be provided pursuant to § [56-245](#) or [56-249.6](#) or subdivisions A 4, 5, or 6 of § [56-585.1](#).

B. During the Transitional Rate Period, pursuant to § [56-36](#), the Commission shall have the right at all times to inspect the books, papers and documents of any investor-owned incumbent electric utility and to require from such companies, from time to time, special reports and statements, under oath, concerning their business.

C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase I Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § [56-585.1](#). A Phase I Utility's filing in such proceedings shall be made on or before March 31 of 2016, and 2018.

2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase II Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § [56-585.1](#). A Phase II utility's filing in such proceedings shall be made on or before March 31 of 2017 and 2019.

3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A 2 a and b of § [56-585.1](#) and shall utilize the utility's actual end-of-test-period capital structure and cost of capital, as well as a 12-month test period ending December 31 immediately preceding the year in which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered no later than eight months after the date of filing, with any adjustment to the fair rate of return for applicable rate adjustment clauses under subdivisions A 5 and 6 of § [56-585.1](#) taking effect on the date of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as the Commission may in its discretion determine. Such proceeding shall concern only the issue of the determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5 and 6 of § [56-585.1](#), and such determination shall have no effect on rates other than those applicable to such rate adjustment clauses; however, after the final such proceeding for a utility has been concluded, the fair combined rate of return on common equity so determined therein shall also be deemed equal to the fair combined rate of return on common equity to be used in such utility's first ~~biennial~~-review proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's earnings on its rates for generation and distribution services for the historic test periods.

D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014, shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014, and the State Corporation Commission shall implement as soon as practicable reductions in the fuel factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as any

reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel year.

E. Except for early retirement plans identified by the utility in an integrated resource plan filed with the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned incumbent electric utility shall not permanently retire an electric power generation facility from service during the Transitional Rate Period without first obtaining the approval of the State Corporation Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the State Corporation Commission that the retirement determination is reasonable and prudent. During the Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs, as recorded per books by the utility for financial reporting purposes and accrued against income, only through its existing tariff rates for generation or distribution services, except such costs as may be recovered pursuant to [§ 56-245](#), [§ 56-249.6](#) or subdivisions A 4, A 5, or A 6 of [§ 56-585.1](#): (i) costs associated with asset impairments related to early retirement determinations for utility generation facilities resulting from the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to [§ 111\(d\)](#) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural disasters.

F. During the Transitional Rate Period:

1. The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing the updated integrated resource plan of any investor-owned incumbent electric utility. The report shall include an analysis of, among other matters, the amount, reliability, and type of generation facilities needed to serve Virginia native load compared to what is then available to serve such load and what may be available to serve such load in the future in view of market conditions and current and pending state and federal environmental regulations. As a part of such report, the State Corporation Commission shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to [§ 111\(d\)](#) of the federal Clean Air Act. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation; and

2. The Department of Environmental Quality shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year concerning the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The report shall include an analysis of, among other matters, the impact of such federal regulations on the operation of any investor-owned incumbent electric utility's electric power generation facilities and any changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

G. The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed ~~500~~ *5,000* megawatts, *including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts*, that use energy derived from sunlight *or from wind* and are located in the Commonwealth *or off the Commonwealth's Atlantic shoreline*, regardless of whether any of such facilities are located within or without such utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this section. Such utility shall utilize goods or services sourced, in whole or in part, from one or more Virginia businesses. The utility may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. An investor-owned incumbent utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility.

H. *To the extent that the provisions of this section are inconsistent with the provisions of §§ [56-249.6](#) and [56-585.1](#), the provisions of this section shall control.*

§ [56-585.1:2](#). Pilot program for energy assistance and weatherization.

Notwithstanding the provisions of §§ [56-249.6](#) and 56-585.1:

Each Phase I and II Utility shall conduct a pilot program for energy assistance and weatherization for low income, elderly, and disabled individuals in their respective service territories in the Commonwealth. Each pilot program shall be funded by the utility and shall commence September 1, 2015. *Each Phase I Utility shall continue such pilot program at no less than the existing levels of funding as of July 1, 2018, for each year that the utility provides such service. Each Phase II Utility shall continue such pilot*

*program at no less than \$13 million for each year the utility is providing such service. The funding for the pilot programs established pursuant hereto for energy assistance and weatherization for low-income, elderly, and disabled individuals in the service territory in the Commonwealth of each respective utility shall continue until the earlier of amendment or repeal of this section or July 1, 2028. Each such utility shall report on the status of its pilot program, including the number of individuals served thereby, to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees by July 1, 2016, and each year thereafter.*

*§ 56-585.1:4. Development of solar and wind generation capacity in the Commonwealth.*

*A. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic shoreline, each having a rated capacity of at least one megawatt and having in the aggregate a rated capacity that does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental attributes from solar facilities described in clause (i) owned by persons other than a public utility is in the public interest, and the Commission shall so find if required to make a finding regarding whether such construction or purchase is in the public interest.*

*B. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic shoreline, each having a rated capacity of less than one megawatt, including rooftop solar installations with a capacity of not less than 50 kilowatts, and having in the aggregate a rated capacity that does not exceed 500 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental attributes from solar facilities described in clause (i) owned by persons other than a public utility is in the public interest, and the Commission shall so find if required to make a finding regarding whether such construction or purchase is in the public interest.*

*C. The aggregate cap of 5,000 megawatts of rated capacity described in clause (i) of subsection A and the aggregate cap of 500 megawatts of rated capacity described in clause (i) of subsection B are separate and independent from each other. The capacity of facilities in subsection B shall not be counted in determining the capacity of facilities in subsection A, and the capacity of facilities in subsection A shall not be counted in determining the capacity of facilities in subsection B.*

*D. Twenty-five percent of the solar generation capacity placed in service on or after July 1, 2018, located in the Commonwealth, and found to be in the public interest pursuant to subsection A or B shall be from the purchase by a public utility of energy, capacity, and*

*environmental attributes from solar facilities owned by persons other than a public utility. The remainder shall be construction or purchase by a public utility of one or more solar generation facilities located in the Commonwealth. All of the solar generation capacity located in the Commonwealth and found to be in the public interest pursuant to subsection A or B shall be subject to competitive procurement, provided that a public utility may select solar generation capacity without regard to whether such selection satisfies price criteria if the selection of the solar generating capacity materially advances non-price criteria, including favoring geographic distribution of generating capacity, areas of higher employment, or regional economic development, if such non-price solar generating capacity selected does not exceed 25 percent of the utility's solar generating capacity.*

*E. Construction, purchasing, or leasing activities for a test or demonstration project for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore wind with an aggregate capacity of not more than 16 megawatts are in the public interest.*

*F. A utility may elect to petition the Commission, outside of a triennial review proceeding conducted pursuant to § [56-585.1](#), at any time for a prudency determination with respect to the construction or purchase by the utility of one or more solar or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic Shoreline or the purchase by the utility of energy, capacity, and environmental attributes from solar or wind facilities owned by persons other than the utility. The Commission's final order regarding any such petition shall be entered by the Commission not more than three months after the date of the filing of such petition.*

§ [56-599](#). Integrated resource plan required.

A. Each electric utility shall file an updated integrated resource plan by July 1, 2015. Thereafter, each electric utility shall file an updated integrated resource plan ~~annually~~ by May 1, *in each year immediately preceding the year the utility is subject to a triennial review filing.* A copy of each integrated resource plan shall be provided to the Chairmen of the House and Senate Committees on Commerce and Labor and to the Chairman of the Commission on Electric Utility Regulation. All updated integrated resource plans shall comply with the provisions of any relevant order of the Commission establishing guidelines for the format and contents of updated and revised integrated resource plans. Each integrated resource plan shall consider options for maintaining and enhancing rate stability, energy independence, economic development including retention and expansion of energy-intensive industries, and service reliability.

B. In preparing an integrated resource plan, each electric utility shall systematically evaluate, and may propose:

1. Entering into short-term and long-term electric power purchase contracts;
2. Owning and operating electric power generation facilities;
3. Building new generation facilities;
4. Relying on purchases from the short term or spot markets;
5. Making investments in demand-side resources, including energy efficiency and demand-side management services;
6. Taking such other actions, as the Commission may approve, to diversify its generation supply portfolio and ensure that the electric utility is able to implement an approved plan;
7. The methods by which the electric utility proposes to acquire the supply and demand resources identified in its proposed integrated resource plan;
8. The effect of current and pending state and federal environmental regulations upon the continued operation of existing electric generation facilities or options for construction of new electric generation facilities; ~~and~~
9. The most cost effective means of complying with current and pending state and federal environmental regulations, including compliance options to minimize effects on customer rates of such regulations;
10. *Long-term electric distribution grid planning and proposed electric distribution grid transformation projects; and*
11. *Developing a long-term plan for energy efficiency measures to accomplish policy goals of reduction in customer bills, particularly for low-income, elderly, and disabled customers; reduction in emissions; and reduction in carbon intensity.*

C. The Commission shall analyze and review an integrated resource plan and, after giving notice and opportunity to be heard, the Commission shall make a determination *within nine months after the date of filing* as to whether *such an-IRP integrated resource plan* is reasonable and is in the public interest.

§ [56-600](#). Definitions.

As used in this chapter:

"Allowed distribution revenue" means the average annual, weather-normalized, nongas commodity revenue per customer associated with the rates in effect as adopted in the applicable utility's last Commission-approved rate case or performance-based regulation plan, multiplied by the average number of customers served.

"Conservation and ratemaking efficiency plan" means a plan filed by a natural gas utility pursuant to this chapter that includes a decoupling mechanism.

"Cost-effective conservation and energy efficiency program" means a program approved by the Commission that is designed to decrease the average customer's annual, weather-normalized consumption or total gas bill, for gas and nongas elements combined, or avoid energy costs or consumption the customer may otherwise have incurred, and is determined by the Commission to be cost-effective ~~upon consideration, among other factors, that~~ *if* the net present value of the benefits exceeds the net present value of the costs ~~under as determined by not less than any three of the following four tests: the Total Resource Cost Test, the Program Administrator Test (also referred to as the Utility Cost Test), the Participant Test, and the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based solely on the results of a single test~~ *approved if the net present value of the benefits exceeds the net present value of the costs as determined by not less than any three of the four tests.* Such determination shall also be made (i) with the assignment of administrative costs associated with the conservation and rate-making efficiency plan to the portfolio as a whole and (ii) with the assignment of education and outreach costs associated with each program in a portfolio of programs to such program and not to individual measures within a program, when such administrative, education, or outreach costs are not otherwise directly assignable. Without limitation, rate designs or rate mechanisms, customer education, customer incentives, and weatherization programs are examples of conservation and energy efficiency programs that the Commission may consider. Energy efficiency programs that provide measurable and verifiable energy savings to low-income customers or elderly customers may also be deemed cost effective. A cost-effective conservation and energy efficiency program shall not include a program designed to convert propane customers to natural gas.

"Decoupling mechanism" means a rate, tariff design or mechanism that decouples the recovery of a utility's allowed distribution revenue from the level of consumption of natural gas by its customers, including (i) a mechanism that adjusts actual nongas distribution revenues per customer to allowed distribution revenues per customer, such as a sales adjustment clause, (ii) rate design changes that substantially align the percentage of fixed charge revenue recovery with the percentage of the utility's fixed costs, such as straight fixed variable rates, provided such mechanism includes a substantial demand component based on a customer's peak usage, or (iii) a combination of clauses (i) and (ii) that substantially decreases the relative amount of nongas distribution revenue affected by changes in per customer consumption of gas.

"Fixed costs" means any and all of the utility's nongas costs of service, together with an authorized return thereon, that are not associated with the cost of the natural gas commodity flowing through and measured by the customer's meter.

"Measure" means an individual item, service, offering, or rebate available to a customer of a natural gas utility as part of the utility's conservation and ratemaking efficiency plan.

"Natural gas utility" or "utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"Portfolio" means the program or programs included in a natural gas utility's conservation and ratemaking efficiency plan.

"Program" means a group of one or more related measures for a customer class.

"Revenue-neutral" means a change in a rate, tariff design or mechanism as a component of a conservation and ratemaking efficiency plan that does not shift annualized allowed distribution revenue between customer classes, and does not increase or decrease the utility's average, weather-normalized nongas utility revenue per customer for any given rate class by more than 0.25 percent when compared to (i) the rate, tariff design or mechanism in effect at the time a conservation and ratemaking efficiency plan is filed pursuant to this chapter or (ii) the allocation of costs approved by the Commission in a rate case using the cost of service methodology set forth in § [56-235.2](#) or a performance-based regulation plan authorized by § [56-235.6](#), where a plan is filed in conjunction with such case.

## 2.

*§ 1. There is hereby established a pilot program to further the understanding of underground electric transmission lines in regard to electric reliability, construction methods and related cost and timeline estimating, and the probability of meeting such projections. The pilot program shall consist of the approval to construct qualifying electrical transmission lines of 230 kilovolts or less (but greater than 69 kilovolts) in whole or in part underground. Such pilot program shall consist of a total of two qualifying electrical transmission line projects, constructed in whole or in part underground, as specified and set forth in this act.*

*§ 2. Notwithstanding any other law to the contrary, as a part of the pilot program established pursuant to this act, the State Corporation Commission shall approve as a qualifying project a transmission line of 230 kilovolts or less that is pending final approval of a certificate of public convenience and necessity from the State Corporation Commission as of December 31, 2017, for the construction of an electrical transmission line approximately 5.3 miles in length utilizing both overhead and underground transmission facilities, of which the underground portion shall be approximately 3.1 miles in length,*

*which has been previously proposed for construction within or immediately adjacent to the right-of-way of an interstate highway. Once the State Corporation Commission has affirmed the project need through an order, the project shall be constructed in part underground, and the underground portion shall consist of a double circuit.*

*The State Corporation Commission shall approve such underground construction within 30 days of receipt of the written request of the public utility to participate in the pilot program pursuant to this section. The State Corporation Commission shall not require the submission of additional technical and cost analyses as a condition of its approval but may request such analyses for its review. The State Corporation Commission shall approve the underground construction of one contiguous segment of the transmission line that is approximately 3.1 miles in length that was previously proposed for construction within or immediately adjacent to the right-of-way of the interstate highway, for which, by resolution, the locality has indicated general community support. The remainder of the construction for the transmission line shall be aboveground. The Commission shall not be required to perform any further analysis as to the impacts of this route, including environmental impacts or impacts upon historical resources.*

*The electric utility may proceed to acquire right-of-way and take such other actions as it deems appropriate in furtherance of the construction of the approved transmission line, including acquiring the cables necessary for the underground installation.*

*§ 3. In reviewing applications submitted by public utilities for certificates of public convenience and necessity for the construction of electrical transmission lines of 230 kilovolts or less filed between July 1, 2018, and July 1, 2020, the State Corporation Commission shall approve, consistent with the requirements of § 4 of this enactment, one additional application as a qualifying project to be constructed in whole or in part underground, as a part of this pilot program. The one qualifying project shall be in addition to the qualifying project described in § 2 of this enactment.*

*§ 4. For purposes of § 3, a project shall be qualified to be placed underground, in whole or in part, if it meets all of the following criteria: (i) an engineering analysis demonstrates that it is technically feasible to place the proposed line, in whole or in part, underground; (ii) the governing body of each locality in which a portion of the proposed line will be placed underground indicates, by resolution, general community support for the project and that it supports the transmission line to be placed underground; (iii) a project has been filed with the State Corporation Commission or is pending issuance of a certificate of public convenience and necessity by July 1, 2020; (iv) the estimated additional cost of placing the proposed line, in whole or in part, underground does not exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards for*

*undergrounding to ensure safety and reliability; if the public utility, the affected localities, and the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5 times the cost of placing the line overhead may also be accepted into the pilot program; (v) the public utility requests that the project be considered as a qualifying project under this enactment; and (vi) the primary need of the project shall be for purposes of grid reliability, grid resiliency, or to support economic development priorities of the Commonwealth and shall not be to address aging assets that would have otherwise been replaced in due course.*

*§ 5. Approval of a transmission line pursuant to this enactment for inclusion in the pilot program shall be deemed to satisfy the requirements of § [15.2-2232](#) of the Code of Virginia and local zoning ordinances with respect to such transmission line and any associated facilities, such as stations, substations, transition stations and locations, and switchyards or stations, that may be required.*

*§ 6. The State Corporation Commission shall report annually to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor on the progress of the pilot program by no later than December 1 of each year that this act is in effect. The State Corporation Commission shall submit a final report to the Commission on Electric Utility Restructuring, the Joint Commission on Technology and Science, and the Governor no later than December 1, 2024, analyzing the entire program and making recommendations about the continued placement of transmission lines underground in the Commonwealth. The State Corporation Commission's final report shall include, but not be limited to, analysis and findings of the costs of underground construction and historical and future consumer rate effects of such costs, effect of underground transmission lines on grid reliability, operability (including operating voltage), probability of meeting cost and construction timeline estimates of such underground transmission lines, and aesthetic or other benefits attendant to the placement of transmission lines underground.*

*§ 7. For the qualifying projects chosen pursuant to this enactment and not fully recoverable as charges for new transmission facilities pursuant to subdivision A 4 of § [56-585.1](#) of the Code of Virginia, the State Corporation Commission shall approve a rate adjustment clause. The rate adjustment clause shall provide for the full and timely recovery of any portion of the cost of such project not recoverable under applicable rates, terms, and conditions approved by the Federal Energy Regulatory Commission and shall include the use of the fair return on common equity most recently approved in a State Corporation Commission proceeding for such utility. Such costs shall be entirely assigned to the utility's Virginia jurisdictional customers. The State Corporation*

*Commission's final order regarding any petition filed pursuant to this section shall be entered not more than three months after the filing of such petition.*

*§ 8. The provisions of this enactment shall not be construed to limit the ability of the State Corporation Commission to approve additional applications for placement of transmission lines underground.*

*§ 9. If two applications are not submitted to the State Corporation Commission that meet the requirements of this act, the State Corporation Commission shall document the failure of the projects to qualify for the pilot program in order to justify approving fewer than two projects to be placed underground, in whole or in part.*

*§ 10. Insofar as the provisions of this act are inconsistent with the provisions of any other law or local ordinance, the provisions of this act shall be controlling.*

3. That after July 1, 2018, each Phase I Utility as defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia shall not recover from customers \$10 million of incurred fuel costs, and the State Corporation Commission shall implement at the time of the utility's next fuel cost recovery proceeding conducted pursuant to § [56-249.6](#) of the Code of Virginia reductions in the fuel factor rate of the Phase I Utility to reflect the nonrecovery of such fuel expense as well as any change in the fuel factor associated with the Phase I Utility's fuel recovery balance for the 2017-2018 fuel year and projected fuel expense for the 2018-2019 fuel year. Such nonrecovery shall not be included in any earnings test after July 1, 2018.

4. That, no later than 30 days following July 1, 2018, each Phase II Utility as defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia shall provide to its current customers a one-time, voluntary generation and distribution services bill credit, to be allocated on a historic test period energy usage basis, in an aggregate amount of \$133 million. Such one-time voluntary generation and distribution services bill credit shall not be included in any earnings test after July 1, 2018.

5. That, no later than 30 days after January 1, 2019, each Phase II Utility shall provide to its current customers a one-time, voluntary generation and distribution services bill credit, to be allocated on a historic test period energy usage basis, in an aggregate amount of \$67 million, which one-time voluntary generation and distribution services bill credit shall be included in the earnings test for the utility in its first triennial review after January 1, 2019.

6. That the State Corporation Commission shall implement adjustments in the rates for generation and distribution services of incumbent electric utilities, as defined in § [56-576](#)

of the Code of Virginia, effective April 1, 2019, to reflect the actual annual reductions in corporate income taxes to be paid by such utilities pursuant to the provisions of the federal Tax Cuts and Jobs Act of 2017 (P.L. 115-97) and as of the effective date of such act.

7. That in advance of the determination of the State Corporation Commission (the Commission) as to rate reductions to reflect reductions in corporate income taxes pursuant to the sixth enactment of this act, any (i) Phase I Utility as defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia shall reduce its existing rates for generation and distribution services on an interim basis, within 30 days of July 1, 2018, in an amount sufficient to reduce its annual revenues from such rates by an aggregate amount of \$50 million and (ii) Phase II Utility as defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia shall reduce its existing rates for generation and distribution services on an interim basis, within 30 days of July 1, 2018, in an amount sufficient to reduce its annual revenues from such rates by an aggregate amount of \$125 million. The amount of such interim reduction in rates for generation and distribution services shall be attributable to reductions in the corporate income tax obligations of the utility pursuant to the provisions of the federal Tax Cuts and Jobs Act of 2017 (P.L. 115-97). In implementing any further reductions to the rates for generation and distribution services of any Phase I Utility or Phase II Utility effective April 1, 2019, pursuant to the sixth enactment of this act, the Commission shall consider this interim revenue requirement reduction, and its actions shall be limited to a true-up of this interim reduction amount to the actual annual reduction in corporate tax obligations of such utility as of the effective date of the federal Tax Cuts and Jobs Act of 2017 (P.L. 115-97).

8. That the provisions of this act amending and reenacting § [56-585.1](#) of the Code of Virginia by adding subdivision A 8 d shall expire on July 1, 2028.

9. That the State Corporation Commission (the Commission) shall establish pilot programs under which each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall submit a proposal to deploy electric power storage batteries. A proposal shall provide for the deployment of batteries pursuant to a pilot program that accomplishes at least one of the following: (i) improve reliability of electrical transmission or distribution systems; (ii) improve integration of different types of renewable resources; (iii) deferred investment in generation, transmission, or distribution of electricity; (iv) reduced need for additional generation of electricity during times of peak demand; or (v) connection to the facilities of a customer receiving generation, transmission, and distribution service from the utility. A Phase I

Utility may install batteries with up to 10 megawatts of capacity. A Phase II Utility may install batteries with up to 30 megawatts of capacity. Each pilot program shall have a duration of five years. The pilot program shall provide for the recovery of all reasonable and prudent costs incurred under the pilot program through the electric utility's base rates on a nondiscriminatory basis. Any pilot program proposed by a Phase I Utility or Phase II Utility that satisfies the requirements of this enactment is in the public interest.

10. That the State Corporation Commission shall, by December 1, 2018, adopt such rules or establish such guidelines as may be necessary for the general administration of pilot programs to deploy electric power storage batteries established by the ninth enactment of this act.

11. That any individual nonresidential retail customer of a Phase II Utility, as defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, whose single account demand during the most recent calendar year exceeded 500 kilowatts but did not exceed one percent of the Phase II Utility's peak load during the most recent calendar year, unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, and that is currently taking service from the Phase II Utility pursuant to an approved tariff rate schedule applicable to large general service customers, not to include any customer taking service under any experimental or pilot program tariff rate schedule, tariff rate schedule for market-based rates, tariff rate schedule to purchase 100 percent renewable energy pursuant to subdivision A 5 of § [56-577](#) of the Code of Virginia, or companion tariff rate schedule, that enters into an exclusive supply agreement with the Phase II Utility whereby the customer agrees to purchase electric energy exclusively from the Phase II Utility serving the exclusive service territory in which such retail customer is located for a period of three years or more shall be eligible for a Manufacturing and Commercial Competitiveness Retention Credit during the duration of such exclusive supply agreement, which shall reduce the base generation charges under the customer's existing approved tariff rate by a total of two percent.

12. That any Phase II Utility, as that term is defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall consider in its integrated resource plan next filed after July 1, 2018, either as a demand-side energy efficiency measure or a supply-side generation alternative, whether the construction or purchase of one or more generation facilities with at least one megawatt of generating capacity, having a measurable aggregate rated capacity of 200 megawatts by 2024, that use combined heat and power or waste heat to power and are located in the Commonwealth, are in the customer interest. For purposes

of this analysis, the total efficiency, including the use of thermal energy, for eligible combined heat and power facilities must meet or exceed 65 percent (Lower Heating Value). The assumed efficiency of waste heat to power systems that do not burn any supplemental fuel and use only waste heat as a fuel source is 100 percent. As used in this enactment, "waste heat to power" means a system that generates electricity through the recovery of a qualified waste heat resource and "qualified waste heat resource" means (i) exhaust heat or flared gas from an industrial process that does not have, as its primary purpose, the production of electricity and (ii) a pressure drop in any gas for an industrial or commercial process.

13. That each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall investigate the feasibility of providing broadband Internet services using utility distribution and transmission infrastructure. Such investigation shall include determination of regulatory barriers to such services and proposed legislation to address such barriers. The State Corporation Commission shall assist each such utility in its determination of such barriers and development of proposed legislation. Each such utility shall evaluate whether it is in the public interest and the interest of the utility (i) to make improvements to the distribution grid in furtherance of providing such broadband Internet services in conjunction with its program of electric distribution grid transformation projects; (ii) to operate broadband Internet services using utility distribution and transmission infrastructure to provide broadband Internet services to unserved areas of the Commonwealth; or (iii) to permit a commercial entity to lease such capacity to provide broadband Internet services to unserved areas of the Commonwealth. Each such utility shall report whether it determines such broadband Internet services using utility distribution and transmission infrastructure to be feasible, including the maturity of the technology, the compatibility of such services with existing electric services, the financial requirements to undertake such broadband Internet services, and those unserved areas in the Commonwealth where the provision of such broadband Internet services appears feasible, to the Governor, the State Corporation Commission, the Broadband Advisory Council, and the Chairmen of the House and Senate Committees on Commerce and Labor by December 1, 2018.

14. That it is the objective of the General Assembly that the construction and development of new utility-owned and utility-operated generating facilities utilizing energy derived from sunlight and from wind with an aggregate capacity of 5,000 megawatts, including rooftop solar installations with a capacity of not less than 50 kilowatts, and with an aggregate capacity of 50 megawatts, be placed in service on or before July 1, 2028.

The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year through December 1, 2028, assessing (i) the aggregate annual new construction and development of new utility-owned and utility-operated generating facilities utilizing energy derived from sunlight, (ii) the integration of utility-owned renewable electric generation resources with the utility's electric distribution grid; (iii) the aggregate additional utility-owned and utility-operated generating facilities utilizing energy derived from sunlight placed in operation since July 1, 2018, and (iv) the need for additional generation of electricity utilizing energy derived from sunlight in order to meet the objective of the General Assembly on or before July 1, 2028. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

15. That each Phase I Utility and Phase II Utility, as such terms are defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall develop a proposed program of energy conservation measures. Any program shall provide for the submission of a petition or petitions for approval to design, implement, and operate energy efficiency programs pursuant to subdivision A 5 c of § [56-585.1](#) of the Code of Virginia. At least five percent of such energy efficiency programs shall benefit low-income, elderly, and disabled individuals. The projected costs for the utility to design, implement, and operate such energy efficiency programs, including a margin to be recovered on operating expenses, shall be no less than an aggregate amount of \$140 million for a Phase I Utility and \$870 million for a Phase II Utility for the period beginning July 1, 2018, and ending July 1, 2028, including any existing approved energy efficiency programs. In developing such portfolio of energy efficiency programs, each utility shall utilize a stakeholder process, to be facilitated by an independent monitor compensated under the funding provided pursuant to subdivision E of § [56-592.1](#) of the Code of Virginia, to provide input and feedback on the development of such energy efficiency programs. Such stakeholder process shall include representatives from each utility, the State Corporation Commission, the office of Consumer Counsel of the Attorney General, the Department of Mines, Minerals and Energy, energy efficiency program implementers, energy efficiency providers, residential and small business customers, and any other interested stakeholder who the independent monitor deems appropriate for inclusion in such process. The utility shall report on the status of the energy efficiency program, including the petitions filed and the determination thereon, to the Governor, the State Corporation

Commission, and the Chairmen of the House and Senate Commerce and Labor Committees on July 1, 2019, and annually thereafter through July 1, 2028.

16. That each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall investigate and report upon its economic development activities and assistance provided to Virginia localities in the area of economic development in each utility's respective service area. Such report shall include discussion of any existing economic rate incentives, the use thereof, and recommendations for changes of such economic rate incentives, if any; any electrical equipment discounts for economic development purposes; any ongoing support for the development of new economic development sites, including determining the energy infrastructure and permitting requirements in advance of an end-user locating on the site, and providing marketing assistance and promotion of validated sites; any direct assistance to localities in their economic development efforts, including responses to requests for information and proposals for economic development prospects; and any resources and personnel devoted to such economic development efforts. The report shall include a discussion of underserved areas, particularly in rural areas of the Commonwealth, together with suggestions for enhancing economic development assistance in such rural areas. The report shall also provide recommendations for the enhancement of economic development activities in each utility's respective service area, including a discussion of requirements to provide electric services to business-ready sites in advance of identifying a user for such sites. Each utility shall report to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees on December 1, 2018.

17. That each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall investigate potential improvements to the net energy metering programs as provided under § [56-594](#) of the Code of Virginia, potential improvements to the pilot programs for community solar development as provided under § [56-585.1:3](#) of the Code of Virginia, expansion of options for customers with corporate clean energy procurement targets, and impediments to the siting of new renewable energy projects. Each such utility shall include interested stakeholders in the investigation of such issues and the development of proposed legislation and shall issue a report of its findings to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Committees on Commerce and Labor by November 1, 2018.

18. That as part of its integrated resource plans filed between 2019 and 2028, any Phase II Utility, as that term is defined in subdivision A 1 of § [56-585.1](#) of the Code of Virginia, shall incorporate into its long-term plan for energy efficiency measures policy goals of reduction in customer bills, particularly for low-income, elderly, veterans, and disabled customers; reduction in emissions; and reduction in the utility's carbon intensity. Considerations shall include analysis of the following: energy efficiency programs for low-income customers in alignment with billing and credit practices; energy efficiency programs that reflect policies and regulations related to customers with serious medical conditions; programs specifically focused on low-income customers, occupants of multifamily housing, veterans, elderly, and disabled customers; options for combining distributed generation, energy storage, and energy efficiency for residential and small business customers; the extent that electricity rates account for the amount of customer electricity bills in the Commonwealth and how such extent in the Commonwealth compares with such extent in other states, including a comparison of the average retail electricity price per kWh by rate class among all 50 states and an analysis of each state's primary fuel sources for electricity generation, accounting for energy efficiency, heating source, cooling load, housing size, and other relevant factors; and other issues as may seem appropriate.

19. That the State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing (i) the reliability of electrical transmission or distribution systems; (ii) the integration of utility or customer owned renewable electric generation resources with the utility's electric distribution grid; (iii) the level of investment in generation, transmission, or distribution of electricity; (iv) the need for additional generation of electricity during times of peak demand; and (v) distribution system hardening projects and enhanced physical security measures. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

20. That the provisions of this act shall apply to any applications pending with the State Corporation Commission regarding new underground facilities or offshore wind facilities on or after January 1, 2018.

21. That on or before July 1, 2028, subject to the approval of the State Corporation Commission (the Commission), a Phase I Utility, as that term is defined in subdivision A 1 of

§ [56-585.1](#) of the Code of Virginia, shall construct or acquire a generation facility or facilities utilizing energy derived from sunlight with an aggregate capacity of not less than 200 megawatts located in the Commonwealth, which utility-owned generation facility or facilities is in the public interest as is set forth in this act. If a Phase I Utility serves in more than one jurisdiction, and a jurisdiction other than the Commonwealth denies the Phase I Utility recovery of the costs of the generation facility or facilities utilizing energy from sunlight allocated to that jurisdiction, the Phase I Utility can recover all of the costs of the generation facility or facilities utilizing energy from sunlight from its Virginia jurisdictional customers, and all attributes of the generation facility or facilities utilizing energy from sunlight, including energy and capacity shall be assigned to Virginia.

22. That from July 1, 2018, until July 1, 2028, not more than one-half of the combined capital investment amount attributable to (i) investments in new utility-owned generation facilities utilizing energy derived from sunlight or from wind; (ii) investments in electric distribution grid transformation projects; (iii) investments in one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth; (iv) investment in the estimated additional cost of placing the two proposed pilot projects for the construction of qualifying electrical transmission lines of 230 kilovolts or less (but greater than 69 kilovolts) in whole or in part underground, in excess of the cost of placing the same lines overhead, assuming accepted industry standards for undergrounding to ensure safety and reliability; and (v) the projected costs for the utility to design, implement and operate energy efficiency programs, including a margin to be recovered on operating expenses, submitted to the Commission for approval, shall be (a) investments in one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth; (b) investment in the estimated additional cost of placing the two proposed pilot projects for the construction of qualifying electrical transmission lines of 230 kilovolts or less (but greater than 69 kilovolts) in whole or in part underground in excess of the cost of placing the same line overhead, assuming accepted industry standards for undergrounding to ensure safety and reliability; and (c) electric distribution grid transformation projects solely designed for physical security at distribution substations.

23. That within 60 days after the conclusion of each triennial review proceeding conducted pursuant to § [56-585.1](#) of the Code of Virginia, the State Corporation Commission (the Commission) shall submit a report to the Governor and the General Assembly and the Chairmen of the House and Senate Commerce and Labor

Committees describing and quantifying all investments made by the utility during the test period or periods under review in both (i) new utility-owned generation facilities utilizing energy derived from sunlight or from onshore or offshore wind and (ii) electric distribution grid transformation projects, as determined by the utility's plant in service and construction work in progress balances related to such investments as recorded per books by the utility for financial reporting purposes as of the end of the most recent test period under review. The Commission's report shall include, but not be limited to, an analysis of the financial effects of such investments, including the effects on customer rates, customer bill credits, and the earnings and rate base of each utility subject to the triennial review provisions of § [56-585.1](#).

24. That this act shall be known as the Grid Transformation and Security Act.

## **Chapter 343 Multistate Tax Commission; the Commonwealth to become associate member.**

An Act to require the Commonwealth of Virginia to become an associate member of the Multistate Tax Commission.

[\[H 373\]](#)

Approved March 19, 2018

Whereas, the Multistate Tax Commission is an intergovernmental state tax agency working on behalf of states and taxpayers to administer, equitably and efficiently, tax laws that apply to multistate and multinational enterprises; and

Whereas, in 1967, the Multistate Tax Compact created the Multistate Tax Commission, which is charged with facilitating the proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes, promoting uniformity or compatibility in significant components of tax systems, facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration, and avoiding duplicative taxation; and

Whereas, the Multistate Tax Commission has three levels of membership: compact members, which are states that have enacted the Multistate Tax Compact into state law; sovereignty members, which are states that support the purposes of the Multistate Tax Compact through regular participation in, and financial support for, the general activities

of the Multistate Tax Commission; and associate members, which are states that participate in Multistate Tax Commission meetings and otherwise consult and cooperate with the Multistate Tax Commission and its other member states; and

Whereas, 48 states and the District of Columbia are currently members of the Multistate Tax Commission, and 26 of such states are associate members; and

Whereas, it is the duty of the Tax Commissioner of the Virginia Department of Taxation to supervise the administration of the tax laws of the Commonwealth insofar as they relate to taxable state subjects and assessments thereon, in light of objectives of ascertaining the best methods of reaching all taxable income, property, and transactions; effectuate equitable assessments; and avoid conflicts and duplication of taxation of the same income, property, and transactions; and

Whereas, the Multistate Tax Commission in 2014 and 2015 adopted revisions to its model Uniform Division of Income for Tax Purposes Act (UDITPA); and

Whereas, actions by the Multistate Tax Commission regarding other model legislation could have a significant impact on the competitiveness of the Commonwealth of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Tax Commissioner of the Department of Taxation shall take such steps as are necessary for Virginia to become an associate member of the Multistate Tax Commission without payment of any membership fees, and shall participate in available Multistate Tax Commission discussions and meetings concerning model legislation and uniform tax policies that could affect the Commonwealth.*

## **Chapter 344 Taxpayers; TAX and VEC to consider feasibility of filing tax reports and payments electronically.**

An Act to require the Department of Taxation and the Virginia Employment Commission to consider the feasibility of permitting taxpayers to submit tax reports and payments electronically for both the Virginia Employment Commission and the Department of Taxation.

[\[H 538\]](#)

Approved March 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Taxation (Department) and the Virginia Employment Commission (Commission) shall consider the feasibility of permitting taxpayers to submit tax reports and payments electronically for both the Virginia Employment Commission and the Department of Taxation using a single sign-on. The Department and the Commission shall also consider the feasibility, merits, and costs of developing and implementing an identity management system or retaining a contractor to do so.*

### **Chapter 348 Trooper Michael Walter Memorial Highway; designating as a portion of Route 13.**

An Act to designate a portion of Virginia Route 13 the "Trooper Michael Walter Memorial Highway."

[\[H 1395\]](#)

Approved March 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the portion of Virginia Route 13 in Powhatan County between Virginia Route 1002 (Emmanuel Church Road) and Cumberland County is hereby designated the "Trooper Michael Walter Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any portions thereof.*

### **Chapter 349 Marine Resources Commission; conveyance of easement and rights-of-way across Rappahannock River.**

An Act to authorize the Virginia Marine Resources Commission to convey a permanent easement and rights-of-way across the Rappahannock River, including a portion of the Baylor Survey, to Virginia Electric and Power Company (Dominion Energy Virginia) for the purpose of installing, constructing, maintaining, repairing, and operating an underground electric transmission line and to repeal Chapter 377 of the Acts of Assembly of 2015.

[\[H 1491\]](#)

Approved March 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor and the Attorney General, shall deem proper, a permanent easement and right-of-way of 200 feet of width, and a temporary right-of-way of a reasonable width, as needed for the purpose of installing, constructing, maintaining, repairing, and operating an underground electric transmission line across the Rappahannock River, including a portion of the Baylor Survey, the center line of such easement being described as follows:*

*Beginning at a point on the mean low water mark on the south side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the southerly line of the Commonwealth of Virginia and being S. 15°27'20" E., a distance of 5.40' from the northwesterly property corner of a parcel of land owned by David B. Wallace and Heidi M. Ott as recorded in Deed Book 282, page 699 in the Clerk's Office of the Circuit Court of Middlesex County, Virginia, said point having a coordinate value of North 3,753,477.44, East 12,081,494.01 based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011), thence continuing in the waters of the Rappahannock River, N. 37°08'57" E., a distance of 224.70' to a point having a coordinate value of North 3,753,656.54, East 12,081,629.71, thence on a curve to the right having a radius of 1990.00', an arc length of 160.99', and a chord bearing and distance of N. 39°28'00" E., 160.94' to a point having a coordinate value of North 3,753,780.79, East 12,081,732.01, thence N. 41°47'04" E., a distance of 1410.46' to a point having a coordinate value of North 3,754,832.51, East 12,082,671.84, thence N. 36°35'14" E., a distance of 6853.09' to a point having a coordinate value of North 3,760,335.21, East 12,086,756.59, thence N. 34°30'43" E., a distance of 1530.60' to a point having a coordinate value of North 3,761,596.43, East 12,087,623.79, thence on a curve to the right having a radius of 990.00', an arc length of 47.03', and a chord bearing and distance of N. 35°52'23" E., 47.03' ending at a point on the mean low water mark on the north side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the northerly line of the Commonwealth of Virginia and being S. 77°21'59" E., a distance of 62.15' from the southwesterly property corner of a*

*parcel of land owned by Highbank Association Incorporated as recorded in instrument number LR20080000163 in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, said point having a coordinate value of North 3,761,634.54, East 12,087,651.35, and containing 46.42 acres more or less.*

*§ 2. The portion of the property described in § 1 of this act that lies within the Baylor Survey shall not be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth and is described as follows:*

*Area within Public Ground No. 1 Middlesex County*

*Beginning at a point on the southerly line of the Baylor Survey grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Middlesex County, Virginia (119.001.0300), said point also being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,754,348.40, East 12,082,239.23, based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011) and being the point of beginning: thence, from said point of beginning along the southerly line of the Baylor Survey Grounds of Public Ground No. 1, N. 75°00'02" W., a distance of 112.02' to a point having a coordinate value of North 3,754,377.39, East 12,082,131.03, thence leaving the aforesaid southerly line, N. 41°47'04" E., a distance of 695.18' to a point having a coordinate value of North 3,754,895.76, East 12,082,594.25, thence N. 36°35'14" E., a distance of 1582.23' to a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 having a coordinate value of North 3,756,166.21, East 12,083,537.33, thence along the aforesaid northerly line, S. 73°58'25" E., a distance of 106.80' to a point, said point being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,756,136.72, East 12,083,639.98, thence S. 73°58'25" E., a distance of 106.80' to a point having a coordinate value of North 3,756,107.24, East 12,083,742.63, thence leaving the aforesaid northerly line, S. 36°35'14" W., a distance of 1666.32' to a point having a coordinate value of North 3,754,769.26, East 12,082,749.43, thence S. 41°47'04" W., a distance of 603.30' to a point, said point being on the southerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,754,319.41, East 12,082,347.44, thence along the aforesaid southerly line, N. 75°00'02" W., a distance of 112.02' to the point of beginning, containing 10.44 acres.*

*Area within Public Ground No. 1 Lancaster County*

*Beginning at a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Lancaster County, Virginia (103.001.0300), said point also being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,760,975.70, East*

*12,087,196.98 based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011) and being the point of beginning: thence, from said point of beginning along the northerly line of the Baylor Survey Grounds of Public Ground No. 1, S. 36°47'27" E., a distance of 105.57' to a point, having a coordinate value of North 3,760,891.15, East 12,087,260.20, thence leaving the aforesaid northerly line, S. 34°30'43" W., a distance of 745.26' to a point having a coordinate value of North 3,760,277.06, East 12,086,837.96, thence S. 36°35'14" W., a distance of 1454.73' to a point on the southerly line of the Baylor Survey Grounds of Public Ground No. 1, having a coordinate value of North 3,759,108.98, East 12,085,970.87, thence along the aforesaid southerly line, N. 55°16'47" W., a distance of 100.05' to a point, said point being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,759,165.97, East 12,085,888.64, thence N. 55°16'47" W., a distance of 100.05' to a point having a coordinate value of North 3,759,222.95, East 12,085,806.40, thence leaving the aforesaid southerly line N. 36°35'14" E., a distance of 1457.63' to a point having a coordinate value of North 3,760,393.36, East 12,086,675.21, thence N. 34°30'43" E., a distance of 809.32' to a point, said point being on the northerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,761,060.24, East 12,087,133.75, thence along the aforesaid northerly line S. 36°47'27" E., a distance of 105.57' to the point of beginning, containing 10.25 acres.*

*§ 3. The instruments granting and conveying the easement and rights-of-way from the Commonwealth to Virginia Electric and Power Company shall be in a form approved by the Attorney General. The legal descriptions in §§ 1 and 2 may be modified to correct any errors discovered during the process of finalizing these instruments. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That Chapter 377 of the Acts of Assembly of 2015 is repealed.

## **Chapter 358 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2018; created.**

An Act to authorize the issuance of bonds, in an amount up to \$21,000,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the

issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 232\]](#)

Approved March 19, 2018

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§1. Title.*

*This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2018."*

*§ 2. Authorization of bonds and bond anticipation notes.*

*The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ....." in an aggregate principal amount not exceeding \$21,000,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to*

*borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:*

<i>Institution</i>	<i>Project Title</i>	<i>Amount</i>
<i>Norfolk State University</i>	<i>Construct Residence Housing</i>	<i>\$10,000,000</i>
<i>The College of William and Mary in Virginia</i>	<i>Renovate Dormitories: Green &amp; Gold Phase</i>	<i>\$11,000,000</i>
<i>Total</i>		<i>\$21,000,000</i>

**§ 3. Application of proceeds**

*The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.*

**§ 4. Details, sale of bonds and BANs.**

*Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of*

*ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates.*

*The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.*

*In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series."*

*§ 5. Execution of bonds and BANs.*

*Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN, such persons may not have been such officers.*

*§ 6. Sources for payment of expenses.*

*All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.*

*§ 7. Revenues*

*Each institution of higher education named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.*

*§ 8. Investments and contracts.*

*A*

*Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.*

*B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager*

*with professional investment capabilities duly authorized by the Treasury Board to make such determinations.*

*C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.*

*§ 9. Security for bonds and BANs.*

*The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.*

*§ 10. Exemption of interest from tax.*

*The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.*

*§ 11. Refunding bonds and BANs.*

*The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia.*

*Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.*

**§ 12. Defeasance.**

*Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.*

**§ 13. Severability**

*The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 366 Purple Heart State; Dept. of Transportation shall place and maintain signs along certain highways.**

An Act to direct the Department of Transportation to place signs reflecting Virginia's designation as a Purple Heart State.

[\[S 847\]](#)

Approved March 19, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation shall place and maintain signs along certain highways reflecting the 2016 designation by the General Assembly of Virginia as a Purple Heart State, reflecting Virginia's admiration and utmost gratitude for all the veterans and active duty service members who have paid the high price of freedom by leaving their families and communities and placing themselves in harm's way and who have selflessly served their country.*

## Chapter 421 Constitutional amendment; real property tax exemption for spouse of disabled veteran.

An Act to provide for the submission to the voters of a proposed amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

[\[H 71\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2018, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action.

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this subdivision, so long as the surviving spouse does not remarry ~~and continues to occupy the real property as his or her principal place of residence.~~ *This exemption applies to the surviving spouse's principal place of res-*

*idence without any restriction on the spouse's moving to a different principal place of residence.*

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

§ 2. The ballot shall contain the following question:

"Question: Shall the real property tax exemption for a primary residence that is currently provided to the surviving spouses of veterans who had a one hundred percent service-connected, permanent, and total disability be amended to allow the surviving spouse to move to a different primary residence and still claim the exemption?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2019.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 422 Constitutional amendment; real property tax exemption for spouse of disabled veteran.**

An Act to provide for the submission to the voters of a proposed amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

[\[S 900\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2018, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action.

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was

eligible for the exemption provided in this subdivision, so long as the surviving spouse does not remarry ~~and continues to occupy the real property as his or her principal place of residence~~. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.*

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

§ 2. The ballot shall contain the following question:

"Question: Shall the real property tax exemption for a primary residence that is currently provided to the surviving spouses of veterans who had a one hundred percent service-connected, permanent, and total disability be amended to allow the surviving spouse to move to a different primary residence and still claim the exemption?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and

without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2019.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 429 Washington Metropolitan Area Transit Authority Board of Directors; review of Board.**

An Act to direct the Secretary of Transportation to conduct a review of the Washington *Metropolitan Area Transit Authority Board of Directors* membership provisions. Report.

[\[H 384\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Secretary of Transportation (Secretary) shall conduct a review of the Washington Metropolitan Area Transit Authority Board of Directors membership provisions. Such review shall consider the criteria used to determine eligibility to represent the Commonwealth on the Washington Metropolitan Area Transit Authority and whether the current representation criteria serve the best interests of the Commonwealth. The Secretary shall also determine whether any changes to the Commonwealth's representation can be made without an amendment to the Washington Metropolitan Area Transit Authority Compact.*

*The Secretary shall conclude the review by November 30, 2018, and shall submit to the Governor and the General Assembly an executive summary and a report of his findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## Chapter 438 Natural Tunnel Parkway; authorizes DCR to accept certain real property in Scott County.

An Act to authorize the Department of Conservation and Recreation to accept certain property on Natural Tunnel Parkway in Scott County.

[\[H 669\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation, pursuant to §§ [2.2-1149](#) and [10.1-114](#) of the Code of Virginia, is hereby authorized to accept from the Newman Living Trust the conveyance of two parcels of real property measuring approximately 1.85 acres in total located on Natural Tunnel Parkway in Scott County, south and east of the intersection of Natural Tunnel Parkway and Glenita Fault Lane and more particularly described as Scott County Real Estate Map I.D. Number 100 A 64, held by the Newman Living Trust by that certain quitclaim deed recorded in Deed Book 545, Page 1420 in the office of the Clerk of the Circuit Court of Scott County and measuring approximately 1.73 acres, and as Scott County Real Estate Map I.D. Number 100 A 65, shown by the Scott County Tax Assessor as held by the Natural Tunnel Stone Co. and measuring approximately 0.12 acres. The conveyance shall be made without consideration and shall be made for the purpose of providing Natural Tunnel State Park with additional property.-*

*§ 2. That notwithstanding any other provision of law, including any provision to the contrary contained in a general appropriation act adopted by the 2018 Session of the General Assembly, the Department of Conservation and Recreation is authorized to accept the conveyance of these properties as contiguous to Natural Tunnel State Park.*

*§ 3. That the conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, accept, and deliver such deed and other documents as may be necessary to accomplish the conveyance. Acceptance of the conveyance is subject to the Department of Conservation and Recreation obtaining appropriate environmental assessment(s) of the property satisfactory to the Commonwealth.*

## Chapter 442 Little Island Coast Guard Station; conveyance of certain property in Virginia Beach.

An Act to authorize the Department of Conservation and Recreation to negotiate a land exchange of certain parcels in an area known as Little Island Park in the City of Virginia Beach.

[\[H 821\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation (the Department) is hereby authorized to convey to the City of Virginia Beach (the City), upon terms and conditions as the Department and the City deem proper, with the approval of the Governor and in a form approved by the Attorney General, all of its right, title, and interest in the parcel within Little Island Park known as the Little Island Coast Guard Station (the Parcel) and identified by recordation in the Clerk's Office of the Circuit Court of the City of Virginia Beach in Deed Book 71 at Page 310, and in the tax records of the City as GPIN 2432-82-2427.*

*§ 2. That in exchange for such conveyance, the Department is authorized to receive, subject to the approval of the Governor and in a form approved by the Attorney General in accordance with § [2.2-1149](#) of the Code of Virginia, all the respective right, title, and interest of the City in property adjacent to Little Island Park that provides public access to Back Bay and has the potential to be used by False Cape State Park for improved interpretation of natural resources (the Exchange Parcel), the boundaries of which shall be determined by mutual agreement of the Department and City (with no further review required), which shall be added to False Cape State Park.*

*§ 3. The General Assembly finds that the Parcel and the Exchange Parcel are of equivalent value and no appraisals of the properties shall be required to complete the exchange.*

*§ 4. The purpose of this exchange is to enable the City to expand its Little Island Park and for the Department to enhance the operations of False Cape State Park.*

*§5. The conveyance shall also comply with the requirements of the federal Land and Water Conservation Fund Act (54 U.S.C. § 200301 et seq.). Pursuant to Item 365 I and notwithstanding the provisions of Item C-25 and § 4-13.00 of the 2017 Appropriation Act, the Department is authorized to accept donated parcels of land adjacent to Little Island Park as needed in order to meet the requirements of the Land and Water Conservation Fund Act.*

## **Chapter 444 Regulatory reduction pilot program; Department of Planning and Budget to implement, report.**

An Act to direct the Department of Planning and Budget to implement a regulatory reduction pilot program.

[\[H 883\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Definitions.*

*As used in this act:*

*"Department" means the Department of Planning and Budget.*

*"Pilot agencies" means the Department of Professional and Occupational Regulation and the Department of Criminal Justice Services.*

*"Regulation" means the same as that term is defined in § [2.2-4001](#).*

*"Regulatory requirement" means any action required to be taken or information required to be provided in accordance with a statute or regulation in order to access government services or operate and conduct business. "Regulatory requirement" does not include (i) regulations and associated regulatory requirements that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved or to meet requirements of federal law or regulations, (ii) statements or policies concerning the internal management of any agency, (iii) guidance documents, (iv) declaratory rulings, or (v) intra-agency or interagency memoranda.*

*§ 2. The Department, under the direction of the Secretary of Finance, shall administer a three-year regulatory reduction pilot program beginning July 1, 2018, and ending July 1, 2021. Such program shall consist of the following elements:*

1. *The program shall focus on regulations promulgated and administered by the pilot agencies. The stated goal of the program shall be to reduce regulatory requirements, compliance costs, and regulatory burden across both agencies by 25 percent by July 1, 2021.*

2. *The responsible Secretaries shall ensure that the pilot agencies develop a baseline regulatory catalog by October 1, 2018, that identifies (i) the total number and type of regulations and regulatory requirements currently promulgated or administered by the two agencies and (ii) any specific federal or state mandates or statutory authority that requires the regulations and associated requirements.*

3. *The catalog data shall be reported to the Department, in a manner specified by the Department, and published in the Regulatory Town Hall.*

4. *The 25 percent reduction goal shall be based on the total number of regulations and regulatory requirements as provided by the baseline regulatory catalog. Progress towards the stated goal shall be measured by the number of regulations and regulatory requirements that are either eliminated or streamlined through regulatory or other action.*

*§ 3. Reporting by pilot agencies.*

A. *The pilot agencies shall report by July 1, 2019, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 7.5 percent of the regulations and regulatory requirements contained in its baseline regulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.*

B. *The pilot agencies shall report by July 1, 2020, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 15 percent of the regulations and regulatory requirements contained in its baseline regulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.*

C. *The pilot agencies shall report by July 1, 2021, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through*

*a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 25 percent reduction of the regulations and regulatory requirements contained in its baseline regulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.*

*§ 4. Reporting by the Secretary of Finance; basis for implementation of 2-for-1 regulatory budget.*

*A. The Secretary of Finance shall report annually to the Speaker of the House and the Chairman of the Senate Rules Committee no later than October 1, 2019, and October 1, 2020, on the progress of the regulatory reduction pilot program established pursuant to this act.*

*B. If, by July 1, 2020, the regulatory reduction pilot program has achieved less than a 15 percent total reduction in regulatory requirements across both pilot agencies, either by initiating rulemaking actions or other streamlining actions, the Secretary of Finance shall include the reasons for not meeting the target reduction in his next available annual report to the Speaker of the House and the Chairman of the Senate Rules Committee.*

*C. The Secretary of Finance shall report by August 15, 2021, to the Speaker of the House and the Chairman of the Senate Rules Committee the following information: (i) the progress towards identifying the 25 percent reduction goal, (ii) recommendations for expanding the program to other agencies, and (iii) any additional information the Secretary determines may be helpful to support the General Assembly's regulatory reduction and reform efforts.*

*D. If, by October 1, 2021, the program has achieved less than a 25 percent total reduction in regulations and regulatory requirements across both pilot agencies, either by initiating rulemaking actions or other streamlining actions, then the Secretary of Finance shall report on the feasibility and effectiveness of implementing a 2-for-1 regulatory budget providing that for every one new regulatory requirement, two existing regulatory requirements of equivalent or greater burden must be streamlined, repealed, or replaced for a period not to exceed three years. The Speaker of the House and the Chairman of the Senate Rules Committee may also direct the House Appropriations Committee and the Senate Finance Committee to initiate a budgetary audit of each agency participating in the pilot program to assess what obstacles exist to meeting the 25 percent reduction goal. Further, the Speaker of the House and the Chairman of the Senate Rules Committee may direct the Joint Legislative Audit and Review Commission to review the regulatory reduction efforts of both agencies as part of the pilot program and report to the General Assembly any findings and recommendations regarding (i) whether the*

*reduction goals are reasonable and achievable, and (ii) policies, practices, and methods that may be adopted by agencies to successfully achieve the reduction goals.*

§ 5. *By July 1, 2020, all executive branch agencies subject to the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) shall develop a baseline regulatory catalog and report their catalog data, and any specific federal or state mandates or statutory authority that require the regulations and associated regulatory requirements, to the Department.*

§ 6. *The Department shall track and report on the extent to which agencies comply with existing requirements to periodically review all regulations every four years. Agencies shall provide to the Department a schedule listing each regulation that shall be reviewed in each of the four years, to be published on the Regulatory Town Hall.*

## **Chapter 445 Regulatory reduction pilot program; Department of Planning and Budget to implement, report.**

An Act to direct the Department of Planning and Budget to implement a regulatory reduction pilot program.

[\[S 20\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Definitions.*

*As used in this act:*

*"Department" means the Department of Planning and Budget.*

*"Pilot agencies" means the Department of Professional and Occupational Regulation and the Department of Criminal Justice Services.*

*"Regulation" means the same as that term is defined in § [2.2-4001](#).*

*"Regulatory requirement" means any action required to be taken or information required to be provided in accordance with a statute or regulation in order to access government services or operate and conduct business. "Regulatory requirement" does not include (i) regulations and associated regulatory requirements that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved or to meet requirements of federal law or regulations, (ii) statements or policies*

concerning the internal management of any agency, (iii) guidance documents, (iv) declaratory rulings, or (v) intra-agency or interagency memoranda.

§ 2. The Department, under the direction of the Secretary of Finance, shall administer a three-year regulatory reduction pilot program beginning July 1, 2018, and ending July 1, 2021. Such program shall consist of the following elements:

1. The program shall focus on regulations promulgated and administered by the pilot agencies. The stated goal of the program shall be to reduce regulatory requirements, compliance costs, and regulatory burden across both agencies by 25 percent by July 1, 2021.

2. The responsible Secretaries shall ensure that the pilot agencies develop a baseline regulatory catalog by October 1, 2018, that identifies (i) the total number and type of regulations and regulatory requirements currently promulgated or administered by the two agencies and (ii) any specific federal or state mandates or statutory authority that requires the regulations and associated requirements.

3. The catalog data shall be reported to the Department, in a manner specified by the Department, and published in the Regulatory Town Hall.

4. The 25 percent reduction goal shall be based on the total number of regulations and regulatory requirements as provided by the baseline regulatory catalog. Progress towards the stated goal shall be measured by the number of regulations and regulatory requirements that are either eliminated or streamlined through regulatory or other action.

§ 3. Reporting by pilot agencies.

A. The pilot agencies shall report by July 1, 2019, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 7.5 percent of the regulations and regulatory requirements contained in its baseline regulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.

B. The pilot agencies shall report by July 1, 2020, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 15 percent of the regulations and regulatory requirements contained in its baseline reg-

*ulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.*

*C. The pilot agencies shall report by July 1, 2021, to the Department all regulations and regulatory requirements initially identified for elimination, amendment, or streamlining. Each pilot agency shall identify any regulation proposed for elimination or modification that requires a change in state law. Each pilot agency shall also initiate reforms, through a rulemaking or nonregulatory action, that produce a reduction of the equivalent of 25 percent reduction of the regulations and regulatory requirements contained in its baseline regulatory catalog. If a pilot agency is unable to reach this goal, it shall provide a separate report to the Secretary of Finance stating the reasons for not meeting the goal.*

*§ 4. Reporting by the Secretary of Finance; basis for implementation of 2-for-1 regulatory budget.*

*A. The Secretary of Finance shall report annually to the Speaker of the House and the Chairman of the Senate Rules Committee no later than October 1, 2019, and October 1, 2020, on the progress of the regulatory reduction pilot program established pursuant to this act.*

*B. If, by July 1, 2020, the regulatory reduction pilot program has achieved less than a 15 percent total reduction in regulatory requirements across both pilot agencies, either by initiating rulemaking actions or other streamlining actions, the Secretary of Finance shall include the reasons for not meeting the target reduction in his next available annual report to the Speaker of the House and the Chairman of the Senate Rules Committee.*

*C. The Secretary of Finance shall report by August 15, 2021, to the Speaker of the House and the Chairman of the Senate Rules Committee the following information: (i) the progress towards identifying the 25 percent reduction goal, (ii) recommendations for expanding the program to other agencies, and (iii) any additional information the Secretary determines may be helpful to support the General Assembly's regulatory reduction and reform efforts.*

*D. If, by October 1, 2021, the program has achieved less than a 25 percent total reduction in regulations and regulatory requirements across both pilot agencies, either by initiating rulemaking actions or other streamlining actions, then the Secretary of Finance shall report on the feasibility and effectiveness of implementing a 2-for-1 regulatory budget providing that for every one new regulatory requirement, two existing regulatory requirements of equivalent or greater burden must be streamlined, repealed, or replaced for a period not to exceed three years. The Speaker of the House and the Chairman of the Senate Rules Committee may also direct the House Appropriations Committee and*

*the Senate Finance Committee to initiate a budgetary audit of each agency participating in the pilot program to assess what obstacles exist to meeting the 25 percent reduction goal. Further, the Speaker of the House and the Chairman of the Senate Rules Committee may direct the Joint Legislative Audit and Review Commission to review the regulatory reduction efforts of both agencies as part of the pilot program and report to the General Assembly any findings and recommendations regarding (i) whether the reduction goals are reasonable and achievable, and (ii) policies, practices, and methods that may be adopted by agencies to successfully achieve the reduction goals.*

*§ 5. By July 1, 2020, all executive branch agencies subject to the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia) shall develop a baseline regulatory catalog and report their catalog data, and any specific federal or state mandates or statutory authority that require the regulations and associated regulatory requirements, to the Department.*

*§ 6. The Department shall track and report on the extent to which agencies comply with existing requirements to periodically review all regulations every four years. Agencies shall provide to the Department a schedule listing each regulation that shall be reviewed in each of the four years, to be published on the Regulatory Town Hall.*

## **Chapter 448 Eastern Virginia groundwater management; Department of Environmental Quality to convene a forum.**

An Act to direct the Department of Environmental Quality to convene a forum; Eastern Virginia groundwater management.

[\[H 1036\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That a groundwater trading work group is established for the purpose of serving as a resource to the Department of Environmental Quality (the Department) by further studying how to implement the recommendation, made by the Eastern Virginia Groundwater Management Advisory Committee (the EVGMAC), established pursuant to Chapters 262 and 613 of the Acts of Assembly of 2015, that an aquifer storage and recovery banking system be developed. The work group shall also conduct further study and identify the*

*components of a groundwater trading program. The work group shall consist of the members of the Trading Work Group of the EVGMAC. The work group shall appoint a chair and report its recommendations, including recommended program components, to the State Water Commission and the Director of the Department no later than July 1, 2020. The work group shall include in its discussions input from groundwater users interested in purchasing credits and representatives from local governing bodies currently injecting water into the Coastal Aquifers or considering a project to do so.*

## **Chapter 449 Dredged material siting; fast-track permitting program.**

An Act to direct the Marine Resources Commission to adopt regulations; disposal of dredged material; fast-track permit.

[\[H 1096\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Marine Resources Commission (the Commission) shall adopt regulations to establish and implement a fast-track permitting program that authorizes the selection and use of appropriate sites in Tidewater Virginia, as defined in § [28.2-100](#) of the Code of Virginia, for the disposal of material dredged in such region, with such regulations to be effective no later than July 1, 2019. The Commission's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ [2.2-4000](#) et seq. of the Code of Virginia), except that the Commission shall provide an opportunity for public comment on the regulations prior to adoption.*

## **Chapter 452 Direct service providers; disclosure of information by employers.**

An Act to direct the Department of Behavioral Health and Developmental Services to convene a work group in support of the Joint Commission on Health Care's efforts to improve the quality of the Commonwealth's direct support professional workforce; report.

[\[H 813\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Behavioral Health and Developmental Services shall, in conjunction with the Department for Aging and Rehabilitative Services, the Department of Medical Assistance Services, the Department of Social Services, the Virginia Association of Community Services Boards, the Virginia Network of Private Providers, and other relevant provider organizations and stakeholders, convene a work group in support of the Joint Commission on Health Care's efforts to improve the quality of the Commonwealth's direct support professional workforce and, if necessary, develop recommendations for policy changes to increase the transparency of the employment history of direct support professional job candidates. The Department of Behavioral Health and Developmental Services shall report its recommendations to the Joint Commission on Health Care by October 1, 2018.*

## **Chapter 462 Virginia Public Procurement Act; bid, performance, and payment bonds, waiver by localities, sunset.**

An Act to amend Chapter 789 of the Acts of Assembly of 2017 by adding a second enactment, relating to the Virginia Public Procurement Act; bid, performance, and payment bonds; waiver by localities; sunset.

[\[H 398\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1. That Chapter 789 of the Acts of Assembly of 2017 is amended by adding a second enactment as follows:

**2. That the provisions of this Act shall expire on July 1, 2021.**

## **Chapter 468 Cognitive impairment; VDH to include certain information in its public health outreach programs.**

An Act to direct the Department of Health to include certain information regarding cognitive impairment in its public health outreach programs.

[\[S 305\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Health in partnership with the Alzheimer's Disease and Related Disorders Commission, the Department for Aging and Rehabilitative Services, and the Alzheimer's Association, shall in its existing, relevant public health outreach programs incorporate information (i) to educate health care providers on the importance of early detection and timely diagnosis of cognitive impairment, validated cognitive assessment tools, the value of a Medicare Annual Wellness visit for cognitive health, and the new Medicare care planning billing code for individuals with cognitive impairment and (ii) to increase understanding and awareness of early warning signs of Alzheimer's disease and other types of dementia, the value of early detection and diagnosis, and how to reduce the risk of cognitive decline, particularly among persons in diverse communities who are at greater risk of developing Alzheimer's disease and other types of dementia.*

## **Chapter 478 Virginia State Bar; Clients' Protection Fund, extends sunset provision.**

An Act to amend and reenact the second enactment of Chapter 807 of the Acts of Assembly of 2007, as amended by Chapter 512 of the Acts of Assembly of 2014, relating to the Virginia State Bar; Clients' Protection Fund.

[\[S 210\]](#)

Approved March 23, 2018

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 807 of the Acts of Assembly of 2007, as amended by Chapter 512 of the Acts of Assembly of 2014, is amended and reenacted as follows:

2. That the provisions of this act shall expire on July 1, ~~2020~~ 2023.

## **Chapter 502 Claims; Danial J. Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice.**

An Act to amend the Code of Virginia by adding in Article 18.2 of Chapter 3 of Title 8.01 a section numbered 8.01-195.13 and for the relief of Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice, relating to compensation for wrongful incarceration for a felony conviction.

[\[H 762\]](#)

Approved March 29, 2018

Whereas, Danial J Williams (Mr. Williams), Joseph Jesse Dick, Jr. (Mr. Dick), Eric Cameron Wilson (Mr. Wilson), and Derek Elliot Tice (Mr. Tice) spent nearly four decades in prison collectively for crimes they did not commit, and another collective 30 years after release from prison under highly restrictive parole and sex offender registry conditions that imposed onerous barriers to their reentry to society; and

Whereas, in the early morning hours of July 8, 1997, Omar Ballard (Ballard) entered the Norfolk, Virginia, apartment of Michelle Moore Bosko (Ms. Bosko) and brutally raped her and strangled and stabbed her to death; and

Whereas, in 1997, Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were young men serving our country through military service with the United States Navy, none of whom had a criminal record; and

Whereas, investigating Norfolk police crime scene officers recorded a crime scene that strongly suggested Ms. Bosko was killed by a single assailant, and the officers collected several samples of DNA material; and

Whereas, a neighbor of Ms. Bosko provided police with the name of Ballard, a person with a long criminal history, as a suspect of Ms. Bosko's rape and murder; and

Whereas, Norfolk police officers investigated another rape that took place in the same complex where Ms. Bosko resided, and the victim provided information that fit the description of Ballard as her likely assailant; and

Whereas, the same evening as the neighbor provided Ballard's name as a suspect of Ms. Bosko's rape and murder, Norfolk police officers secured a warrant for Ballard's arrest for the assault of another woman in the same complex where Ms. Bosko resided; and

Whereas, instead of focusing on Ballard as a suspect in Ms. Bosko's rape and murder, Norfolk police officers interrogated and focused exclusively on Mr. Williams, a neighbor of Ms. Bosko; and

Whereas, police learned from Mr. Williams's ailing wife, who had just returned home from the hospital after cancer surgery, that Mr. Williams had been with her the entire evening of July 7 and morning hours of July 8; and

Whereas, while no evidence linked Mr. Williams to the crime, he fully cooperated with interrogating officers and repeatedly denied any involvement in or knowledge of the crime over the course of many hours; and

Whereas, after more than nine hours of interrogation during which Norfolk police officers falsely told Mr. Williams that he had failed a polygraph examination and suggested to Mr. Williams that he had raped Ms. Bosko and killed her by beating her with a shoe, Mr. Williams continued to declare his innocence; and

Whereas, Norfolk police brought into the interrogation Detective Robert Glen Ford (Ford), an aggressive and determined interrogator with a history of eliciting false confessions who has subsequently been convicted of federal felonies related to his police work; and

Whereas, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from an exhausted and traumatized Mr. Williams that he had assaulted and killed Ms. Bosko with a shoe; and

Whereas, Ford and other Norfolk police officers knew that Mr. Williams's statement was based on a false scenario provided to Mr. Williams by an interrogator and did not conform to the medical and forensic evidence; and

Whereas, when the medical examiner determined that Ms. Bosko had been strangled and stabbed to death, Norfolk police returned to Mr. Williams and insisted he change his confession to match the crime by saying that he stabbed and strangled Ms. Bosko; and

Whereas, Mr. Williams was a young man who had been taught by the Navy to comply with authority figures and was completely overwhelmed, and so he did as demanded by the police; and

Whereas, the Norfolk police accepted Mr. Williams's altered confession, told the public the case was solved, and did not further investigate the crime; and

Whereas, Mr. Williams was held without bail and charged with capital murder and rape; and

Whereas, in December 1997, Commonwealth crime lab DNA testing determined that Mr. Williams was not the source of the DNA evidence recovered from the crime scene; and

Whereas, Ford, who decided to continue to investigate Mr. Williams as a suspect, had previously secured false confessions after using aggressive interrogation techniques, and as a result had been demoted out of the homicide squad; and

Whereas, the Norfolk police did not turn the investigation to Ballard, even though he was now in prison for the violent assault of two young women, but instead sought to find a co-defendant to Mr. Williams who might be the contributor of the DNA evidence recovered at the crime scene; and

Whereas, Norfolk police decided to interrogate Mr. Williams's roommate, Mr. Dick, even though they had no evidence that he was involved in the crime; and

Whereas, Mr. Dick was a highly suggestible, immature young man of limited cognitive functioning; and

Whereas, on January 12, 1998, police picked up Mr. Dick from the naval base, placed him in a Norfolk police interrogation room, and sought to have him implicate himself and Mr. Williams in the crime; and

Whereas, Mr. Dick repeatedly told police that he had no involvement in the crime and had been on duty on the USS *Saipan* the week beginning on July 7; and

Whereas, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from Mr. Dick, who broke down after hours of steadfastly asserting his innocence; and

Whereas, Mr. Dick gave a statement in which he said that he and Mr. Williams had jointly assaulted and stabbed Ms. Bosko; and

Whereas, numerous facts in Mr. Dick's statement were glaringly inconsistent with both the known crime scene evidence and Mr. Williams's coerced statement; and

Whereas, Mr. Dick was held without bail and charged with capital murder and rape; and

Whereas, in March 1998, Commonwealth crime lab DNA testing confirmed that Mr. Dick was not the source of the DNA evidence recovered at the Bosko crime scene, and no evidence linked him to the crime; and

Whereas, Norfolk police again chose not to investigate Ballard as a suspect in the rape and murder of Ms. Bosko, and instead chose to look for another co-defendant to Mr. Williams and Mr. Dick, despite the fact that the crime scene evidence was inconsistent with a multiple-offender crime theory; and

Whereas, the Norfolk police turned their attention to Mr. Wilson, an acquaintance of Mr. Williams; and

Whereas, in early April 1998, Norfolk police brought Mr. Wilson to an interrogation room and, through illegal and improper means and contrary to accepted police practices, obtained a false confession; and

Whereas, Mr. Wilson had, for hours, denied any knowledge or involvement in the crime but like Mr. Williams and Mr. Dick had become exhausted and traumatized and gave into pressure from the police; and

Whereas, Mr. Wilson's confession matched neither the known crime scene evidence nor Mr. Williams's nor Mr. Dick's prior statements to the police, and no forensic evidence linked Mr. Wilson to the crime; and

Whereas, Mr. Wilson was held without bail and charged with capital murder and rape; and

Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Wilson as the source of the DNA recovered from the crime scene; and

Whereas, in June 1998, Norfolk police again ignored the overwhelming evidence that Ballard might have committed this crime and sought to identify a fourth potential DNA contributor through continued questioning of the highly malleable and submissive Mr. Dick; and

Whereas, undeterred by Mr. Dick's then-obvious prior false and inconsistent statements, Ford and his partner demanded that Mr. Dick provide the name of another suspect; and

Whereas, despite Mr. Dick giving the Norfolk police officers a made-up name and description of someone that did not match Navy records, Ford persisted and pressured Mr. Dick to pick out Mr. Tice from a Navy yearbook from Mr. Wilson's ship; and

Whereas, again, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from Mr. Tice, who after two days in police custody, hours of interrogation, and repeatedly professing his innocence to no avail finally told Ford that he committed the crime along with Mr. Williams, Mr. Dick, and Mr. Wilson; and

Whereas, Mr. Tice's confession was inconsistent in numerous respects with the known crime scene evidence and the statements of Mr. Williams, Mr. Dick, and Mr. Wilson; and

Whereas, Mr. Tice was held on bail and charged with capital murder and rape; and

Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Tice as a contributor of the DNA evidence recovered from the crime scene; and

Whereas, in the fall of 1998, in a misdirected search for a co-defendant whose DNA would match the Bosko crime scene evidence, Ford and other Norfolk police officers

interrogated and charged three additional former members of the U.S. Navy with participating in the assault and murder of Ms. Bosko; despite forceful interrogations, none of these men gave incriminating statements but each was held for several months even though two of the three had very strong alibis that were known to the police; and Whereas, in February 1999, Ballard, incarcerated for a sexual assault he had committed unrelated to the Bosko case, wrote to a friend and admitted responsibility for killing Ms. Bosko; and

Whereas, this letter was promptly shared with Norfolk police; and

Whereas, Ford and another Norfolk police officer met with Ballard, who confessed to Ms. Bosko's murder after a brief questioning and told police that he alone committed the crime; and

Whereas, Ballard's statement matched the known crime scene evidence in all respects; and

Whereas, Commonwealth crime lab DNA testing confirmed that the DNA evidence recovered from Ms. Bosko's body, from under her fingernails, and from a blanket near her body belonged to Ballard; and

Whereas, Ballard was charged with capital murder and rape; and

Whereas, Ford was involved before, during, and after his investigation of the rape and murder of Ms. Bosko in a fraudulent scheme to urge judges to allow certain offenders to remain out on bail; these offenders paid thousands of dollars to Ford as bribes, and in return Ford committed perjury so they could retain their freedom; and

Whereas, Ford has subsequently been convicted and is serving a 150-month sentence in federal prison related to this felonious scheme; and

Whereas, in order for Ford to conceal that the confessions of Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were coerced and false so that he could continue to be employed with the homicide squad, as well as so that he could continue his enrichment scheme to accept bribes, Ford told Ballard that he could avoid the death penalty only by asserting that Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice committed the crime with him; and Whereas, even though the statement that the other four men were involved in the assault and murder of Ms. Bosko was a lie, Ballard agreed to go along with Ford in order to obtain the life-sentence deal; and

Whereas, fearing the death penalty, Mr. Williams reluctantly entered a guilty plea in order to receive a sentence of life without parole; and

Whereas, Mr. Williams sought to withdraw his guilty plea after he learned of Ballard's confession, but the prosecution successfully opposed the motion; and

Whereas, also fearing for his life and in a fragile state of mind, Mr. Dick also entered a plea of guilty and was sentenced to life in prison; and

Whereas, Mr. Wilson insisted on going to trial and testified at the trial that he was not guilty; the jury acquitted him of murder but convicted him of rape, based solely on his false, coerced confession, and sentenced him to eight and one-half years in prison; and

Whereas, Mr. Tice also fought the charges against him and was tried twice. His first conviction was overturned on appeal due to defective jury instructions, but solely on the basis of his false, coerced confession he was convicted at a second trial of both capital murder and rape and received life sentences; and

Whereas, Norfolk police withheld from each of these wrongfully charged men evidence that, had it been disclosed, would have prevented Mr. Williams and Mr. Dick from entering guilty pleas to avoid the death penalty and would have led juries to acquit Mr. Wilson and Mr. Tice of all charges; and

Whereas, each of these four men were imprisoned and experienced assaults and other horrific experiences during the imprisonment that irreparably broke them in a manner that no time or money will ever fix; and

Whereas, in 2005, the four men sought absolute pardons due to their innocence; and

Whereas, Norfolk officials vigorously opposed these petitions and continued to withhold evidence from the Governor of Virginia that would have confirmed their innocence; and

Whereas, in 2009, Governor Tim Kaine granted conditional pardons to Mr. Williams, Mr. Dick, and Mr. Tice, concluding that they had made a very strong case that they, and Mr. Wilson, were innocent; however, Governor Kaine did not disturb their convictions and required that they each accept parole supervision for 20 years and register as sex offenders; and

Whereas, Mr. Wilson had previously been released from prison in 2005 after serving his full sentence and was also required to register as a sex offender; and

Whereas, all four men have struggled to rebuild their lives and have lived vastly reduced lives due to the strong stigma of their wrongful convictions for violent crimes and due further to the stringent conditions of parole and sex offender registry requirements; and

Whereas, many job training programs and promising employment opportunities have not been available due to these limitations; and

Whereas, the four men have been restricted from living in certain areas, subject to strict curfews, and unable to be in the vicinity of certain public facilities; and

Whereas, numerous family relations were shattered, and other friends and acquaintances have wanted nothing to do with them; and

Whereas, federal habeas review overturned Mr. Tice's convictions; that relief was affirmed by a unanimous three-judge panel of the United States Court of Appeals for the Fourth Circuit, and thereafter all state charges were dismissed without prejudice (with the Commonwealth reserving the right to recharge him later); and

Whereas, in 2016, federal habeas review brought relief to Mr. Williams and Mr. Dick when a district court judge, after conducting a two-day hearing on innocence, ruled that Mr. Williams, Mr. Dick, Mr. Tice, and Mr. Wilson were absolutely innocent, and that the only guilty party was Ballard; and

Whereas, all charges were dismissed against Mr. Williams and Mr. Dick in November 2016; and

Whereas, Mr. Wilson could not receive any state or federal judicial relief due to procedural technicalities; however, in late 2016, he, Mr. Williams, Mr. Dick, and Mr. Tice filed for absolute pardons from Governor Terry McAuliffe; and

Whereas, in March 2017, Governor McAuliffe issued full, absolute pardons to each man due to their factual innocence; and

Whereas, had Norfolk officials not purposefully fabricated evidence to make each man appear guilty and deliberately withheld exonerating evidence during the trials, appeals, clemency proceedings, and state and federal habeas proceedings that would have proven their innocence, these men would not have been charged with or convicted of these horrific crimes and would not have suffered for nearly two decades with shame, humiliation, and loss of liberty as convicted rapists and murderers; and

Whereas, Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice have no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 18.2 of Chapter 3 of Title 8.01 a section numbered 8.01-195.13 as follows:

*§ 8.01-195.13. Compensation for certain intentional acts.*

*A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a court of competent jurisdiction over the matter determines, or the court record clearly demonstrates, that the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision thereof (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful conviction in such manner and (ii) intentionally, willfully, and continuously suppressed or withheld evidence establishing the innocence of the person wrongfully incarcerated, including but not limited to suppression*

*or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth may compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in addition to any compensation awarded pursuant to § [8.01-195.11](#) and may be up to or equal to the amount of such compensation. The additional compensation shall be added to any amount awarded pursuant to § [8.01-195.11](#), and the total compensation shall be paid pursuant to subdivision B of § [8.01-195.11](#). Nothing provided in this section shall be interpreted to supplant, revoke, or supersede any other provision of this article applicable to the award of compensation for wrongful incarceration, and the additional compensation shall be subject to any conditions set forth in this article.*

*B. Any compensation awarded pursuant to this article that includes the additional compensation for intentional acts as set forth in subsection A shall not become effective and payable by the Commonwealth unless and until (i) the person wrongfully incarcerated executes the release and waiver pursuant to subsection B of § [8.01-195.12](#) and (ii) the instrumentality, or political subdivision thereof, employing any individual committing the intentional acts set forth in clauses (i) and (ii) of subsection A enters into an agreement with the person wrongfully incarcerated requiring such instrumentality or political subdivision to compensate the person with a sum at least equal to the total compensation provided pursuant to § [8.01-195.11](#) and this section.*

**2.**

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$895,299 for the relief of Danial J Williams, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Williams may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$179,060 to be paid to Mr. Williams by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$716,239 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the third enactment of this act, for the primary benefit of Mr. Williams, the terms of such annuity structured in Mr. Williams's best interests based on consultation among Mr. Williams or his representatives, the State Treasurer, and other necessary parties.*

§ 2. That there is hereby appropriated from the general fund of the state treasury the sum of \$875,845 for the relief of Joseph Jesse Dick, Jr., to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Dick may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$175,169 to be paid to Mr. Dick by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$700,676 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fourth enactment of this act, for the primary benefit of Mr. Dick, the terms of such annuity structured in Mr. Dick's best interests based on consultation among Mr. Dick or his representatives, the State Treasurer, and other necessary parties.

§ 3. That there is hereby appropriated from the general fund of the state treasury the sum of \$866,456 for the relief of Eric Cameron Wilson, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Wilson may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$173,291 to be paid to Mr. Wilson by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$693,165 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fifth enactment of this act, for the primary benefit of Mr. Wilson, the terms of such annuity structured in Mr. Wilson's best interests based on consultation among Mr. Wilson or his representatives, the State Treasurer, and other necessary parties.

§ 4. That there is hereby appropriated from the general fund of the state treasury the sum of \$858,704 for the relief of Derek Elliot Tice, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Tice may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to §

[19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$171,741 to be paid to Mr. Tice by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$686,963 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the sixth enactment of this act, for the primary benefit of Mr. Tice, the terms of such annuity structured in Mr. Tice's best interests based on consultation among Mr. Tice or his representatives, the State Treasurer, and other necessary parties.*

3. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 1 of the second enactment of this act shall not become effective until such time as Danial J Williams and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Williams the sum of at least \$895,299. In order for the provisions of § 1 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

4. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 2 of the second enactment of this act shall not become effective until such time as Joseph Jesse Dick, Jr., and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Dick the sum of at least \$875,845. In order for the provisions of § 2 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

5. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 3 of the second enactment of this act shall not become effective until such time as Eric Cameron Wilson and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Wilson the sum of at least \$866,456. In order for the provisions of § 3 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall

forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

6. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 4 of the second enactment of this act shall not become effective until such time as Derek Elliot Tice and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Tice the sum of at least \$858,704. In order for the provisions of § 4 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

7. That the provisions of § [8.01-195.12](#) of the Code of Virginia shall apply to any compensation awarded under this act.

### **Chapter 503 Claims; Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice.**

An Act to amend the Code of Virginia by adding in Article 18.2 of Chapter 3 of Title 8.01 a section numbered 8.01-195.13 and for the relief of Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice, relating to compensation for wrongful incarceration for a felony conviction.

[\[S 772\]](#)

Approved March 29, 2018

Whereas, Danial J Williams (Mr. Williams), Joseph Jesse Dick, Jr. (Mr. Dick), Eric Cameron Wilson (Mr. Wilson), and Derek Elliot Tice (Mr. Tice) spent nearly four decades in prison collectively for crimes they did not commit, and another collective 30 years after release from prison under highly restrictive parole and sex offender registry conditions that imposed onerous barriers to their reentry to society; and

Whereas, in the early morning hours of July 8, 1997, Omar Ballard (Ballard) entered the Norfolk, Virginia, apartment of Michelle Moore Bosko (Ms. Bosko) and brutally raped her and strangled and stabbed her to death; and

Whereas, in 1997, Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were young men serving our country through military service with the United States Navy, none of whom had a criminal record; and

Whereas, investigating Norfolk police crime scene officers recorded a crime scene that strongly suggested Ms. Bosko was killed by a single assailant, and the officers collected several samples of DNA material; and

Whereas, a neighbor of Ms. Bosko provided police with the name of Ballard, a person with a long criminal history, as a suspect of Ms. Bosko's rape and murder; and

Whereas, Norfolk police officers investigated another rape that took place in the same complex where Ms. Bosko resided, and the victim provided information that fit the description of Ballard as her likely assailant; and

Whereas, the same evening as the neighbor provided Ballard's name as a suspect of Ms. Bosko's rape and murder, Norfolk police officers secured a warrant for Ballard's arrest for the assault of another woman in the same complex where Ms. Bosko resided; and

Whereas, instead of focusing on Ballard as a suspect in Ms. Bosko's rape and murder, Norfolk police officers interrogated and focused exclusively on Mr. Williams, a neighbor of Ms. Bosko; and

Whereas, police learned from Mr. Williams's ailing wife, who had just returned home from the hospital after cancer surgery, that Mr. Williams had been with her the entire evening of July 7 and morning hours of July 8; and

Whereas, while no evidence linked Mr. Williams to the crime, he fully cooperated with interrogating officers and repeatedly denied any involvement in or knowledge of the crime over the course of many hours; and

Whereas, after more than nine hours of interrogation during which Norfolk police officers falsely told Mr. Williams that he had failed a polygraph examination and suggested to Mr. Williams that he had raped Ms. Bosko and killed her by beating her with a shoe, Mr. Williams continued to declare his innocence; and

Whereas, Norfolk police brought into the interrogation Detective Robert Glen Ford (Ford), an aggressive and determined interrogator with a history of eliciting false confessions who has subsequently been convicted of federal felonies related to his police work; and

Whereas, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from an exhausted and traumatized Mr. Williams that he had assaulted and killed Ms. Bosko with a shoe; and

Whereas, Ford and other Norfolk police officers knew that Mr. Williams's statement was based on a false scenario provided to Mr. Williams by an interrogator and did not conform to the medical and forensic evidence; and

Whereas, when the medical examiner determined that Ms. Bosko had been strangled and stabbed to death, Norfolk police returned to Mr. Williams and insisted he change his confession to match the crime by saying that he stabbed and strangled Ms. Bosko; and  
Whereas, Mr. Williams was a young man who had been taught by the Navy to comply with authority figures and was completely overwhelmed, and so he did as demanded by the police; and

Whereas, the Norfolk police accepted Mr. Williams's altered confession, told the public the case was solved, and did not further investigate the crime; and

Whereas, Mr. Williams was held without bail and charged with capital murder and rape; and

Whereas, in December 1997, Commonwealth crime lab DNA testing determined that Mr. Williams was not the source of the DNA evidence recovered from the crime scene; and

Whereas, Ford, who decided to continue to investigate Mr. Williams as a suspect, had previously secured false confessions after using aggressive interrogation techniques, and as a result had been demoted out of the homicide squad; and

Whereas, the Norfolk police did not turn the investigation to Ballard, even though he was now in prison for the violent assault of two young women, but instead sought to find a co-defendant to Mr. Williams who might be the contributor of the DNA evidence recovered at the crime scene; and

Whereas, Norfolk police decided to interrogate Mr. Williams's roommate, Mr. Dick, even though they had no evidence that he was involved in the crime; and

Whereas, Mr. Dick was a highly suggestible, immature young man of limited cognitive functioning; and

Whereas, on January 12, 1998, police picked up Mr. Dick from the naval base, placed him in a Norfolk police interrogation room, and sought to have him implicate himself and Mr. Williams in the crime; and

Whereas, Mr. Dick repeatedly told police that he had no involvement in the crime and had been on duty on the USS *Saipan* the week beginning on July 7; and

Whereas, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from Mr. Dick, who broke down after hours of steadfastly asserting his innocence; and

Whereas, Mr. Dick gave a statement in which he said that he and Mr. Williams had jointly assaulted and stabbed Ms. Bosko; and

Whereas, numerous facts in Mr. Dick's statement were glaringly inconsistent with both the known crime scene evidence and Mr. Williams's coerced statement; and

Whereas, Mr. Dick was held without bail and charged with capital murder and rape; and

Whereas, in March 1998, Commonwealth crime lab DNA testing confirmed that Mr. Dick was not the source of the DNA evidence recovered at the Bosko crime scene, and no evidence linked him to the crime; and

Whereas, Norfolk police again chose not to investigate Ballard as a suspect in the rape and murder of Ms. Bosko, and instead chose to look for another co-defendant to Mr. Williams and Mr. Dick, despite the fact that the crime scene evidence was inconsistent with a multiple-offender crime theory; and

Whereas, the Norfolk police turned their attention to Mr. Wilson, an acquaintance of Mr. Williams; and

Whereas, in early April 1998, Norfolk police brought Mr. Wilson to an interrogation room and, through illegal and improper means and contrary to accepted police practices, obtained a false confession; and

Whereas, Mr. Wilson had, for hours, denied any knowledge or involvement in the crime but like Mr. Williams and Mr. Dick had become exhausted and traumatized and gave into pressure from the police; and

Whereas, Mr. Wilson's confession matched neither the known crime scene evidence nor Mr. Williams's nor Mr. Dick's prior statements to the police, and no forensic evidence linked Mr. Wilson to the crime; and

Whereas, Mr. Wilson was held without bail and charged with capital murder and rape; and

Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Wilson as the source of the DNA recovered from the crime scene; and

Whereas, in June 1998, Norfolk police again ignored the overwhelming evidence that Ballard might have committed this crime and sought to identify a fourth potential DNA contributor through continued questioning of the highly malleable and submissive Mr. Dick; and

Whereas, undeterred by Mr. Dick's then-obvious prior false and inconsistent statements, Ford and his partner demanded that Mr. Dick provide the name of another suspect; and

Whereas, despite Mr. Dick giving the Norfolk police officers a made-up name and description of someone that did not match Navy records, Ford persisted and pressured Mr. Dick to pick out Mr. Tice from a Navy yearbook from Mr. Wilson's ship; and

Whereas, again, Ford, through illegal and improper means and contrary to accepted police practices, obtained a false confession from Mr. Tice, who after two days in police custody, hours of interrogation, and repeatedly professing his innocence to no avail finally told Ford that he committed the crime along with Mr. Williams, Mr. Dick, and Mr. Wilson; and

Whereas, Mr. Tice's confession was inconsistent in numerous respects with the known crime scene evidence and the statements of Mr. Williams, Mr. Dick, and Mr. Wilson; and  
Whereas, Mr. Tice was held on bail and charged with capital murder and rape; and  
Whereas, shortly thereafter, Commonwealth crime lab DNA testing also excluded Mr. Tice as a contributor of the DNA evidence recovered from the crime scene; and  
Whereas, in the fall of 1998, in a misdirected search for a co-defendant whose DNA would match the Bosko crime scene evidence, Ford and other Norfolk police officers interrogated and charged three additional former members of the U.S. Navy with participating in the assault and murder of Ms. Bosko; despite forceful interrogations, none of these men gave incriminating statements but each was held for several months even though two of the three had very strong alibis that were known to the police; and  
Whereas, in February 1999, Ballard, incarcerated for a sexual assault he had committed unrelated to the Bosko case, wrote to a friend and admitted responsibility for killing Ms. Bosko; and  
Whereas, this letter was promptly shared with Norfolk police; and  
Whereas, Ford and another Norfolk police officer met with Ballard, who confessed to Ms. Bosko's murder after a brief questioning and told police that he alone committed the crime; and  
Whereas, Ballard's statement matched the known crime scene evidence in all respects; and  
Whereas, Commonwealth crime lab DNA testing confirmed that the DNA evidence recovered from Ms. Bosko's body, from under her fingernails, and from a blanket near her body belonged to Ballard; and  
Whereas, Ballard was charged with capital murder and rape; and  
Whereas, Ford was involved before, during, and after his investigation of the rape and murder of Ms. Bosko in a fraudulent scheme to urge judges to allow certain offenders to remain out on bail; these offenders paid thousands of dollars to Ford as bribes, and in return Ford committed perjury so they could retain their freedom; and  
Whereas, Ford has subsequently been convicted and is serving a 150-month sentence in federal prison related to this felonious scheme; and  
Whereas, in order for Ford to conceal that the confessions of Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice were coerced and false so that he could continue to be employed with the homicide squad, as well as so that he could continue his enrichment scheme to accept bribes, Ford told Ballard that he could avoid the death penalty only by asserting that Mr. Williams, Mr. Dick, Mr. Wilson, and Mr. Tice committed the crime with him; and

Whereas, even though the statement that the other four men were involved in the assault and murder of Ms. Bosko was a lie, Ballard agreed to go along with Ford in order to obtain the life-sentence deal; and

Whereas, fearing the death penalty, Mr. Williams reluctantly entered a guilty plea in order to receive a sentence of life without parole; and

Whereas, Mr. Williams sought to withdraw his guilty plea after he learned of Ballard's confession, but the prosecution successfully opposed the motion; and

Whereas, also fearing for his life and in a fragile state of mind, Mr. Dick also entered a plea of guilty and was sentenced to life in prison; and

Whereas, Mr. Wilson insisted on going to trial and testified at the trial that he was not guilty; the jury acquitted him of murder but convicted him of rape, based solely on his false, coerced confession, and sentenced him to eight and one-half years in prison; and

Whereas, Mr. Tice also fought the charges against him and was tried twice. His first conviction was overturned on appeal due to defective jury instructions, but solely on the basis of his false, coerced confession he was convicted at a second trial of both capital murder and rape and received life sentences; and

Whereas, Norfolk police withheld from each of these wrongfully charged men evidence that, had it been disclosed, would have prevented Mr. Williams and Mr. Dick from entering guilty pleas to avoid the death penalty and would have led juries to acquit Mr. Wilson and Mr. Tice of all charges; and

Whereas, each of these four men were imprisoned and experienced assaults and other horrific experiences during the imprisonment that irreparably broke them in a manner that no time or money will ever fix; and

Whereas, in 2005, the four men sought absolute pardons due to their innocence; and

Whereas, Norfolk officials vigorously opposed these petitions and continued to withhold evidence from the Governor of Virginia that would have confirmed their innocence; and

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Wilson, were innocent; however, Governor Kaine did not disturb their convictions and required that they each accept parole supervision for 20 years and register as sex offenders; and

Whereas, Mr. Wilson had previously been released from prison in 2005 after serving his full sentence and was also required to register as a sex offender; and

Whereas, all four men have struggled to rebuild their lives and have lived vastly reduced lives due to the strong stigma of their wrongful convictions for violent crimes and due further to the stringent conditions of parole and sex offender registry requirements; and

Whereas, many job training programs and promising employment opportunities have not been available due to these limitations; and

Whereas, the four men have been restricted from living in certain areas, subject to strict curfews, and unable to be in the vicinity of certain public facilities; and

Whereas, numerous family relations were shattered, and other friends and acquaintances have wanted nothing to do with them; and

Whereas, federal habeas review overturned Mr. Tice's convictions; that relief was affirmed by a unanimous three-judge panel of the United States Court of Appeals for the Fourth Circuit, and thereafter all state charges were dismissed without prejudice (with the Commonwealth reserving the right to recharge him later); and

Whereas, in 2016, federal habeas review brought relief to Mr. Williams and Mr. Dick when a district court judge, after conducting a two-day hearing on innocence, ruled that Mr. Williams, Mr. Dick, Mr. Tice, and Mr. Wilson were absolutely innocent, and that the only guilty party was Ballard; and

Whereas, all charges were dismissed against Mr. Williams and Mr. Dick in November 2016; and

Whereas, Mr. Wilson could not receive any state or federal judicial relief due to procedural technicalities; however, in late 2016, he, Mr. Williams, Mr. Dick, and Mr. Tice filed for absolute pardons from Governor Terry McAuliffe; and

Whereas, in March 2017, Governor McAuliffe issued full, absolute pardons to each man due to their factual innocence; and

Whereas, had Norfolk officials not purposefully fabricated evidence to make each man appear guilty and deliberately withheld exonerating evidence during the trials, appeals, clemency proceedings, and state and federal habeas proceedings that would have proven their innocence, these men would not have been charged with or convicted of these horrific crimes and would not have suffered for nearly two decades with shame, humiliation, and loss of liberty as convicted rapists and murderers; and

Whereas, Danial J Williams, Joseph Jesse Dick, Jr., Eric Cameron Wilson, and Derek Elliot Tice have no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 18.2 of Chapter 3 of Title 8.01 a section numbered 8.01-195.13 as follows:

*§ 8.01-195.13. Compensation for certain intentional acts.*

*A. In any matter resulting in compensation for wrongful incarceration pursuant to this article, if a court of competent jurisdiction over the matter determines, or the court record clearly demonstrates, that the Commonwealth or any agency, instrumentality, officer or employee, or political subdivision thereof (i) intentionally and wrongfully fabricated evidence that was used to obtain the wrongful conviction in such manner and (ii) intentionally, willfully, and continuously suppressed or withheld evidence establishing the innocence of the person wrongfully incarcerated, including but not limited to suppression or withholding of evidence to the Governor for the purpose of clemency, the Commonwealth may compensate the person wrongfully incarcerated for such intentional acts. Such amount shall be in addition to any compensation awarded pursuant to § [8.01-195.11](#) and may be up to or equal to the amount of such compensation. The additional compensation shall be added to any amount awarded pursuant to § [8.01-195.11](#), and the total compensation shall be paid pursuant to subdivision B of § [8.01-195.11](#). Nothing provided in this section shall be interpreted to supplant, revoke, or supersede any other provision of this article applicable to the award of compensation for wrongful incarceration, and the additional compensation shall be subject to any conditions set forth in this article.*

*B. Any compensation awarded pursuant to this article that includes the additional compensation for intentional acts as set forth in subsection A shall not become effective and payable by the Commonwealth unless and until (i) the person wrongfully incarcerated executes the release and waiver pursuant to subsection B of § [8.01-195.12](#) and (ii) the instrumentality, or political subdivision thereof, employing any individual committing the intentional acts set forth in clauses (i) and (ii) of subsection A enters into an agreement with the person wrongfully incarcerated requiring such instrumentality or political subdivision to compensate the person with a sum at least equal to the total compensation provided pursuant to § [8.01-195.11](#) and this section.*

**2.**

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$895,299 for the relief of Danial J Williams, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Williams may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$179,060 to be paid to Mr. Williams by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$716,239 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the third enactment of this act, for the primary benefit of Mr. Williams, the terms of such annuity structured in Mr. Williams's best interests based on consultation among Mr. Williams or his representatives, the State Treasurer, and other necessary parties.*

*§ 2. That there is hereby appropriated from the general fund of the state treasury the sum of \$875,845 for the relief of Joseph Jesse Dick, Jr., to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Dick may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to [§ 19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$175,169 to be paid to Mr. Dick by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$700,676 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fourth enactment of this act, for the primary benefit of Mr. Dick, the terms of such annuity structured in Mr. Dick's best interests based on consultation among Mr. Dick or his representatives, the State Treasurer, and other necessary parties.*

*§ 3. That there is hereby appropriated from the general fund of the state treasury the sum of \$866,456 for the relief of Eric Cameron Wilson, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Wilson may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to [§ 19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$173,291 to be paid to Mr. Wilson by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$693,165 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the fifth enactment of this act, for the primary benefit of Mr. Wilson, the terms of such annuity structured in*

*Mr. Wilson's best interests based on consultation among Mr. Wilson or his representatives, the State Treasurer, and other necessary parties.*

§ 4. That there is hereby appropriated from the general fund of the state treasury the sum of \$858,704 for the relief of Derek Elliot Tice, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Tice may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof; (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia; and (iii) all other parties of interest in connection with the aforesaid occurrence.

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$171,741 to be paid to Mr. Tice by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$686,963 to purchase an annuity within 90 days of receipt of the signed agreement pursuant to the sixth enactment of this act, for the primary benefit of Mr. Tice, the terms of such annuity structured in Mr. Tice's best interests based on consultation among Mr. Tice or his representatives, the State Treasurer, and other necessary parties.*

3. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 1 of the second enactment of this act shall not become effective until such time as Danial J Williams and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Williams the sum of at least \$895,299. In order for the provisions of § 1 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

4. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 2 of the second enactment of this act shall not become effective until such time as Joseph Jesse Dick, Jr., and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Dick the sum of at least \$875,845. In order for the provisions of § 2 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

5. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 3 of the second enactment of this act shall not become effective until such time as Eric Cameron Wilson and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Wilson the sum of at least \$866,456. In order for the provisions of § 3 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

6. That notwithstanding the provisions of subsection B of § [8.01-195.12](#), the provisions of § 4 of the second enactment of this act shall not become effective until such time as Derek Elliot Tice and the City of Norfolk enter into an agreement in connection with the aforesaid factual situation requiring the City of Norfolk to compensate Mr. Tice the sum of at least \$858,704. In order for the provisions of § 4 of the second enactment of this act to become effective, such agreement shall be entered into prior to a final verdict in a court of law related to the aforesaid factual situation. The City of Norfolk shall forward a copy of the signed agreement to the Treasurer of Virginia within five days of its execution.

7. That the provisions of § [8.01-195.12](#) of the Code of Virginia shall apply to any compensation awarded under this act.

## **Chapter 505 Expedited land use permit process; Dept. of Transportation shall develop and submit for approval.**

An Act to direct the Department of Transportation to develop and submit for approval an expedited land use permit process; rights-of-way.

[\[H 901\]](#)

Approved March 29, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Transportation (Department) shall develop and submit for approval to the Federal Highway Administration an expedited land use permit process by which public or private utility companies that offer high-speed Internet services may*

*apply to use any right-of-way maintained by the Department. Such process shall be designed to apply only when the proposed use of the right-of-way does not make substantial changes to such right-of-way and does not interfere with the safety or ongoing maintenance of the right-of-way for transportation purposes.*

2. That the Department of Transportation shall complete the requirements of the first enactment of this act by November 30, 2018, and shall submit to the Governor and the General Assembly an executive summary and a report on the expedited land use permit process and, if possible, the response from the Federal Highway Administration for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

## **Chapter 517 High schools; Board of Education to make recommendations.**

An Act to direct the Board of Education to make recommendations relating to career and technical education and diplomas.

[\[H 1530\]](#)

Approved March 29, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Board of Education shall make recommendations to the Governor and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2018, relating to (i) strategies for eliminating any stigma associated with high school career and technical education pathways and the choice of high school students to pursue coursework and other educational opportunities in career and technical education and related fields such as computer science and robotics and (ii) the consolidation of the standard and advanced diplomas into a single diploma and the creation of multiple endorsements for such diploma to recognize student competencies and achievements in specific subject matter areas.*

## **Chapter 553 VDOT; review of enrollment in federal pilot program or project.**

An Act to authorize the Department of Transportation to review implications of enrollment in a federal pilot program or project.

[\[H 1276\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Transportation (the Department) shall convene a work group to identify the implications of the Commonwealth's participation in a federal data collection pilot program or project involving six-axle tractor truck semitrailer combinations weighing up to 91,000 pounds and utilizing interstate highways. The Department shall consult relevant stakeholders and shall review (i) the fee structure for qualifying tractor trucks, (ii) the axle spacing for qualifying tractor trucks, (iii) issues related to reasonable access from loading facilities onto a primary or secondary highway and interstate highways, (iv) the sufficiency of existing data in determining if certain routes and bridges should be excluded from the federal pilot program or project, and (v) any other issues as deemed relevant or appropriate by the Department. The Department shall complete its meetings by November 30, 2018, and shall submit to the General Assembly and the Governor an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 554 VDOT; review of enrollment in federal pilot program or project.**

An Act to authorize the Department of Transportation to review implications of enrollment in a federal pilot program or project.

[\[S 504\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Transportation (the Department) shall convene a work group to identify the implications of the Commonwealth's participation in a federal data collection pilot program or project involving six-axle tractor truck semitrailer combinations weighing up to 91,000 pounds and utilizing interstate highways. The Department shall consult relevant stakeholders and shall review (i) the fee structure for qualifying tractor trucks, (ii) the axle spacing for qualifying tractor trucks, (iii) issues related to reasonable access from loading facilities onto a primary or secondary highway and interstate highways, (iv) the sufficiency of existing data in determining if certain routes and bridges should be excluded from the federal pilot program or project, and (v) any other issues as deemed relevant or appropriate by the Department. The Department shall complete its meetings by November 30, 2018, and shall submit to the General Assembly and the Governor an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

## **Chapter 562 Newborn screening; screening for Pompe disease, etc.**

An Act to require the Board of Health to amend regulations governing newborn screening to include certain diseases.

[\[H 1174\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall amend regulations governing newborn screening to include screening for Pompe disease and mucopolysaccharidosis type 1 (MPS-1).*

## **Chapter 563 Newborn screening; screening for Pompe disease, etc.**

An Act to require the Board of Health to amend regulations governing newborn screening to include certain diseases.

[\[S 449\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Board of Health shall amend regulations governing newborn screening to include screening for Pompe disease and mucopolysaccharidosis type 1 (MPS-1).*

## **Chapter 566 Medical Assistance Services, Department of; eligibility for services under waiver.**

An Act to direct the Department of Medical Assistance Services to make recommendations regarding flexibility to individuals enrolled in certain waivers.

[\[S 310\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Medical Assistance Services (Department) shall make recommendations to the General Assembly for legislative, regulatory, or policy changes that provide flexibility to an individual enrolled in a home and community-based waiver to choose his place of residence in the Commonwealth and that ensure such individual's informed choice of place of residence does not reduce, terminate, suspend, or deny services for which he is otherwise eligible. The Department shall report such recommendations to the House Committees on Appropriations and Health, Welfare and Institutions and the Senate Committees on Finance and Education and Health by November 1, 2018.*

## **Chapter 572 BHDS, State Board of; definition of "licensed mental health professional."**

An Act to require the State Board of Behavioral Health and Developmental Services to amend the definition of "licensed mental health professional."

[\[S 762\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Behavioral Health and Developmental Services shall amend regulations governing licensure of providers of behavioral health services to include behavior analysts in the definition of "licensed mental health professional."*

2. That the State Board of Behavioral Health and Developmental Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

## **Chapter 598 Radon; VDH shall review consumer complaints regarding testing and mitigation.**

An Act to require the Department of Health to determine the most effective means of protecting the public from cancer caused by radon.

[\[H 1534\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Health shall review consumer complaints regarding radon testing and mitigation received since 2013 and the current certification requirements for individuals performing radon testing and mitigation and shall determine the benefits of any additional oversight for individuals performing radon testing and mitigation. The Department of Health shall report its findings and any recommendations to the House*

*Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2018.*

## **Chapter 605 Reformulated gasoline program; exemption in portion of Hopewell located west of Interstate 295.**

An Act directing the Department of Environmental Quality to seek an exemption from the federal reformulated gasoline program for certain gasoline sold in the City of Hopewell.

[\[H 1521\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Environmental Quality be directed to seek from the U.S. Environmental Protection Agency an exemption from the federal reformulated gasoline program for the sale of conventional gasoline within that portion of the City of Hopewell that is located west of Interstate 295.*

## **Chapter 607 William Preston Memorial Highway; designating as portion of U.S. Route 220 in Botetourt County.**

An Act to designate a portion of U.S. Route 220 in Botetourt County the "William Preston Memorial Highway."

[\[H 1571\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the portion of U.S. Route 220 in Botetourt County between the Town of Fincastle and the intersection of State Route 675 is hereby designated the "William Preston Memorial Highway." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this highway. This designation shall not affect any other designation heretofore or hereafter applied to this highway or any*

*portions thereof.*

## **Chapter 616 Constitutional amendment; real property tax exemption for flooding remediation, abatement, etc.**

An Act to provide for the submission to the voters of a proposed amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax; exemption for flooding remediation, abatement, and resiliency.

[\[S 219\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 2018, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational

purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effect-

ive date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

*(k) The General Assembly may by general law authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.*

§ 2. The ballot shall contain the following question:

"Question: Should a county, city, or town be authorized to provide a partial tax exemption for real property that is subject to recurrent flooding, if flooding resiliency improvements have been made on the property?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § [24.2-684](#) of the Code of Virginia. The State Board of Elections shall comply with § [30-19.9](#) of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

The electoral board of each county and city shall make out, certify and forward an abstract of the votes cast for and against such proposed amendment in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for and against such amendment in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall without delay make proclamation of the result, stating therein the aggregate vote for and against the amendment.

If a majority of those voting vote in favor of the amendment, it shall become effective on January 1, 2019.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.

## **Chapter 621 Income tax, state; modifying restrictions related to entities.**

An Act to modify the restrictions related to entities entitled to voluntary contributions of tax refunds and their listing on individual income tax returns.

[\[S 376\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. For taxable years beginning on and after January 1, 2018, but before January 1, 2021, notwithstanding the provisions of subdivision A 2 of § [58.1-344.3](#) of the Code of Virginia, the entity listed in subdivision B 13 of § [58.1-344.3](#) shall be listed on the individual income tax return regardless of whether it meets the requirements of subdivision A 1 of § [58.1-344.3](#).*

*§ 2. For taxable years beginning on and after January 1, 2021, the entity listed in subdivision B 13 of § [58.1-344.3](#) of the Code of Virginia shall be listed on the individual income tax return only if it meets the requirements of subdivision A 1 of § [58.1-344.3](#);*

*however, it shall not be removed from the individual income tax return for failure to meet such requirements in any taxable year prior to January 1, 2018.*

§ 3. *The entity listed in subdivision B 13 of § [58.1-344.3](#) of the Code of Virginia shall count as one of the maximum of 25 contributions listed on the individual income tax return pursuant to subdivision A 3 a of § [58.1-344.3](#) unless it is removed for a taxable year beginning on and after January 1, 2021.*

## **Chapter 622 Battlefields; entry into an agreement to transfer certain easements.**

An Act to direct the entry into an agreement to transfer certain battlefield easements.

[\[S 450\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *The Secretary of Natural Resources, on behalf of the Commonwealth, shall endeavor to enter into a memorandum of understanding, memorandum of agreement, or similar protocol with the United States to accomplish and expedite the transfer or assignment, in such instances and upon such terms as the Secretary may deem appropriate, of the Commonwealth's easement interests in battlefield lands located within the boundaries of federal battlefield parks. By October 1, 2018, the Secretary shall report on the status of this protocol to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources.*

## **Chapter 623 Izaak Walton League of America, Norfolk Chapter of; exempt from taxation.**

An Act to deem certain property exempt from taxation pursuant to Article X of the Constitution of Virginia.

[\[S 485\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The General Assembly of Virginia deems that property owned by the Norfolk Chapter of the Izaak Walton League of America located at 2136 Trailsend Lane in Chesapeake, Virginia (Parcel Number 0340000001070) was exempt from taxation pursuant to the 1902 Constitution of Virginia and thus continues to be exempt pursuant to Article X, Section 6 (f) of the Constitution of Virginia.*

2. That nothing in this act shall be construed to provide the Norfolk Chapter of the Izaak Walton League of America a claim for a refund for any property taxes paid on the property set forth in the first enactment prior to January 1, 2017.

### **Chapter 625 Accelerated refund program; Department of Taxation shall reestablish.**

An Act to require the Department of Taxation to reinstitute an accelerated refund program.

[\[S 531\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Taxation shall reestablish an accelerated refund program for Virginia taxpayers filing income tax returns in person or via the United States mail with a local commissioner of the revenue for taxable years beginning on and after January 1, 2018. Such program shall be similar to the program discontinued on December 1, 2016.*

### **Chapter 631 Friends of the Blue Ridge Parkway, Inc.; funds from license plates may be used to support operation.**

An Act to amend and reenact § 3 of Chapter 760 of the Acts of Assembly of 2011, relating to special license plates; Friends of the Blue Ridge Parkway.

[\[S 792\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1. That § 3 of Chapter 760 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 3. Special license plates for members and supporters of the Friends of the Blue Ridge Parkway, Inc.; fees.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue special license plates to members and supporters of the Friends of the Blue Ridge Parkway, Inc.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Friends of the Blue Ridge Parkway, Inc., Fund established within the Department of Accounts. These funds shall be paid annually to the Friends of the Blue Ridge Parkway, Inc., and used to support its ~~program to clear the scenic overlooks along the Blue Ridge Parkway in order to promote tourism along the Parkway in Virginia operation and programs in Virginia~~. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

## **Chapter 632 Coal combustion residuals and other units; permits, request for proposals.**

An Act relating to the closure of coal combustion residuals impoundments and other units; permits; request for proposals for recycling or beneficial use projects.

[\[S 807\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Director of the Department of Environmental Quality shall suspend, delay, or defer until July 1, 2019, the issuance of any permit required to provide for the closure of any coal combustion residuals (CCRs) surface impoundment or other CCRs unit that no longer receives CCRs, located within the Chesapeake Bay watershed. The provisions of this section shall not apply to the issuance of any permit required for impoundments where CCRs have already been removed and placed in another impoundment on site, are being removed from an impoundment, or are being processed in connection with a recycling or beneficial use project.*

2. That the owner or operator of any coal combustion residuals (CCRs) surface impoundment or other CCRs unit to which the first enactment of this act applies shall by July 15, 2018, issue a request for proposals for entities to conduct recycling or beneficial use projects for the CCRs at such impoundment or unit. The request for proposals shall require responding entities to provide information from which the owner or operator is able to determine (i) the quantity of CCRs, including CCRs below the unit's waste boundary, that may be suitable for recycling or beneficial use, including but not limited to encapsulated beneficial uses, such as bricks or concrete, in each such CCRs unit; (ii) the cost of such recycling or beneficial use of such CCRs; and (iii) the potential market demand for material recycled or beneficially used from such CCRs.

3. That no later than November 15, 2018, the owner or operator of each coal combustion residuals (CCRs) surface impoundment or other CCRs unit to which the second enactment of this act applies shall transmit a business plan that compiles the information collected pursuant to clauses (i), (ii), and (iii) of such enactment to the Governor; to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Commerce and Labor, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Commerce and Labor (the Committees); and to the Directors of the Departments of Environmental Quality and Conservation and Recreation (the Departments). Each such owner or operator and each entity that provided the information collected pursuant to clauses (i), (ii), and (iii) of the second enactment of this act shall provide assistance to the Governor, the Committees, and the Departments, upon request.

## Chapter 634 Marine Resources Commission; conveyance of easement and rights-of-way across Rappahannock River.

An Act to authorize the Virginia Marine Resources Commission to convey a permanent easement and rights-of-way across the Rappahannock River, including a portion of the Baylor Survey, to Virginia Electric and Power Company (Dominion Energy Virginia) for the purpose of installing, constructing, maintaining, repairing, and operating an underground electric transmission line and to repeal Chapter 377 of the Acts of Assembly of 2015.

[\[S 888\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Marine Resources Commission is hereby authorized to grant and convey to Virginia Electric and Power Company, its successors and assigns, upon such terms and conditions as the Commission, with the approval of the Governor and the Attorney General, shall deem proper, a permanent easement and right-of-way of 200 feet of width, and a temporary right-of-way of a reasonable width, as needed for the purpose of installing, constructing, maintaining, repairing, and operating an underground electric transmission line across the Rappahannock River, including a portion of the Baylor Survey, the center line of such easement being described as follows:*

*Beginning at a point on the mean low water mark on the south side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the southerly line of the Commonwealth of Virginia and being S. 15°27'20" E., a distance of 5.40' from the northwesterly property corner of a parcel of land owned by David B. Wallace and Heidi M. Ott as recorded in Deed Book 282, page 699 in the Clerk's Office of the Circuit Court of Middlesex County, Virginia, said point having a coordinate value of North 3,753,477.44, East 12,081,494.01 based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011), thence continuing in the waters of the Rappahannock River, N. 37°08'57" E., a distance of 224.70' to a point having a coordinate value of North 3,753,656.54, East 12,081,629.71, thence on a curve to the right having a radius of 1990.00', an arc length of 160.99', and a chord bearing and*

*distance of N. 39°28'00" E., 160.94' to a point having a coordinate value of North 3,753,780.79, East 12,081,732.01, thence N. 41°47'04" E., a distance of 1410.46' to a point having a coordinate value of North 3,754,832.51, East 12,082,671.84, thence N. 36°35'14" E., a distance of 6853.09' to a point having a coordinate value of North 3,760,335.21, East 12,086,756.59, thence N. 34°30'43" E., a distance of 1530.60' to a point having a coordinate value of North 3,761,596.43, East 12,087,623.79, thence on a curve to the right having a radius of 990.00', an arc length of 47.03', and a chord bearing and distance of N. 35°52'23" E., 47.03' ending at a point on the mean low water mark on the north side of the Rappahannock River and east of the Robert O. Norris Bridge, State Route 3, said point also being on the northerly line of the Commonwealth of Virginia and being S. 77°21'59" E., a distance of 62.15' from the southwesterly property corner of a parcel of land owned by Highbank Association Incorporated as recorded in instrument number LR20080000163 in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, said point having a coordinate value of North 3,761,634.54, East 12,087,651.35, and containing 46.42 acres more or less.*

*§ 2. The portion of the property described in § 1 of this act that lies within the Baylor Survey shall not be considered part of the natural oyster beds, rocks, and shoals in the waters of the Commonwealth and is described as follows:*

*Area within Public Ground No. 1 Middlesex County*

*Beginning at a point on the southerly line of the Baylor Survey grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Middlesex County, Virginia (119.001.0300), said point also being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,754,348.40, East 12,082,239.23, based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011) and being the point of beginning: thence, from said point of beginning along the southerly line of the Baylor Survey Grounds of Public Ground No. 1, N. 75°00'02" W., a distance of 112.02' to a point having a coordinate value of North 3,754,377.39, East 12,082,131.03, thence leaving the aforesaid southerly line, N. 41°47'04" E., a distance of 695.18' to a point having a coordinate value of North 3,754,895.76, East 12,082,594.25, thence N. 36°35'14" E., a distance of 1582.23' to a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 having a coordinate value of North 3,756,166.21, East 12,083,537.33, thence along the aforesaid northerly line, S. 73°58'25" E., a distance of 106.80' to a point, said point being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,756,136.72, East 12,083,639.98, thence S. 73°58'25" E., a distance of 106.80' to a point having a coordinate value of North 3,756,107.24, East 12,083,742.63, thence*

*leaving the aforesaid northerly line, S. 36°35'14" W., a distance of 1666.32' to a point having a coordinate value of North 3,754,769.26, East 12,082,749.43, thence S. 41°47'04" W., a distance of 603.30' to a point, said point being on the southerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,754,319.41, East 12,082,347.44, thence along the aforesaid southerly line, N. 75°00'02" W., a distance of 112.02' to the point of beginning, containing 10.44 acres.*

*Area within Public Ground No. 1 Lancaster County*

*Beginning at a point on the northerly line of the Baylor Survey Grounds of Public Ground No. 1 in the waters of the Rappahannock River, located in Lancaster County, Virginia (103.001.0300), said point also being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,760,975.70, East 12,087,196.98 based on the Virginia State Plane Coordinate System, South Zone, NAD 1983 (2011) and being the point of beginning: thence, from said point of beginning along the northerly line of the Baylor Survey Grounds of Public Ground No. 1, S. 36°47'27" E., a distance of 105.57' to a point, having a coordinate value of North 3,760,891.15, East 12,087,260.20, thence leaving the aforesaid northerly line, S. 34°30'43" W., a distance of 745.26' to a point having a coordinate value of North 3,760,277.06, East 12,086,837.96, thence S. 36°35'14" W., a distance of 1454.73' to a point on the southerly line of the Baylor Survey Grounds of Public Ground No. 1, having a coordinate value of North 3,759,108.98, East 12,085,970.87, thence along the aforesaid southerly line, N. 55°16'47" W., a distance of 100.05' to a point, said point being along the centerline of a 200' Virginia Electric and Power Company right-of-way, having a coordinate value of North 3,759,165.97, East 12,085,888.64, thence N. 55°16'47" W., a distance of 100.05' to a point having a coordinate value of North 3,759,222.95, East 12,085,806.40, thence leaving the aforesaid southerly line N. 36°35'14" E., a distance of 1457.63' to a point having a coordinate value of North 3,760,393.36, East 12,086,675.21, thence N. 34°30'43" E., a distance of 809.32' to a point, said point being on the northerly line of the aforesaid Public Ground No. 1 having a coordinate value of North 3,761,060.24, East 12,087,133.75, thence along the aforesaid northerly line S. 36°47'27" E., a distance of 105.57' to the point of beginning, containing 10.25 acres.*

*§ 3. The instruments granting and conveying the easement and rights-of-way from the Commonwealth to Virginia Electric and Power Company shall be in a form approved by the Attorney General. The legal descriptions in §§ 1 and 2 may be modified to correct any errors discovered during the process of finalizing these instruments. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

2. That Chapter 377 of the Acts of Assembly of 2015 is repealed.

## **Chapter 638 Relief; Davis, Robert Paul.**

An Act for the relief of Robert Paul Davis.

[\[H 1010\]](#)

Approved March 30, 2018

Whereas, Robert Paul Davis (Robert Davis) spent almost 13 years in prison within the Virginia Department of Corrections for crimes he did not commit; and  
Whereas, on February 19, 2003, the Crozet Fire Department and Albemarle County law-enforcement officers responded to a fire on Cling Lane in Crozet, Virginia, and upon entering the home, investigators discovered the bodies of Nola Annette Charles and her son, William Thomas Charles; and  
Whereas, the deaths of Nola Annette Charles and William Thomas Charles were determined to be homicides; and  
Whereas, investigation by law enforcement led to the arrest on February 21, 2003, of William Rockland Fugett, Jr. (Rocky Fugett), age 19, and his sister Jessica Gale Fugett (Jessica Fugett), age 15; and  
Whereas, Rocky Fugett and Jessica Fugett lived across the street from the home of the Charleses and knew the Charles family; and  
Whereas, Rocky Fugett and Jessica Fugett attended Western Albemarle High School, where Robert Davis also attended; and  
Whereas, Rocky Fugett and Jessica Fugett were interrogated by investigators of the Albemarle County Police Department on February 21, 2003; and  
Whereas, Rocky Fugett and Jessica Fugett admitted to the murders of Nola Annette Charles and William Thomas Charles and also implicated Robert Davis and others not prosecuted; and  
Whereas, Rocky Fugett and Jessica Fugett were known to have bullied and harbored a deep hatred of Robert Davis; and  
Whereas, there was substantial physical and forensic evidence linking Rocky Fugett and Jessica Fugett to the deaths of Nola Annette Charles and Williams Thomas Charles; and

Whereas, the statements by Rocky Fugett and Jessica Fugett implicating Robert Davis in the deaths of Nola Annette Charles and William Thomas Charles were never corroborated by any independent evidence; and

Whereas, Robert Davis was arrested on February 22, 2003, and subsequently interrogated by investigators of the Albemarle County Police Department; and

Whereas the video-taped interrogation commenced at 2:00 a.m., February 22, 2003, and continued until 8:00 a.m., February 22, 2003; and

Whereas, at the time of his arrest, Robert Davis was 18 years of age, was a senior at Western Albemarle High School, and had no prior adult criminal record; and

Whereas, at the time of his arrest, Robert Davis had a learning disability and had attended a special school for learning disabled students; and

Whereas, at the time of his arrest, Robert Davis was ill with a virus, was on antibiotic medication, and periodically used a breathing device for his asthma; and

Whereas, Robert Davis denied any involvement in the deaths of Nola Annette Charles and William Thomas Charles at least 78 times during almost six hours of video-taped interrogation; and

Whereas, Robert Davis asked to be given a polygraph examination at least five times and stated at least 26 times that he had not been in the Charleses' house; and

Whereas, the investigators interrogating Robert Davis did not have any independent, physical, or forensic evidence linking Robert Davis to the deaths of Nola Annette Charles and William Thomas Charles, only statements made by Rocky Fugett and Jessica Fugett implicating Robert Davis; and

Whereas, through improper and questionable interrogating procedures and techniques, the investigators fed Robert Davis facts relevant to the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, through these improper and questionable interrogating procedures and techniques, coupled with other salient factors, the investigators eventually wore Robert Davis down and overbore his will, and Robert Davis eventually confessed to the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, Robert Davis's confession was never corroborated by any independent evidence linking Robert Davis to the deaths of Nola Annette Charles and William Thomas Charles and the confession given by Robert Davis did not fit the facts of the crime scene; and

Whereas, upon the conclusion of the interrogation by investigators of the Albemarle County Police Department, Robert Davis once again insisted that he was not involved in the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, on October 6, 2003, Robert Davis was indicted on two counts of first-degree murder, two counts of attempted murder, and arson, robbery, and burglary; and

Whereas, a Motion to Suppress the Confession was heard by the Albemarle Circuit Court on December 2, 2003, and said motion was denied as a matter of constitutional law, leaving the reliability of the confession to the judgment of the jury; and

Whereas, prosecutors notified the attorneys for Robert Davis that Rocky Fugett would testify against Robert Davis; and

Whereas, Robert Davis, if convicted at trial, could have been sentenced to life imprisonment in the Virginia Department of Corrections; and

Whereas, the prosecutors offered Robert Davis the opportunity to plead guilty to the first-degree murder of Nola Annette Charles and the second-degree murder of William Thomas Charles and indicated that they would recommend a sentence of 23 years in the Virginia Department of Corrections; and

Whereas, Robert Davis continued to insist that he was innocent and was not involved in the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, the attorneys for Robert Davis were concerned that if Robert Davis went to trial on these charges and were found guilty, he likely would receive at least one life sentence; and

Whereas, upon consultation with his attorneys, who recommended that he accept the plea agreement, Robert Davis reluctantly agreed; and

Whereas, Robert Davis entered an "Alford Plea," which would allow him to maintain his innocence while acknowledging that the prosecutors could prove the charges; and

Whereas, on April 19, 2004, after entering his Alford Plea, Robert Davis, while still maintaining his innocence, was sentenced to 23 years in the Virginia Department of Corrections; and

Whereas, in 2006, Rocky Fugett, who was sentenced to 75 years in the Virginia Department of Corrections for his role in the deaths of Nola Annette Charles and William Thomas Charles, contacted the attorney for Robert Davis and recanted his statement, under oath, that Robert Davis was involved in the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, in 2012, Jessica Fugett, who was sentenced to 100 years in the Virginia Department of Corrections for her role in the deaths of Nola Annette Charles and William Thomas Charles, contacted the attorney for Robert Davis and recanted her statement, under oath, that Robert Davis was involved in the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, a Petition for Clemency on behalf of Robert Davis was filed in 2012 with the Office of the Governor of Virginia; and

Whereas, nationally recognized experts in the field of interrogation practices and procedures, along with mental health experts who evaluated Robert Davis, examined the interrogation processes and procedures used against Robert Davis and evidence related to the deaths of Nola Annette Charles and William Thomas Charles and opined that the interrogation of Robert Davis that led to his confession was improper and unreliable; and

Whereas, on December 21, 2015, Governor Terry McAuliffe granted the Petition for Clemency and issued a Conditional Pardon releasing Robert Davis from prison and placing him on parole; and

Whereas, in 2016, the Chief of Albemarle County Police Department and a senior detective stated that Robert Davis's confession was improperly obtained and thus unreliable, and this was presented to Governor Terry McAuliffe as a basis to request an absolute pardon for Robert Davis and a declaration of innocence; and

Whereas, on December 15, 2016, Governor Terry McAuliffe granted the Petition for Clemency, issued an Absolute Pardon, and declared Robert Davis innocent in the deaths of Nola Annette Charles and William Thomas Charles; and

Whereas, Robert Davis, as a result of this wrongful incarceration, has lost almost 13 years of his freedom and countless life experiences and opportunities, including the loss of family relations, the opportunity to further his education, and the opportunity to earn potential income from gainful employment during his years of incarceration; and

Whereas, Robert Davis, as a result of this wrongful incarceration, has suffered severe physical, emotional, and psychological damage; and

Whereas, Robert Davis has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$582,313 for the relief of Robert Davis, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of any present or future claims Robert Davis may have against (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § [19.2-159](#) of the Code of Virginia, and (iii) all other parties of interest in connection with the aforesaid occurrence.*

*The compensation, subject to the execution of the release described herein, shall be paid as follows: (a) an initial lump sum of \$116,463 to be paid to Robert Davis by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (b) the sum of \$465,850 to purchase an annuity no later than September 30, 2018, for the primary benefit of Robert Davis, the terms of such annuity structured in Robert Davis's best interests based on consultation with Robert Davis or his representatives, the State Treasurer, and other necessary parties.*

*The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Robert Davis's death.*

*§ 2. That Robert Davis shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2023.*

2. That the provisions of § [8.01-195.12](#) of the Code of Virginia shall apply to any compensation awarded under this act.

## **Chapter 662 Background checks; Department of State Police shall recommend, etc., options to expedite process.**

An Act to request that the Department of State Police recommend options to expedite the process of performing background checks; report.

[\[S 716\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of State Police (the Department) shall identify, analyze, and recommend options to expedite and improve the efficiency of its process for performing*

*requested background checks. The Department shall report its findings and recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by November 1, 2018.*

## **Chapter 676 Pocahontas Building; temporary General Assembly Building.**

An Act to designate the Pocahontas Building as the temporary General Assembly Building and a part of the Capitol Square complex.

[\[S 490\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any other law to the contrary, the Pocahontas Building is designated as the temporary General Assembly Building and as such a part of the Capitol Square complex during the reconstruction of the General Assembly Building and until such time as the building is reoccupied and ready to resume business as determined by the Director of the Department of General Services in consultation with the Clerk of the Senate and the Clerk of the House of Delegates.*

2. That an emergency exists and this act is in force from its passage.

## **Chapter 686 Assisted living facilities; regulations governing staff.**

An Act to require the State Board of Social Services to amend certain regulations related to staffing of assisted living facilities providing care for adults with serious cognitive impairments.

[\[S 875\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the State Board of Social Services shall amend regulations governing staffing*

*of assisted living facilities that provide care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare to allow an exception to the requirements that at least two direct care staff members who are awake, on duty, and responsible for the care and supervision of residents be in each building at all times when residents are present for assisted living facilities that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments.*

2. That an emergency exists and this act is in force from its passage.
3. That the Board of Social Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.
4. That the Commissioner of Social Services shall not enforce the provisions of 22VAC40-73-1020, as it shall become effective, in cases involving assisted living facilities that are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments.

## **Chapter 687 Honor & Remember Flag; standards for display at state buildings, etc.**

An Act to establish standards for the display of the Honor and Remember Flag at state buildings and facilities outside of Capitol Square.

[\[S 924\]](#)

Approved March 30, 2018

Whereas, in 2010 the General Assembly designated the Honor and Remember Flag as the Commonwealth's emblem of the service and sacrifice of the brave men and women of the United States Armed Forces who had given their lives in the line of duty; and Whereas, since that designation there have been instances where the appropriateness for the display of the Honor and Remember Flag was unclear; and Whereas, there is a need to clarify when it is appropriate to display the Honor and Remember Flag in light of its symbolic importance; now, therefore, Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That in the absence of a directive from the Governor or the Director of the*

*Department of General Services, the head of the state agency that controls any facility or building outside of Capitol Square may determine when to display the Honor and Remember Flag, provided that the Honor and Remember Flag that is displayed is (i) smaller in height and width than the flag of the United States that is officially displayed at the building or facility and (ii) made in the United States.*

## **Chapter 710 Workforce Development, Virginia Board of; strategies to identify and engage certain persons.**

An Act to direct the Virginia Board of Workforce Development to develop strategies to identify and engage certain persons; report.

[\[H 1552\]](#)

Approved March 30, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Virginia Board of Workforce Development (the Board) shall recommend strategies to identify and engage discouraged workers and unemployed individuals not currently served by the workforce system and measurably improve the performance of federal Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128) Title 1 Youth programs so they lead to improved employability and the development of skills to enter the workforce in a high-demand field. The Board shall (i) review the Commonwealth's current workforce development programs and use income, race, geographic, and age data to identify underserved populations that will be targeted; (ii) determine which localities to target using measures such as the fiscal stress index published by the Commission on Local Government of the Department of Housing and Community Development, underemployment and unemployment data, and socioeconomic and demographic characteristics; and (iii) encourage partnerships among public and private entities, including the Department of Social Services, to provide identified underserved populations and populations with low labor market participation rates with job training and other resources to obtain employment.*

2. That the Virginia Board of Workforce Development shall report on its recommended strategies developed pursuant to the first enactment of this act, and metrics and other items identified therein, to the Governor and the General Assembly by October 1, 2019.

## Chapter 737 License plates, special; STOP GUN VIOLENCE.

An Act to authorize the issuance of special license plates for supporters of stopping gun violence bearing the legend STOP GUN VIOLENCE; fees.

[\[H 287\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Special license plates for supporters of stopping gun violence bearing the legend STOP GUN VIOLENCE.*

*On receipt of an application and following the provisions of § [46.2-725](#) of the Code of Virginia, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of stopping gun violence bearing the legend STOP GUN VIOLENCE.*

*§ 2. Special license plates for supporters of stopping gun violence bearing the legend STOP GUN VIOLENCE; fees.*

*A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § [46.2-725](#) of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of stopping gun violence bearing the legend STOP GUN VIOLENCE.*

*B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Stop Gun Violence Fund established within the Department of Accounts. These funds shall be paid annually to the Behavioral Health and Developmental Services Fund and used to enhance and ensure for the coming years the quality of care and treatment provided to individuals receiving public mental health, developmental, and substance abuse services in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.*

2. That the provisions of § 1 of the first enactment of this act shall expire on July 1, 2020.
3. That the provisions of § 2 of the first enactment of this act shall become effective on July 1, 2020.

### **Chapter 738 American Legion Bridge; VDOT to submit a plan for remediation of bridge.**

An Act to direct the Department of Transportation to submit a plan for the remediation of the American Legion Bridge to the General Assembly.

[\[H 662\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The Department of Transportation (Department) shall begin the initial design and related assessments for remediating the American Legion Bridge at the earliest time possible once necessary decisions have been made by the state of Maryland. The Department shall consult with the Commonwealth Transportation Board, the Department of Rail and Public Transportation, and the Northern Virginia Transportation Authority.*

*The Department shall submit to the Governor and the General Assembly an executive summary and a report of its design and assessments for publication as a House or Senate document when available.*

### **Chapter 739 White Oak Technology Park; conveyance of property in Henrico County.**

An Act to authorize the Department of Conservation and Recreation to convey certain property adjacent to the White Oak Technology Park and Elko Tract Road to the Economic Development Authority of Henrico County.

[\[S 353\]](#)

Approved April 4, 2018

Whereas, the Department of Conservation and Recreation ("the Department") acquired 39.564 acres of land at the corner of Elko Road and Elko Tract Road in Henrico County ("the Property") from the Division of Engineering and Buildings (now the Department of General Services) by Agreement dated August 10, 1976, of record in Deed Book 1691, Page 89, in the Office of the Circuit Court Clerk of Henrico County, which property was held for possible construction of a new headquarters building for the Department; and Whereas, the Department of General Services subsequently transferred adjacent lands to the Industrial Development Authority of Henrico County, now known as the Economic Development Authority of Henrico County ("the Authority") for the development of the White Oak Technology Park, by Deed of Bargain and Sale dated September 25, 1996, of record in Deed Book 2675, Page 1312, in the Office of the Circuit Court Clerk of Henrico County; and

Whereas, a portion of the White Oak Technology Park property lying south of Portugee Road is environmentally sensitive and is unsuitable for development; and

Whereas, the Department no longer has any need for the Property and is willing to transfer it to the Authority in exchange for the placement by the Authority of a deed of open space easement and natural area preserve dedication under the Open-Space Land Act (§ [10.1-1700](#) et seq. of the Code of Virginia) and the Virginia Natural Area Preserves Act (§ [10.1-209](#) et seq. of the Code of Virginia) on certain portions of the White Oak Technology Park property that are unsuitable for development; now, therefore,  
Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Department of Conservation and Recreation ("the Department"), with approval of the Governor pursuant to § [10.1-109](#) of the Code of Virginia, or his designee, is hereby authorized to convey to the Economic Development Authority of Henrico County ("the Authority") a parcel of 39.564 acres of land at the corner of Elko Road and Elko Tract Road in Henrico County ("the Property"), which the Department acquired from the Division of Engineering and Buildings by Agreement dated August 10, 1976, of record in Deed Book 1691, Page 89, in the Office of the Circuit Court Clerk of Henrico County. The conveyance shall be made without any monetary consideration and shall be subject to easements and other restrictions of record.*

*§ 2. That the deed transferring the Property shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

§ 3. *That as a condition of such conveyance, the Authority shall simultaneously convey to the Department a deed of open space easement and natural area preserve dedication on land, the extent of which shall be mutually deemed sufficient by the Department and the Authority, comprising a portion of that property known as White Oak Technology Park, which property was acquired by the Authority from the Department of General Services by Deed of Bargain and Sale dated September 25, 1996, of record in Deed Book 2675, Page 1312, in the Office of the Circuit Court Clerk of Henrico County.*

§ 4. *That the Authority shall not be required to provide any payment to the Commonwealth under the terms of the Real Estate Purchase Agreement dated May 20, 1996, and amended December 12, 2017, for transfer of the deed of open space easement and natural area preserve dedication set forth above.*

## **Chapter 740 Caledon State Park; DCR to convey certain property.**

An Act to authorize the Department of Conservation and Recreation to convey its interest in certain property at Caledon State Park.

[\[S 587\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *That in accordance with and as evidence of General Assembly approval pursuant to § [10.1-109](#) of the Code of Virginia, the Department of Conservation and Recreation (Department) is hereby authorized to quitclaim and release any interest it may hold in the unimproved parcel of land near the southwest corner of Caledon State Park, and containing approximately 6.5 acres bearing Tax Map Parcel No. 6A-1-19, and included within the survey to a deed recorded in Plat Book 8, Page 20, in the Office of Circuit Court Clerk of King George County (the Payne Property) to Rose Payne, her successors and assigns (the Grantee), upon terms and conditions as the Department deems proper, and with the approval of the Governor and in a form approved by the Attorney General, all as required by § [10.1-109](#) of the Code of Virginia.*

§ 2. *The purpose of this quitclaim and release is to certify that the Grantee's claim of title is superior to the Department's. The conveyance shall be made without any consideration. The appropriate officials of the Commonwealth are hereby authorized to*

*prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.*

*§ 3. The conveyance shall, to the extent applicable, comply with the requirements of the federal Land and Water Conservation Fund Act (54 U.S.C. § 200301 et seq.). Pursuant to Item 365 I and notwithstanding the provisions of Item C-25 and § 4-13.00 of the 2017 Appropriation Act, the Department is authorized to accept donated parcels of land as needed in order to meet the requirements of the Land and Water Conservation Fund Act.*

## **Chapter 743 Interstate 81 Corridor Improvement Plan; Commonwealth Transportation Board to develop.**

An Act to direct the Commonwealth Transportation Board to study financing options for Interstate 81 corridor improvements; report.

[\[S 971\]](#)

Approved April 4, 2018

Whereas, an adequate, efficient, and safe Interstate 81 corridor is important to the economic well-being of the communities located along the corridor; and

Whereas, Interstate 81 carries 42 percent of all the truck vehicle miles traveled on interstate highways in the Commonwealth and, in 2016, there were more than 2,000 crashes on Interstate 81 and, of such crashes, 30 took more than six hours to clear; and

Whereas, Interstate 81 is a crucial corridor for interstate truck traffic and an efficient artery to promote the flow of goods and continued economic development; and

Whereas, losing one lane of traffic due to a crash reduces the highway capacity by 65 percent; and

Whereas, the lack of parallel routes and automated traffic management systems increases the impact of such crashes on users of Interstate 81; and

Whereas, due to these conditions, the Interstate 81 corridor today does not meet the needs of these communities, and current statewide transportation revenues are not sufficient to implement necessary improvements to the Interstate 81 corridor; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth Transportation Board (the Board) be directed to study financing options for Interstate 81 corridor improvements.*

*In conducting its study, the Board shall evaluate the feasibility of using toll financing to improve Interstate 81 throughout the Commonwealth. Such evaluation shall not consider options that toll all users of Interstate 81, and shall not consider tolls on commuters using Interstate 81, but may consider high-occupancy toll lanes established pursuant to § [33.2-502](#) of the Code of Virginia and tolls on heavy commercial vehicles. The Board, with the support of the Office of Intermodal Planning and Investment, shall develop and adopt an Interstate 81 Corridor Improvement Plan (Plan). Such Plan shall include the examination of the entire length of Interstate 81 and the methods of financing such improvements, and such Plan may include tolls imposed or collected on heavy commercial vehicles but shall not include tolls on commuters using Interstate 81.*

*At a minimum, in the development of such Plan, the Board shall:*

- 1. Designate specific segments of the Interstate 81 corridor for improvement;*
- 2. Identify a targeted set of improvements for each segment that may be financed or funded in such segment and evaluated using the statewide prioritization process pursuant to § [33.2-214.1](#) of the Code of Virginia;*
- 3. Ensure that in the overall plan of expenditure and distribution of any toll revenues or other financing means evaluated, each segment's total long-term benefit shall be approximately equal to the proportion of the total of the toll revenues collected that are attributable to such segment divided by the total of such toll revenues collected;*
- 4. Study truck travel patterns along the Interstate 81 corridor and analyze policies that minimize the impact on local truck traffic;*
- 5. Identify incident management strategies corridor-wide;*
- 6. Ensure that any revenues collected on Interstate 81 be used only for the benefit of that corridor;*
- 7. Identify actions and policies that will be implemented to minimize the diversion of truck traffic from the Interstate 81 corridor, including the prohibition of through trucks on parallel routes;*
- 8. Determine potential solutions to address truck parking needs along the Interstate 81 corridor; and*
- 9. Assess the potential economic impacts on Virginia agriculture, manufacturing, and logistics sector companies utilizing the I-81 corridor from tolling only heavy commercial trucks.*

*Technical assistance shall be provided to the Commonwealth Transportation Board by the Department of Transportation, the Department of Motor Vehicles, and the Department of State Police. All agencies of the Commonwealth shall provide assistance to the Commonwealth Transportation Board for this study, upon request.*

*The Commonwealth Transportation Board shall complete its meetings by November 30, 2018, and shall submit to the Governor and the General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2019 Regular Session of the General Assembly and shall be posted on the General Assembly's website.*

2. That nothing in this act shall be construed to conflict with the exclusive authority of the General Assembly to approve tolling on components of highways, bridges, or tunnels.

## **Chapter 758 Short-term rentals; local ordinances regulating rentals in Cities of Lexington and Virginia Beach.**

An Act to address local ordinances concerning the regulation of short-term rentals in the City of Lexington and the City of Virginia Beach.

[\[H 824\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding any provision of law to the contrary, general or special, any ordinance in effect and any ordinance adopted by the governing body of the City of Lexington ("the City") shall comply with each of the following provisions:*

- 1. The provisions of this act shall apply to all short-term rentals, whether the City ordinance refers to such rentals as "45 Nights or Less Rentals" or by any other terms.*
- 2. The provisions of this act and subsections A, B, and C of § [15.2-983](#) of the Code of Virginia shall be construed to prohibit, limit, or otherwise supersede any existing local authority of the City to regulate the short-term rental of property through its general land use and zoning authority or any other local authority through its charter or through any provision of Title 15.2 of the Code of Virginia. The City shall not have any provision in its ordinance that is inconsistent with, or not expressly authorized by, subsections A, B, and C of § [15.2-983](#) of the Code of Virginia. However, subject to this act and subsections A, B, and C of § [15.2-983](#) of the Code of Virginia, the City may regulate short-term rentals*

*through its general land use and zoning authority as authorized in subsection D of [15.2-983](#) of the Code of Virginia.*

*3. The City shall not regulate the short-term rental of real property except for such rentals that are for a period of fewer than 30 consecutive days, in compliance with § [15.2-983](#) of the Code of Virginia.*

*4. The City shall not require a business license for, nor require payment of license taxes by, any person engaged in the rental of real property, in compliance with subdivision C 7 of § [58.1-3703](#) of the Code of Virginia.*

*5. The City may include in its ordinance a provision for a short-term rental registry only in compliance with § [15.2-983](#) of the Code of Virginia, including exemptions as provided in subdivision B 2 of § [15.2-983](#).*

*6. The City shall comply with the provisions of § [15.2-2311](#) of the Code of Virginia with respect to any determinations made by the zoning administrator or other administrative officials concerning any alleged violations of the City's short-term rental ordinance, including complying with the requirement to provide the recipient with a statement informing him that he may have a right to appeal the notice of a zoning violation or written order within 30 days.*

2. That the City of Lexington shall amend and reenact its existing ordinance to come into compliance with this act on or before September 30, 2018.

3. That any short-term rental located in the Sandbridge Special Service District in the City of Virginia Beach shall be a principal use subject to the City's regulations applicable to short-term rentals. Whether a short-term rental located in any other area of the City of Virginia Beach is a permitted use shall be determined by the provisions of the City's zoning ordinance.

## **Chapter 759 Telework Promotion & Broadband Assistance, Office of, & Broadband Advisory Council; expiration.**

An Act to amend and reenact the second enactment of Chapter 444 of the Acts of Assembly of 2008 and to amend and reenact the third enactment of Chapter 818 and the third enactment of Chapter 852 of the Acts of Assembly of 2009, relating to the Office of Telework Promotion and Broadband Assistance and the Broadband Advisory Council; expiration.

[\[H 999\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 444 of the Acts of Assembly of 2008 is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.**

2. That the third enactment of Chapter 818 of the Acts of Assembly of 2009 is amended and reenacted as follows:

**3. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.**

3. That the third enactment of Chapter 852 of the Acts of Assembly of 2009 is amended and reenacted as follows:

**3. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.**

## **Chapter 760 Telework Promotion and Broadband Assistance, Office of, and Broadband Advisory Council; expiration.**

An Act to amend and reenact the second enactment of Chapter 444 of the Acts of Assembly of 2008 and to amend and reenact the third enactment of Chapter 818 and the third enactment of Chapter 852 of the Acts of Assembly of 2009, relating to the Office of Telework Promotion and Broadband Assistance and the Broadband Advisory Council; expiration.

[\[S 991\]](#)

Approved April 4, 2018

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 444 of the Acts of Assembly of 2008 is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.**

2. That the third enactment of Chapter 818 of the Acts of Assembly of 2009 is amended and reenacted as follows:

**3. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.**

3. That the third enactment of Chapter 852 of the Acts of Assembly of 2009 is amended and reenacted as follows:

3. That the provisions of this act shall expire on July 1, ~~2018~~ 2019.

### **Chapter 789 Children's residential facilities; operated or conducted under auspices of a religious institute.**

An Act to exempt certain children's residential facilities from current licensure requirements.

[\[S 506\]](#)

Approved April 6, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That, notwithstanding any provision of Chapter 17 (§ [63.2-1700](#) et seq.) of Title 63.2 of the Code of Virginia, the Commissioner of Social Services shall issue a license to a facility operated or conducted under the auspices of a religious institution established in 1978 and located in Atkins, Virginia, at the intersection of Pierce Road and Freedom Tabernacle Lane that receives no public funds that meets the minimum standards for licensed child-caring institutions adopted by the Board of Social Services and in effect on January 1, 1987. Such facility shall not be required to comply with regulations governing children's residential facilities as a condition of licensure.*

2. That the provisions of this act shall expire on July 1, 2021.

### **Chapter 808 Camp 7; disposition of parcel located in Clarke County.**

An Act relating to the disposition of a portion of the Camp 7 parcel located in Clarke County.

[\[S 899\]](#)

Approved April 9, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. That the Commonwealth shall not convey, sell, or otherwise dispose of certain real*

*property identified as a 65+/- contiguous acre parcel, described below, located within Clarke County. The portion of the Camp 7 parcel shall be held by the Commonwealth with the intent to enter into an agreement for the conveyance, sale, or other disposition to Clarke County upon such terms as negotiated by the Commonwealth or any agency thereof and representatives of Clarke County, pursuant to § [2.2-1150](#) of the Code of Virginia.*

*§ 2. Any conveyance, sale, or other disposition of the 65+/- contiguous acre parcel or any portion thereof that is proposed as a result of negotiations between the Commonwealth and the representatives of Clarke County shall be approved by the General Assembly prior to execution of such conveyance, sale, or other disposition.*

*§ 3. The prohibition on the conveyance, sale, or other disposition of the 65+/- contiguous acre parcel to anyone other than Clarke County shall expire on July 1, 2019; however, any conveyance, sale, or other disposition of the 65+/- acre parcel shall be approved by the General Assembly.*

*§ 4. The 65+/- contiguous acres is bound by Rt. 340/Lord Fairfax Highway to the north, Rt. 644/Featherbed Road to the east, and a subdivision line to be created starting at the northern intersection point of the property line at Rt. 522 to the west and extending to Rt. 644/Featherbed Road to the east separating the parcel from the balance of the 200+/- acres and designated as Clarke County tax map number 27A 10.*

## **Chapter 812 Constitutional amendment; real property tax exemption for spouse of disabled veteran.**

HOUSE JOINT RESOLUTION NO. 6

Proposing an amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

Agreed to by the House of Delegates, February 8, 2018

Agreed to by the Senate, March 5, 2018

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the

General Assembly at the regular session of 2017 and referred to this, the next regular session held after the 2017 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

## ARTICLE X

### TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action.

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this subdivision, so long as the surviving spouse does not remarry ~~and continues to occupy the real property as his or her principal place of residence~~. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.*

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to

the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

## **Chapter 813 Constitutional amendment; property tax, exemption for flooding remediation, etc.**

SENATE JOINT RESOLUTION NO. 21

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to property tax; exemption for flooding remediation, abatement, and resiliency.

Agreed to by the Senate, February 12, 2018

Agreed to by the House of Delegates, February 28, 2018

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2017 and referred to this, the next regular session held after the 2017 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

ARTICLE X

TAXATION AND FINANCE

Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to

exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

*(k) The General Assembly may by general law authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.*

## **Chapter 814 Constitutional amendment; real property tax exemption for spouse of disabled veteran.**

SENATE JOINT RESOLUTION NO. 76

Proposing an amendment to Section 6-A of Article X of the Constitution of Virginia, relating to real property tax; exemption.

Agreed to by the Senate, February 12, 2018

Agreed to by the House of Delegates, February 28, 2018

WHEREAS, a proposed amendment to the Constitution of Virginia, hereinafter set forth, was agreed to by a majority of the members elected to each of the two houses of the General Assembly at the regular session of 2017 and referred to this, the next regular session held after the 2017 general election of members of the House of Delegates, as required by the Constitution of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6-A of Article X of the Constitution of Virginia as follows:

### ARTICLE X

#### TAXATION AND FINANCE

Section 6-A. Property tax exemption for certain veterans *and their surviving spouses* and surviving spouses of soldiers killed in action.

(a) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, shall exempt from taxation the real property, including the joint real property of husband and wife, of any veteran who has been determined by the United States Department of Veterans Affairs or its successor agency pursuant to federal law to have a one hundred percent service-connected, permanent, and total disability, and who occupies the real property as his or her

principal place of residence. The General Assembly shall also provide this exemption from taxation for real property owned by the surviving spouse of a veteran who was eligible for the exemption provided in this subdivision, so long as the surviving spouse does not remarry and continues to occupy the real property as his or her principal place of residence. *This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence.*

(b) Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may exempt from taxation the real property of the surviving spouse of any member of the armed forces of the United States who was killed in action as determined by the United States Department of Defense, who occupies the real property as his or her principal place of residence. The exemption under this subdivision shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in action prior to the effective date of this subdivision, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the member of the armed forces.

## **Chapter 815 Feminine hygiene products; no cost to female prisoners or inmates.**

An Act to require the provision of feminine hygiene products at no cost to female prisoners or inmates.

[\[H 83\]](#)

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. The State Board of Corrections shall adopt and implement a standard to ensure the provision of feminine hygiene products to female inmates without charge.*

*§ 2. The Director of the Department of Corrections shall adopt and implement a policy and procedure to ensure the provision of feminine hygiene products to female prisoners without charge.*

## **Chapter 833 School boards; permitted to employ certain individuals.**

An Act to permit school boards to employ certain individuals.

[\[H 1000\]](#)

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1.

*§ 1. Notwithstanding the provisions of subsection A of § [22.1-296.1](#) of the Code of Virginia and consistent with the discretion granted to a school board pursuant to § [22.1-307](#) of the Code of Virginia to retain an employee who is convicted of an offense subsequent to the employee's hiring, a school board may employ an individual who, at the time of the individual's hiring, has been convicted of a felony, provided that such individual (i) was employed in good standing by a school board on or before December 17, 2015; (ii) has been granted a simple pardon for such offense by the Governor or other appropriate authority; and (iii) has had his civil rights restored by the Governor or other appropriate authority. However, a school board may employ, until July 1, 2020, such an individual who does not satisfy the conditions set forth in clauses (ii) and (iii), provided that such individual has been continuously employed by the school board from December 17, 2015, through July 1, 2018.*

## **Chapter 843 School boards; permitted to employ certain individuals.**

An Act to permit school boards to employ certain individuals.

[\[S 343\]](#)

Approved April 18, 2018

Be it enacted by the General Assembly of Virginia:

1.

§ 1. *Notwithstanding the provisions of subsection A of § [22.1-296.1](#) of the Code of Virginia and consistent with the discretion granted to a school board pursuant to § [22.1-307](#) of the Code of Virginia to retain an employee who is convicted of an offense subsequent to the employee's hiring, a school board may employ an individual who, at the time of the individual's hiring, has been convicted of a felony, provided that such individual (i) was employed in good standing by a school board on or before December 17, 2015; (ii) has been granted a simple pardon for such offense by the Governor or other appropriate authority; and (iii) has had his civil rights restored by the Governor or other appropriate authority. However, a school board may employ, until July 1, 2020, such an individual who does not satisfy the conditions set forth in clauses (ii) and (iii), provided that such individual has been continuously employed by the school board from December 17, 2015, through July 1, 2018.*

## **Chapter 851 Trespass; use of an unmanned aircraft system, penalty.**

An Act to amend and reenact § [15.2-926.3](#) of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-121.3 and by adding in Article 8 of Chapter 7 of Title 18.2 a section numbered 18.2-324.2, and to repeal the second enactment of Chapter 451 of the Acts of Assembly of 2016, relating to trespass; unmanned aircraft system; penalty.

[\[H 638\]](#)

Approved May 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-926.3](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-121.3 and by adding in Article 8 of Chapter 7 of Title 18.2 a section numbered 18.2-324.2 as follows:

§ [15.2-926.3](#). (Expires July 1, 2019) Local regulation of certain aircraft.

No ~~locality~~ *political subdivision* may regulate the use of a privately owned, unmanned aircraft system as defined in § [19.2-60.1](#) within its boundaries. *Nothing in this section shall permit a person to go or enter upon land owned by a political subdivision solely because*

*he is in possession of an unmanned aircraft system if he would not otherwise be permitted entry upon such land.*

*§ 18.2-121.3. Trespass with an unmanned aircraft system; penalty.*

*A. Any person who knowingly and intentionally causes an unmanned aircraft system to enter the property of another and come within 50 feet of a dwelling house (i) to coerce, intimidate, or harass another person or (ii) after having been given actual notice to desist, for any other reason, is guilty of a Class 1 misdemeanor.*

*B. This section shall not apply to any person who causes an unmanned aircraft system to enter the property as set forth in subsection A if (i) consent is given to the entry by any person with legal authority to consent or by any person who is lawfully present on such property or (ii) such person is authorized by federal regulations to operate an unmanned aircraft system and is operating such system in an otherwise lawful manner and consistent with federal regulations.*

*§ 18.2-324.2. Use of unmanned aircraft system for certain purposes; penalty.*

*A. It is unlawful for any person who is required to register pursuant to [§ 9.1-901](#) to use or operate an unmanned aircraft system to knowingly and intentionally (i) follow or contact another person without permission of such person or (ii) capture the images of another person without permission of such person when such images render the person recognizable by his face, likeness, or other distinguishing characteristic.*

*B. It is unlawful for a respondent of a protective order issued pursuant to [§ 16.1-279.1](#) or [19.2-152.10](#) to knowingly and intentionally use or operate an unmanned aircraft system to follow, contact, or capture images of the petitioner of the protective order or any other individual named in the protective order.*

*C. A violation of this section is a Class 1 misdemeanor.*

2. That the second enactment of Chapter 451 of the Acts of Assembly of 2016 is repealed.

3. That the Secretary of Commerce and Trade, in consultation with the Virginia Economic Development Partnership, shall study the impact of this act on unmanned aircraft research, innovation, and economic development in Virginia and report to the Governor and General Assembly no later than November 1, 2019.

## Chapter 852 Trespass; use of an unmanned aircraft system, penalty.

An Act to amend and reenact § [15.2-926.3](#) of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 18.2-121.3 and by adding in Article 8 of Chapter 7 of Title 18.2 a section numbered 18.2-324.2, and to repeal the second enactment of Chapter 451 of the Acts of Assembly of 2016, relating to trespass; unmanned aircraft system; penalty.

[\[S 526\]](#)

Approved May 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That § [15.2-926.3](#) of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-121.3 and by adding in Article 8 of Chapter 7 of Title 18.2 a section numbered 18.2-324.2 as follows:

§ [15.2-926.3](#). (Expires July 1, 2019) Local regulation of certain aircraft.

No ~~locality~~ *political subdivision* may regulate the use of a privately owned, unmanned aircraft system as defined in § [19.2-60.1](#) within its boundaries. *Nothing in this section shall permit a person to go or enter upon land owned by a political subdivision solely because he is in possession of an unmanned aircraft system if he would not otherwise be permitted entry upon such land.*

§ 18.2-121.3. *Trespass with an unmanned aircraft system; penalty.*

A. *Any person who knowingly and intentionally causes an unmanned aircraft system to enter the property of another and come within 50 feet of a dwelling house (i) to coerce, intimidate, or harass another person or (ii) after having been given actual notice to desist, for any other reason, is guilty of a Class 1 misdemeanor.*

B. *This section shall not apply to any person who causes an unmanned aircraft system to enter the property as set forth in subsection A if (i) consent is given to the entry by any person with legal authority to consent or by any person who is lawfully present on such property or (ii) such person is authorized by federal regulations to operate an unmanned aircraft system and is operating such system in an otherwise lawful manner and consistent with federal regulations.*

*§ 18.2-324.2. Use of unmanned aircraft system for certain purposes; penalty.*

*A. It is unlawful for any person who is required to register pursuant to § [9.1-901](#) to use or operate an unmanned aircraft system to knowingly and intentionally (i) follow or contact another person without permission of such person or (ii) capture the images of another person without permission of such person when such images render the person recognizable by his face, likeness, or other distinguishing characteristic.*

*B. It is unlawful for a respondent of a protective order issued pursuant to § [16.1-279.1](#) or [19.2-152.10](#) to knowingly and intentionally use or operate an unmanned aircraft system to follow, contact, or capture images of the petitioner of the protective order or any other individual named in the protective order.*

*C. A violation of this section is a Class 1 misdemeanor.*

2. That the second enactment of Chapter 451 of the Acts of Assembly of 2016 is repealed.

3. That the Secretary of Commerce and Trade, in consultation with the Virginia Economic Development Partnership, shall study the impact of this act on unmanned aircraft research, innovation, and economic development in Virginia and report to the Governor and General Assembly no later than November 1, 2019.

## **Chapter 854 Mass transit; establishing various Funds to improve transportation.**

An Act to amend and reenact §§ [33.2-2400](#), [33.2-2401](#), [33.2-2509](#), [58.1-638](#), [58.1-811](#), as it is currently effective, [58.1-815.4](#), as it is currently effective and as it may become effective, [58.1-1741](#), as it is currently effective, [58.1-2289](#), as it is currently effective, [58.1-2299.20](#), as it is currently effective, and [58.1-3221.3](#) of the Code of Virginia; to amend and reenact § 3 of the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011; to amend and reenact the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015; to amend the Code of Virginia by adding a section numbered 33.2-214.3, by adding in Article 5 of Chapter 2 of Title 33.2 a section numbered 33.2-286, by adding a section numbered 33.2-1526.1, by adding in Article 11 of Chapter 19 of Title 33.2 a section numbered 33.2-1936, by adding in Title 33.2 a chapter numbered 31.01, consisting of a section numbered 33.2-3100.1, by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered 33.2-3400 through 33.2-3404, by adding in Title 33.2 a chapter numbered 35, consisting of sections numbered 33.2-3500, 33.2-3501, and 33.2-3502, by

adding a section numbered 58.1-802.3, and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743 and 58.1-1744; to amend the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, by adding sections numbered 3.1 and 3.2; and to repeal § [58.1-802.2](#) and Article 10 (§ [58.1-1742](#)) of Chapter 17 of Title 58.1 of the Code of Virginia, relating to mass transit in the Commonwealth.

[\[H 1539\]](#)

Approved May 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.2-2400](#), [33.2-2401](#), [33.2-2509](#), [58.1-638](#), [58.1-811](#), as it is currently effective, [58.1-815.4](#), as it is currently effective and as it may become effective, [58.1-1741](#), as it is currently effective, [58.1-2289](#), as it is currently effective, [58.1-2299.20](#), as it is currently effective, and [58.1-3221.3](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.2-214.3, by adding in Article 5 of Chapter 2 of Title 33.2 a section numbered 33.2-286, by adding a section numbered 33.2-1526.1, by adding in Article 11 of Chapter 19 of Title 33.2 a section numbered 33.2-1936, by adding in Title 33.2 a chapter numbered 31.01, consisting of a section numbered 33.2-3100.1, by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered 33.2-3400 through 33.2-3404, by adding in Title 33.2 a chapter numbered 35, consisting of sections numbered 33.2-3500, 33.2-3501, and 33.2-3502, by adding a section numbered 58.1-802.3, and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743 and 58.1-1744, as follows:

*§ 33.2-214.3. Statewide prioritization for the Commonwealth Mass Transit Fund.*

*A. 1. The Board shall develop a prioritization process for the use of funds allocated pursuant to subdivision C 2 of § 33.2-1526.1. Such prioritization process shall be used for the development of the Six-Year Improvement Program adopted annually by the Board pursuant to § [33.2-214](#). There shall be a separate prioritization process for state of good repair projects and major expansion projects. The prioritization process shall, for state of good repair projects, be based upon transit asset management principles, including federal requirements for Transit Asset Management pursuant to 49 U.S.C. § 5326. The prioritization process shall, for major expansion projects, be based on an objective and*

*quantifiable analysis that considers the following factors relative to the cost of a major expansion project: congestion mitigation, economic development, accessibility, safety, environmental quality, and land use.*

*2. The Board shall solicit input from localities, metropolitan planning organizations, transit authorities, transportation authorities, and other stakeholders in its development of the prioritization process pursuant to this subsection. Further, the Board shall explicitly consider input provided by an applicable metropolitan planning organization or the Northern Virginia Transportation Authority when developing the prioritization process set forth in subdivision 1 for a metropolitan planning area with a population of over 200,000 individuals.*

*B. 1. The Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of the process set forth in subdivision 2. The Transit Service Delivery Advisory Committee shall elect a chairman from among its membership. The Department of Rail and Public Transportation shall provide administrative support to the Transit Service Delivery Advisory Committee. The Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation.*

*2. The Department of Rail and Public Transportation, in conjunction with the Transit Service Delivery Advisory Committee, shall develop a process for the distribution of the funds allocated pursuant to subdivision C 1 of § 33.2-1526.1 and the incorporation by transit systems of the service delivery factors set forth therein into their transit development plans. Prior to the Board approving service delivery factors, the Director of the Department of Rail and Public Transportation and the Chairman of the Transit Service Delivery Advisory Committee shall brief the House Committees on Appropriations and Transportation and the Senate Committees on Finance and Transportation regarding the findings and recommendations of the Transit Service Delivery Advisory Committee and the Department of Rail and Public Transportation. Before redefining any component of the service delivery factors, the Board shall consult with the Director of the Department of Rail and Public Transportation, the Transit Service Delivery Advisory Committee, and interested stakeholders, and shall provide for a 45-day public comment period. The*

*process required to be delivered by this subsection shall be adopted no later than July 1, 2019, and shall apply beginning with the fiscal year 2020-2025 Six-Year Improvement Program.*

*§ 33.2-286. Urban transit agency strategic plans.*

*A. The Department of Rail and Public Transportation shall develop guidelines, subject to the approval of the Board, for the development of strategic plans for transit agencies that (i) serve an urbanized area with a population of 50,000 or more and (ii) have a bus fleet consisting of at least 20 buses.*

*B. As a condition of receiving funds from the Commonwealth Mass Transit Fund, any transit agency that meets the criteria of subsection A shall develop, and update at least once every five years, a strategic plan using the guidelines approved by the Board.*

*C. The guidelines shall require the following:*

- 1. An assessment of state of good repair needs;*
- 2. A review of the performance of fixed-route bus service, including schedules, route design, connectivity, and vehicle sizes;*
- 3. An evaluation of opportunities to improve operating efficiency of the transit network, including reliability of trips and travel speed;*
- 4. An examination and identification of opportunities to share services where multiple transit providers' services overlap; and*
- 5. An examination of opportunities to improve service in underserved areas.*

*D. In addition to developing and updating a strategic plan pursuant to this section, in all planning districts with transit systems collectively serving population areas of not less than 1.5 million nor more than 2 million, such transit systems shall develop a regional transit planning process coordinated by the federally designated Metropolitan Planning Organization. Such planning process shall include the identification and prioritization of projects, the establishment of performance benchmarks that incorporate state and federal requirements, the development and implementation of a regional subsidy allocation model, and the distribution of funds solely designated for transit and rail and that are administered by a regional body authorized by this Code to enter into agreements for the operation and maintenance of transit and rail facilities.*

*§ 33.2-1526.1. Use of the Commonwealth Mass Transit Fund.*

*A. All funds deposited pursuant to §§ [58.1-638](#), [58.1-638.3](#), [58.1-815.4](#), and [58.1-2289](#) into the Commonwealth Mass Transit Fund (the Fund), established pursuant to subdivision A 4 of § [58.1-638](#), shall be allocated as set forth in this section.*

*B. The Board may establish policies for the implementation of this section, including the determination of the state share of operating, capital, and administrative costs related to mass transit. For purposes of this section, capital costs may include debt service payments on local or agency transit bonds. Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes as set forth in this section. No funds from the Fund shall be allocated without a local match from the recipient.*

*C. Each year the Director of the Department of Rail and Public Transportation shall make recommendations to the Board for the allocation of funds from the Fund. Such recommendations, and the final allocations approved by the Board, shall adhere to the following:*

*1. Thirty-one percent of the funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency as established by the Board. Such measures and their relative weight shall be evaluated every three years and, if redefined by the Board, shall be published and made available for public comment at least one year in advance of being applied. The Washington Metropolitan Area Transit Authority (WMATA) shall not be eligible for an allocation of funds pursuant to this subdivision.*

*2. Twelve and one-half percent of the funds shall be allocated for capital purposes and distributed utilizing the transit capital prioritization process established by the Board pursuant to § 33.2-214.3. The Washington Metropolitan Area Transit Authority shall not be eligible for an allocation of funds pursuant to this subdivision.*

*3. Fifty-three and one-half percent of the funds shall be allocated to the Northern Virginia Transportation Commission for distribution to WMATA for capital purposes and operating assistance, as determined by the Commission.*

*4. Three percent of the funds shall be allocated for special programs, including ride-sharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation. Remaining funds may also be used directly by the Department of Rail and Public Transportation to (i) finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout the Commonwealth or (ii) finance up to 80 percent of the cost of development and implementation of projects with a purpose of enhancing the provision and use of public transportation services.*

*D. The Board may consider the transfer of funds from subdivisions C 2 and 4 to subdivision C 1 in times of statewide economic distress or statewide special need.*

*E. The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Fund revenues in order to ensure stability in providing operating and capital funding to transit entities from year to year, provided that such balance shall not exceed five percent of revenues in a given biennium.*

*F. The Board may allocate up to 3.5 percent of the funds set aside for the Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.*

*G. Funds allocated to the Northern Virginia Transportation Commission (NVTC) for WMATA pursuant to subdivision C 3 shall be credited to the Counties of Arlington and Fairfax and the Cities of Alexandria, Fairfax, and Falls Church. Beginning in the fiscal year when service starts on Phase II of the Silver Line, such funds shall also be credited to Loudoun County. Funds allocated pursuant to this subsection shall be credited as follows:*

*1. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC, which shall use 95 percent state aid for these payments.*

*2. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Local transit subsidies and local capital costs of Loudoun County shall not be included. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.*

*H. Appropriations from the Fund are intended to provide a stable and reliable source of revenue, as defined by P.L. 96-184.*

*I. Notwithstanding any other provision of law, funds allocated to WMATA may be disbursed by the Department of Rail and Public Transportation directly to WMATA or to any other transportation entity that has an agreement to provide funding to WMATA.*

*J. In any year that the total Virginia operating assistance in the approved WMATA budget increases by more than 3 percent from the total operating assistance in the prior year's approved WMATA budget, the Board shall withhold an amount equal to 35 percent of the funds available under subdivision C 3. The following items shall not be included in the calculation of any WMATA budget increase: (i) any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any capital project*

*approved by the WMATA Board before or after the effective date of this provision; and (iii) any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity.*

§ 33.2-1936. *Transportation districts with unique needs.*

*The General Assembly finds that transportation districts that (i) have a population of 1.7 million or more, as shown by the most recent United States Census, (ii) have not less than 1.5 million motor vehicles registered therein, and (iii) have a total transit ridership of not less than 75 million riders per year across all transit systems within the transportation district and in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § [33.2-1901](#) have unique transportation needs.*

§ [33.2-2400](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Northern Virginia Transportation District Fund, referred to in this chapter as "the Fund," consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under subsection B of § [58.1-802](#) and § [58.1-814](#). The Fund shall also include any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including any funds distributed pursuant to § [33.2-366](#), that may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly and designated for the Fund and all interest, dividends, and appreciation that may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2, 3, or 4 project may be funded.

B. Allocations from the Fund may be paid (i) to any authority, locality, or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program, which consists of the following: the Fairfax County Parkway, the Route 234 Bypass, Metrorail capital improvements attributable to Fairfax County including Metro parking expansions, Metrorail capital improvements including the Franconia-Springfield

Metrorail Station and new rail car purchases, the Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County including Ballston Station improvements, the Route 15 safety improvements in Loudoun County, the Route 28 parallel roads in Loudoun County, the Route 28/Sterling Boulevard interchange in Loudoun County, the Route 1/Route 123 interchange improvements in Prince William County, the Lee Highway improvements in the City of Fairfax, the Route 123 improvements in Fairfax County, the Telegraph Road improvements in Fairfax County, the Route 123 Occoquan River Bridge, Gallows Road in Fairfax County, the Route 1/Route 234 interchange improvements in Prince William County, the Potomac-Rappahannock Transportation Commission bus replacement program, and the Dulles Corridor Enhanced Transit program and (ii) for Category 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

*D. Beginning in fiscal year 2019, \$20 million each year shall be transferred from the Fund to the Washington Metropolitan Area Transit Authority Capital Fund established pursuant to § 33.2-3401.*

§ [33.2-2401](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe, and efficient transportation network in Northern Virginia that shall be known as the Northern Virginia Transportation District Program (the Program), including environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the projects listed in clause (i) of subsection B of § [33.2-2400](#).

B. Allocations to the Program from the Fund shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe and efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility, and quality of life in the Commonwealth.

C. Except in the event that the Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in subdivision 12 of § [33.2-1700](#).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E *and in subsection D of § [33.2-2400](#)*.

E. The Commonwealth Transportation Board is authorized to receive, dedicate, or use (i) first from revenues received from the Fund; (ii) to the extent required, ~~funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located~~ *available for distribution after providing for subsection B of § [33.2-358](#)*; (iii) to the extent required, legally available revenues of the Transportation Trust Fund; and (iv) such other funds that may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [33.2-2509](#). Northern Virginia Transportation Authority Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 8 to be known as the Northern Virginia Transportation Authority Fund, referred to in this chapter as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§~~[58.1-638](#), [58.1-802.2](#), and [58.1-1742](#)~~, any other funds that may be appropriated by the General Assembly, and any funds that may be received for the credit of the Fund from any other source shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including

interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The amounts dedicated to the Fund pursuant to §§ [58.1-638](#), [58.1-802.2](#), and [58.1-1742](#) shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Authority as soon as practicable for use in accordance with § [33.2-2510](#). If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § [33.2-2510](#), the Authority may invest such excess moneys to the same extent as provided in subsection A of § [33.2-1525](#) for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

*CHAPTER 31.01.*

*METRO REFORM COMMISSION.*

*§ 33.2-3100.1. Metro Reform Commission established; membership; duties.*

*A. As used in this chapter, unless the context requires a different meaning:*

*"Commission" means the Metro Reform Commission.*

*"WMATA" means the Washington Metropolitan Area Transit Authority.*

*B. There is hereby created the Metro Reform Commission. The Commission shall consist of four members appointed as follows: two members appointed by the Speaker of the House of Delegates and two members appointed by the Senate Committee on Rules. Members of the Commission may or may not be members of the General Assembly. Members shall be citizens of the Commonwealth, but shall not be required to reside in the area served by WMATA. Members shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties pursuant to §§ [2.2-2813](#) and [2.2-2825](#).*

*C. The Commission shall advise and make recommendations to the Signatories of the Washington Metropolitan Area Transit Authority Compact of 1966 on reforms to the National Capital Area Interest Arbitration Standards Act.*

*CHAPTER 34.*

*WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY CAPITAL FUND.*

§ 33.2-3400. *Definitions.*

*As used in this chapter:*

*"Fund" means the Washington Metropolitan Area Transit Authority Capital Fund.*

*"NVTC" means the Northern Virginia Transportation Commission.*

*"WMATA" means the Washington Metropolitan Area Transit Authority.*

§ 33.2-3401. *Washington Metropolitan Area Transit Authority Capital Fund.*

*A. There is hereby created in the state treasury a special nonreverting fund for the benefit of the Northern Virginia Transportation District to be known as the Washington Metropolitan Area Transit Authority Capital Fund. The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ [33.2-2400](#), [33.2-3404](#), [58.1-802.3](#), [58.1-1741](#), [58.1-1743](#), and [58.1-2299.20](#) shall be paid into the state treasury and credited to the Fund as set forth in subsection B and shall be used for the payment of capital purposes incurred, or to be incurred, by WMATA. Interest on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Comptroller shall disburse funds to WMATA on a monthly basis if NVTC has provided the certification required by subsection B of § 33.2-3402.*

*B. 1. Within the Fund, there shall be established a separate, segregated account into which revenues dedicated to the Fund pursuant to §§ [33.2-2400](#) and [58.1-1741](#) shall be deposited (the Restricted Account). Revenues deposited into the Restricted Account shall be available for use by WMATA for capital purposes other than for the payment of, or security for, debt service on bonds or other indebtedness of WMATA.*

*2. Within the Fund, there shall be established a separate, segregated account into which revenues dedicated to the Fund pursuant to §§ [33.2-3404](#), [58.1-802.3](#), [58.1-1743](#), and [58.1-2299.20](#) shall be deposited (the Non-Restricted Account). Revenues deposited into the Non-Restricted Account shall be available for use by WMATA for capital purposes, including for the payment of, or security for, debt service on bonds or other indebtedness of WMATA, or for any other WMATA capital purposes.*

*C. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.*

*§ 33.2-3402. NVTC oversight.*

*A. In any year that funds are deposited into the Fund, the NVTC shall request certain documents and reports from WMATA to confirm the benefits of the WMATA system to persons living, traveling, commuting, and working in the localities that the NVTC comprises.*

*Such documents and reports shall include:*

- 1. WMATA's annual capital budget;*
- 2. WMATA's annual independent financial audit;*
- 3. WMATA's National Transit Data annual profile; and*
- 4. Single audit reports issued in accordance with the Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards (2 C.F.R. Part 200).*

*B. NVTC shall be responsible for coordinating the delivery of such documents and reports with WMATA. Funding of the Commonwealth to support WMATA pursuant to § 33.2-1526.1 shall be contingent on WMATA providing the documents and reports described in subsection A, and NVTC shall provide annual certification to the Comptroller that such documents and reports have been received.*

*§ 33.2-3403. NVTC report.*

*By November 1 of each year that funds are deposited into the Fund, NVTC shall report to the Governor and the General Assembly on the performance and condition of WMATA. Such report shall contain, at a minimum, documentation of the following:*

- 1. The safety and reliability of the rapid heavy rail mass transportation system and bus network;*
- 2. The financial performance of WMATA related to the operations of the rapid heavy rail mass transportation system, including farebox recovery, service per rider, and cost per service hour;*
- 3. The financial performance of WMATA related to the operations of the bus mass transportation system, including farebox recovery, service per rider, and cost per service hour;*
- 4. Potential strategies to reduce the growth in such costs and to improve the efficiency of WMATA operations;*
- 5. Use of the funds provided from the Fund to improve the safety and condition of the rapid heavy rail mass transportation system; and*
- 6. Ridership of the rapid heavy rail mass transportation system and the bus mass transportation system.*

*§ 33.2-3404. Local transportation support for WMATA.*

*A. Each county or city that (i) is located in a transportation district that as of January 1, 2018, meets the criteria established in § 33.2-1936 and (ii) has financial obligations to a*

*transit system that operates a rapid heavy rail mass transit system operating on an exclusive right-of-way that is funded and controlled in part by such transportation district shall annually pay to the Fund an amount as determined by subsection B.*

*B. The amount to be paid by each local government pursuant to subsection A shall be determined by multiplying \$27.12 million by a fraction the numerator of which shall be such local government's share of capital funding for WMATA and the denominator of which shall be the total share of capital funding for WMATA for all local governments in the Commonwealth.*

*C. A locality subject to subsection A shall pay the amount determined by subsection B by transferring a portion of the revenues received pursuant to subsection B of § [33.2-2510](#) to the Fund. However, in any fiscal year in which a locality subject to subsection A has adopted a budget and a corresponding resolution to provide the amount of funds determined pursuant to subsection B from a source other than the revenues received pursuant to subsection B of § [33.2-2510](#), such locality may provide the funds for that fiscal year from such other source, and shall not be required to transfer funds received pursuant to subdivision B of § [33.2-2510](#).*

CHAPTER 35.

COMMUTER RAIL OPERATING AND CAPITAL FUND.

§ 33.2-3500. *Commuter Rail Operating and Capital Fund.*

*A. The General Assembly declares it to be in the public interest that developing and continuing commuter rail operations and developing rail infrastructure, rolling stock, and support facilities to support commuter rail service are important elements of a balanced transportation system in the Commonwealth and further declares that retaining, maintaining, improving, and developing commuter rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.*

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Commuter Rail Operating and Capital Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller and shall consist of funds deposited into the Fund pursuant to § [58.1-2299.20](#) and other funds as may be set forth in a general appropriation act or allocated by the Commonwealth Transportation Board. Such funds shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Comptroller shall*

*disburse funds in the Fund monthly to transportation districts established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) that on July 1, 2018, jointly operate a commuter rail system. The amount distributed to each transportation district shall be determined by multiplying the total amount of funds available for disbursement by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding provided by both transportation districts for such commuter rail service.*

*C. If the transportation districts described in subsection B determine that such moneys distributed to the districts exceed the amount required to meet the current capital and operating needs of the commuter rail system, they may invest such excess moneys to the same extent as provided in subsection A of § [33.2-1525](#) for excess funds in the Transportation Trust Fund.*

*D. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined. Any amounts deposited pursuant to § [58.1-2299.20](#) shall be considered local funds when used to make a required match for state or federal transportation grant funds.*

*§ 33.2-3501. Use of revenues in the Fund.*

*A. The transportation districts described in subsection B of § 33.2-3500 shall administer and expend, or commit, funds from the Fund to support the cost of operating commuter rail service; acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for commuter rail transportation purposes whenever such transportation districts have determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support commuter rail projects.*

*B. Capital projects, including tracks and facilities constructed, and property, equipment, and rolling stock purchased, with funds from the Fund pursuant to this section shall be owned, leased, or otherwise subject to the continuing use of the transportation districts described in subsection B of § 33.2-3500 for the useful life of the projects and property,*

*equipment, and rolling stock, as determined by such transportation districts, and shall be made available for use by all commuter rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements between the parties. Such transportation districts may transfer ownership of any tracks or property to the Commonwealth. Projects undertaken pursuant to this section shall be limited to those providing benefits to a region of the Commonwealth, the Commonwealth as a whole, or an adjacent jurisdiction served by commuter rail originating in the Commonwealth.*

§ 33.2-3502. Authority to issue bonds.

*The transportation districts described in subsection B of § 33.2-3500 may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of Article 5 (§ [33.2-1920](#) et seq.) of Chapter 19 shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available in the Fund, provided that the total amount of debt service for all outstanding bonds may not exceed 66 percent of the revenues dedicated to the Fund pursuant to § [58.1-2299.20](#).*

§ [58.1-638](#). Disposition of state sales and use tax revenue.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § [33.2-1524](#). Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth. Expenditures for such capital needs are restricted to those capital projects specified in subsection B of § [62.1-132.1](#).

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § [5.1-2.16](#), or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each

airport to total enplanements at all air carrier airports, except airports owned or leased by MWA. No air carrier airport sponsor, however, shall receive less than \$50,000 nor more than \$2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.

Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to § [33.2-1526](#) shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. ~~If funds in subdivision 4 b (1)(c) or 4 b (2)(d) are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of § [33.2-214.1](#). Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.~~

b. The amounts allocated pursuant to ~~this section~~ § [33.2-1526.1](#) shall be used to support the operating, capital, and administrative costs of public transportation at a state share determined by the Commonwealth Transportation Board, and these amounts may be used to support the capital project costs of public transportation and ridesharing

equipment, facilities, and associated costs at a state share determined by the Commonwealth Transportation Board. Capital costs may include debt service payments on local or agency transit bonds. ~~In making these determinations, the Commonwealth Transportation Board shall confer with the Director of the Department of Rail and Public Transportation. In development of the Director's recommendation and subsequent allocation of funds by the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation and the Commonwealth Transportation Board shall adhere to the following:~~

~~(1) For the distribution of revenues from the Commonwealth Mass Transit Fund, of those revenues generated in 2014 and thereafter, the first \$160 million in revenues or the maximum available revenues if less than \$160 million shall be distributed by the Commonwealth Transportation Board as follows:~~

~~(a) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:~~

~~(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.~~

~~(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.~~

~~(b) At least 72 percent of the funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.~~

~~(c) Twenty-five percent of the funds shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds~~

allocated for debt service payments will be included in the tier that applies to the capital asset that is leveraged.

~~(d) Transfer of funds from funding categories in subdivisions 4 b (1)(a) and 4 b (1)(c) to 4 b (1)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.~~

~~(2) The Commonwealth Transportation Board shall allocate the remaining revenues after the application of the provisions set forth in subdivision 4 b (1) generated for the Commonwealth Mass Transit Fund for 2014 and succeeding years as follows:~~

~~(a) Funds pursuant to this section shall be distributed among operating, capital, and special projects in order to respond to the needs of the transit community.~~

~~(b) Of the funds pursuant to this section, at least 72 percent shall be allocated to support operating costs of transit providers and distributed by the Commonwealth Transportation Board based on service delivery factors, based on effectiveness and efficiency, as established by the Commonwealth Transportation Board. These measures and their relative weight shall be evaluated every three years and, if redefined by the Commonwealth Transportation Board, shall be published and made available for public comment at least one year in advance of being applied. In developing the service delivery factors, the Commonwealth Transportation Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of a distribution process for the funds allocated pursuant to this subdivision 4 b (2)(b) and how transit systems can incorporate these metrics in their transit development plans. The Transit Service Delivery Advisory Committee shall elect a Chair. The Department of Rail and Public Transportation shall provide administrative support to the committee. Effective July 1, 2013, the Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation. Prior to the Commonwealth Transportation Board approving the service delivery factors, the Director of the Department of Rail and Public Transportation along with the Chair of the Transit Service Delivery Advisory Committee shall brief the Senate Committee on Finance, the House Appropriations Committee, and the Senate and House Committees on Transportation on the findings of the Transit Service Delivery~~

Advisory Committee and the Department's recommendation. Before redefining any component of the service delivery factors, the Commonwealth Transportation Board shall consult with the Director of the Department of Rail and Public Transportation, Transit Service Delivery Advisory Committee, and interested stakeholders and provide for a 45-day public comment period. Prior to approval of any amendment to the service delivery measures, the Board shall notify the aforementioned committees of the pending amendment to the service delivery factors and its content.

(c) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(d) Of the funds pursuant to this section, 25 percent shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments shall be included in the tier that applies to the capital asset that is leveraged.

(e) Transfer of funds from funding categories in subdivisions 4 b (2)(c) and 4 b (2)(d) to 4 b (2)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.

(f) The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Commonwealth Mass Transit Fund revenues under this subsection in

~~order to assure better stability in providing operating and capital funding to transit entities from year to year.~~

~~(3) The Commonwealth Mass Transit Fund shall not be allocated without requiring a local match from the recipient.~~

c. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in [§ 33.2-1800](#) and for purposes as enumerated in subdivision 7 of [§ 33.2-1701](#) or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. ~~If revenues of the Commonwealth Transit Capital Fund are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of [§ 33.2-214.1](#).~~ The Commonwealth Transit Capital Fund shall not be allocated without requiring a local match from the recipient.

~~d. The Commonwealth Transportation Board may allocate up to three and one-half percent of the funds set aside for the Commonwealth Mass Transit Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.~~

~~5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church, and Fairfax in the following manner:~~

~~a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.~~

~~b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.~~

~~Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.~~

~~6. Notwithstanding any other provision of law, funds allocated to Metro may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro.~~

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon

Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § [29.1-101](#) and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the

Capital Improvement Fund, established under § [29.1-101.01](#), is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § [29.1-101](#), in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#) an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#), and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date) Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530:

1. For fiscal year 2014, an amount equal to 10 percent;
2. For fiscal year 2015, an amount equal to 20 percent;
3. For fiscal year 2016, an amount equal to 30 percent; and
4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2509](#).

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2600](#).

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

J. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-802.3. *Regional transportation improvement fee.*

*In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional WMATA capital fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city that is a member of the Northern Virginia Transportation Authority is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remain-*

*ing thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.*

*The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.*

*No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.*

*Fees imposed by this section shall be collected by the clerk of the court. For fees collected in a county or city located in a transportation district established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) of Title 33.2 that as of January 1, 2018, meets the criteria established in § 33.2-1936 shall be transferred to the state treasury as soon as practicable and deposited into the fund established in § 33.2-3401. The fees collected in any other county or city in which the fee is imposed shall be retained by the county or city, and shall be used solely for transportation purposes.*

§ [58.1-811](#). (Contingent expiration date) Exemptions.

A. The taxes imposed by §§ [58.1-801](#) and [58.1-807](#) shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;
2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § [57-16.1](#), where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;
3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;
4. To the Virginia Division of the United Daughters of the Confederacy;
5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;
6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;
7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

15. When it is a deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

16. When it is a deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ [58.1-803](#) and [58.1-804](#) shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;
2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § [57-16.1](#);
3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;
4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;
5. Securing a loan made by an organization described in subdivision A 14;
6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home; or
7. Given by any entity organized pursuant to Chapter 9.1 (§ [56-231.15](#) et seq.) of Title 56.

C. The tax imposed by § [58.1-802](#) and the fee imposed by §§ [58.1-802.2](#) [58.1-802.3](#) shall not apply to any:

1. Transaction described in subdivisions A 6 through 13, 15, and 16;
2. Instrument or writing given to secure a debt;
3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;
4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district, or other political subdivision thereof;
5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § [58.1-802](#) or subject to the fee under § [58.1-802.2](#) [58.1-802.3](#); or
6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § [57-16.1](#).

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § [58.1-807](#) shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ [58.1-801](#), [58.1-802](#), [58.1-802.2](#), [58.1-802.3](#), [58.1-807](#), [58.1-808](#), and [58.1-814](#) shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural, or open space areas.

G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees mentioned in § [57-8](#) and the ecclesiastical officers mentioned in § [57-16](#).

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or similar federal law.

J. No recordation tax shall be required for the recordation of any transfer on death deed or any revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act (§ [64.2-621](#) et seq.) when no consideration has passed between the parties.

§ [58.1-815.4](#). (Contingent expiration dates) Distribution of recordation tax for certain transportation-related purposes.

Of the state recordation taxes imposed pursuant to §§ [58.1-801](#) and [58.1-803](#), the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

- ~~1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b (1)(b) of § [58.1-638](#); and~~
- ~~2. The revenues collected from \$0.01 of the total tax shall be deposited into the Commonwealth Mass Transit Capital Fund established pursuant to subdivision A 4-e of § [58.1-638](#).~~

§ [58.1-815.4](#). (Contingent effective date, and contingent expiration date) Distribution of recordation tax for certain transportation-related purposes.

Effective July 1, 2008, of the state recordation taxes imposed pursuant to §§ [58.1-801](#) and [58.1-803](#), the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b-(1)(b) of § [58.1-638](#); and
2. The revenues collected from \$0.01 of the total tax shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#).

§ [58.1-1741](#). (Contingent expiration date) Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose.

However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § [58.1-1736](#) on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii), an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), and by §§ [58.1-1735](#), [58.1-1736](#) and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § [58.1-1736](#) at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and two-thirds of which shall be paid into the Rail Enhancement Fund established by § [33.2-1601](#) and one-third of which shall be deposited into the ~~Transportation Trust Fund established pursuant to § [33.2-1524](#) and set aside for state of good repair purposes pursuant to § [33.2-369](#)~~ *Washington Metropolitan Area Transit Authority Capital Fund* pursuant to § [33.2-3401](#); and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § [58.1-1736](#) shall be used

to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to ~~clause (ii) of subsection~~ *subdivision A 2*, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

*Article 11.*

*Transportation Transient Occupancy Taxes.*

§ 58.1-1743. *Transportation district transient occupancy tax.*

*In addition to all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city located in a transportation district established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) of Title 33.2 that as of January 1, 2018, meets the criteria established in § 33.2-1936.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer into the state treasury pursuant to § [2.2-806](#) and transferred by the Comptroller into special funds established by law. In the case of the Northern Virginia Transportation District, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3401. For additional transportation districts that may become subject to this section, funds shall be established by appropriate legislation.*

§ 58.1-1744. *Local transportation transient occupancy tax.*

*In addition to all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city that is a member of the Northern Virginia Transportation Authority that is not described in § 58.1-1743.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer and may be used only for public transportation purposes.*

**§ [58.1-2289](#). (For contingent expiration, see note) Disposition of tax revenue generally.**

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department

of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council.

D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.2-1510](#), a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#), (ii) 11.3 percent shall be deposited into the Transportation Trust Fund established pursuant to § [33.2-1524](#), (iii) four percent shall be deposited into the Priority Transportation Fund, (iv) ~~3.11~~ 3.7 percent shall be deposited into the Commonwealth *Mass Transit-Capital* Fund established pursuant to subdivision A 4-e of § [58.1-638](#), and (v) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, ~~(vi) 0.35 of one percent shall be deposited into the Commonwealth-Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated~~

~~to subdivision A 4 b (1)(b), and (vii) 0.24 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated to subdivision A 4 b (1)(a).~~

**§ [58.1-2299.20](#). (Contingent expiration date) Disposition of tax revenues.**

A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in *clause (i) of subdivision A 1 of § [58.1-2295](#)*, after subtraction of the direct costs of administration by the Department, shall be deposited *each month as follows*:

*1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500;*

*2. a. Until June 30, 2019, an amount equal to the increase in taxes, interest, and civil penalties paid to the Commissioner each month, compared with the same month for fiscal year 2018, minus any amounts deposited pursuant to subdivision 1, shall be deposited into the Washington Metropolitan Area Transit Capital Fund established pursuant to § 33.2-3401; and*

*b. Beginning on July 1, 2019, an amount equal to one-twelfth of the increase in taxes, interest, and civil penalties paid to the Commissioner in fiscal year 2019 compared to fiscal year 2018, minus any amounts deposited pursuant to subdivision A 1, shall be deposited in the Washington Metropolitan Area Transit Authority Capital Fund established pursuant to § 33.2-3401; and*

*3. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_." The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § [33.2-1915](#), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § [33.2-1915](#), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. ~~The direct costs of administration shall be credited to the funds appropriated to the Department.~~*

B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (ii) of subdivision A 1 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited each month as follows:

1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500; and

2. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_." The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § [33.2-1915](#), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district that was established on or before January 1, 1986, and is also subject to subsection C of § [33.2-1915](#), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction.

C. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 2 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited into special funds established by law. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2600](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

D. The direct cost of administration of this section shall be credited to the funds appropriated to the Department.

§ [58.1-3221.3](#). Classification of certain commercial and industrial real property and taxation of such property by certain localities.

A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are wholly embraced by the

Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used to benefit the locality imposing the tax solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, ~~or~~ (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii), *or (v) for a locality subject to § 33.2-3404, any other transportation pur-*

*poses, provided that the amount used does not exceed the amount such locality is required to transfer pursuant to § 33.2-3404; and*

(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as a separate class of real property for local taxation in accordance with the provisions of this section.

C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property located in special regional transportation tax districts specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all

real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall be used for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable and solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, ~~or~~ (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii), *or (v) for a locality subject to § 33.2-3404, any other transportation purposes, provided that the amount used does not exceed the amount such locality is required to transfer pursuant to § 33.2-3404;*

(2) Any local ordinance adopted in accordance with the provisions of subsection C and this subsection shall include the requirement that the additional real property taxes so authorized are to be imposed annually in accordance with applicable law;

(3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall not be permitted to also impose the additional real property taxes set forth in subsection C and this subsection. In addition, any locality electing to impose the additional real property taxes on all real property located in such locality that is specially classified in subsections A and B must do so in the manner prescribed in subsections A and B and not by creation of a special transportation tax district as set forth in subsection C and this subsection. The creation of such special regional transportation tax districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;

(4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of \$0.125 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of \$0.10 per \$100 of assessed value in any locality wholly embraced by the Hampton

Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code; and

(5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.

2. That § 3 of the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended and reenacted as follows:

§ 3. The net proceeds of the Bonds *authorized by § 2* shall be used exclusively for the purpose of providing funds for paying the costs incurred or to be incurred for construction or funding of transportation projects pursuant to § ~~33.1-23.4-01~~ [33.2-365](#) of the Code of Virginia, including but not limited to environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs and other financing expenses. Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

3. That the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended by adding sections numbered 3.1 and 3.2 as follows:

*§ 3.1. The Commonwealth Transportation Board is hereby further authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the Transportation Development and Revenue Bond Act (§ [33.2-1700](#) et seq. of the Code of Virginia), as amended from time to time, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series ...." at one time in an aggregate principal amount not to exceed an additional \$50 million for a total authorization of \$3.05 billion, plus costs. The issuance of any bonds under this act is subject to the provisions of subsection C of § [33.2-1527](#) of the Code of Virginia.*

*§ 3.2. The net proceeds of the additional bonds authorized in § 3.1 of this enactment shall be used exclusively for the Commonwealth of Virginia to match federal funds provided for capital projects by the Washington Metropolitan Area Transit Authority.*

4. That § [58.1-802.2](#) and Article 10 (§ [58.1-1742](#)) of Chapter 17 of Title 58.1 of the Code of Virginia are repealed.

5. That each county or city that is a member of the Potomac Rappahannock Transportation Commission, but not a member of the Northern Virginia Transportation Authority, as of January 1, 2018, shall expend or disburse for the support of public transportation an amount that is at least equal to the average annual amount expended or disbursed for such purposes by the county or city, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2015, and June 30, 2018.

6. That the provisions of this act, except for §§ 33.2-214.3, 33.2-286, and 33.2-1526.1 of the Code of Virginia, as created by this act, and § [58.1-638](#) of the Code of Virginia, as amended by this act, shall not become effective until 30 days after the District of Columbia and the State of Maryland each enact legislation or take actions to provide dedicated funding for the Washington Metropolitan Area Transit Authority (WMATA). The percentage of funding provided by the Commonwealth for its share of WMATA funding pursuant to this act beginning with the fiscal year that this act becomes effective, and each fiscal year thereafter, shall be proportional to the amount of funding provided by the District of Columbia and Maryland relative to their respective share of WMATA funding in that fiscal year.

7. That the Commonwealth Transportation Board shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the Code of Virginia, as created by this act, if (i) any alternate directors participate or take action at an official Washington Metropolitan Area Transit Authority (WMATA) Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate directors.

8. That, beginning July 1, 2019, the Commonwealth Transportation Board (the Board) shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the Code of Virginia, as created by this act, each year unless (i) the Washington Metropolitan Area Transit Authority (WMATA) has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the Northern Virginia Transportation Commission, and (ii) WMATA has adopted or updated a strategic plan within the preceding 36

months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by the Northern Virginia Transportation Commission. In order to satisfy the requirements of clause (ii) of this enactment, the first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017.

9. That the Department of Rail and Public Transportation shall develop a prioritization process as required by § 33.2-214.3 of the Code of Virginia, as created by this act, for the Commonwealth Transportation Board's consideration. The Board shall implement the prioritization process required by § 33.2-214.3 of the Code of Virginia, as created by this act, no later than July 1, 2019, and use such process for the development of the Six-Year Improvement Program for fiscal years 2020 through 2025.

10. That the Commonwealth Transportation Board shall (i) adopt the guidelines required by § 33.2-286 of the Code of Virginia, as created by this act, by December 1, 2018, and (ii) develop and adopt a plan for phased implementation of the requirements for submissions of the strategic plans required to be developed over a period of five years. No agency subject to § 33.2-286 of the Code of Virginia, as created by this act, shall be penalized for not submitting a strategic plan pursuant to such section, provided that the agency is in compliance with the phased implementation schedule adopted by the Commonwealth Transportation Board.

11. That notwithstanding the provisions of subdivision C 1 of § 33.2-1526.1 of the Code of Virginia, as created by this act, for fiscal year 2019 the funds allocated to support the operating costs of transit shall be distributed as follows: (i) the first \$54 million of such funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for purposes deemed to be eligible by the Board and (ii) the remaining amount of such funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency, as established by the Board.

12. That (i) the Washington Metropolitan Area Transit Authority (WMATA) was established pursuant to an interstate compact between Virginia, Maryland, and the District of Columbia to operate a regional mass transit system in the Washington, D.C., metropolitan area; (ii) WMATA is currently the second largest rapid heavy rail mass transportation system and the sixth largest bus mass transportation system in the United

States; (iii) Section 16 of the WMATA compact embodies the funding principle that "the payment of the costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments"; (iv) the operation of the rapid heavy rail mass transportation system and the bus mass transportation system by WMATA provides particular and substantial benefit to the persons living, traveling, commuting, and working in those localities embraced by the Northern Virginia Transportation Commission; (v) the benefits to such persons include not only access to the rapid heavy rail mass transportation system and the bus mass transportation system operated by WMATA but also the lessened congestion on roadways and highways as a result of such operations; and (vi) on a typical weekday more than 340,000 trips are taken on WMATA in Virginia. On the basis of these facts, the General Assembly finds that dedicated funding is appropriate and necessary to support the capital needs of WMATA's rapid heavy rail mass transportation system.

13. That Virginia shall seek to appoint members to the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors (i) with experience in transit, transportation, or land use planning; transit, transportation, or other public-sector management; engineering; finance; public safety; homeland security; human resources; or the law and (ii) who are familiar with the WMATA system.

14. That, for projects initiated by the Washington Metropolitan Area Transit Authority on and after July 1, 2018, and located solely within the Commonwealth, bidders, offers, contractors, or subcontractors (i) shall not, as a condition of the contract, be required to enter into or adhere to or prohibited from entering into or adhering to agreements with one or more labor organizations and (ii) shall not otherwise be discriminated against for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations.

15. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions shall remain in effect.

16. That should any provision of this act changing the allocation of existing revenues in the Code of Virginia be declared invalid by a court of competent jurisdiction, the amendments to the relevant section of the Code of Virginia made by this act shall expire, and such section shall revert to the language in the Code of Virginia in effect on January 1, 2018.

17. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

18. That the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015 is amended and reenacted as follows:

12. That the provisions of this act amending §§ [33.2-1530](#), [58.1-815.4](#), [58.1-1741](#), and [58.1-2289](#) of the Code of Virginia shall expire if the Commonwealth collects sales and use tax from remote sellers on sales made into the Commonwealth pursuant to legislation enacted by the federal government that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state.

## **Chapter 856 Mass transit; establishing various Funds to improve transportation.**

An Act to amend and reenact §§ [33.2-2400](#), [33.2-2401](#), [33.2-2509](#), [58.1-638](#), [58.1-811](#), as it is currently effective, [58.1-815.4](#), as it is currently effective and as it may become effective, [58.1-1741](#), as it is currently effective, [58.1-2289](#), as it is currently effective, [58.1-2299.20](#), as it is currently effective, and [58.1-3221.3](#) of the Code of Virginia; to amend and reenact § 3 of the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011; to amend and reenact the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015; to amend the Code of Virginia by adding a section numbered 33.2-214.3, by adding in Article 5 of Chapter 2 of Title 33.2 a section numbered 33.2-286, by adding a section numbered 33.2-1526.1, by adding in Article 11 of Chapter 19 of Title 33.2 a section numbered 33.2-1936, by adding in Title 33.2 a chapter numbered 31.01, consisting of a section numbered 33.2-3100.1, by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered 33.2-3400 through 33.2-3404, by adding in Title 33.2 a chapter numbered 35, consisting of sections numbered 33.2-3500, 33.2-3501, and 33.2-3502, by adding a section numbered 58.1-802.3, and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743 and 58.1-1744; to amend the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, by adding sections numbered 3.1 and 3.2;

and to repeal § [58.1-802.2](#) and Article 10 (§ [58.1-1742](#)) of Chapter 17 of Title 58.1 of the Code of Virginia, relating to mass transit in the Commonwealth.

[\[S 856\]](#)

Approved May 18, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ [33.2-2400](#), [33.2-2401](#), [33.2-2509](#), [58.1-638](#), [58.1-811](#), as it is currently effective, [58.1-815.4](#), as it is currently effective and as it may become effective, [58.1-1741](#), as it is currently effective, [58.1-2289](#), as it is currently effective, [58.1-2299.20](#), as it is currently effective, and [58.1-3221.3](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.2-214.3, by adding in Article 5 of Chapter 2 of Title 33.2 a section numbered 33.2-286, by adding a section numbered 33.2-1526.1, by adding in Article 11 of Chapter 19 of Title 33.2 a section numbered 33.2-1936, by adding in Title 33.2 a chapter numbered 31.01, consisting of a section numbered 33.2-3100.1, by adding in Title 33.2 a chapter numbered 34, consisting of sections numbered 33.2-3400 through 33.2-3404, by adding in Title 33.2 a chapter numbered 35, consisting of sections numbered 33.2-3500, 33.2-3501, and 33.2-3502, by adding a section numbered 58.1-802.3, and by adding in Chapter 17 of Title 58.1 an article numbered 11, consisting of sections numbered 58.1-1743 and 58.1-1744, as follows:

*§ 33.2-214.3. Statewide prioritization for the Commonwealth Mass Transit Fund.*

*A. 1. The Board shall develop a prioritization process for the use of funds allocated pursuant to subdivision C 2 of § 33.2-1526.1. Such prioritization process shall be used for the development of the Six-Year Improvement Program adopted annually by the Board pursuant to § [33.2-214](#). There shall be a separate prioritization process for state of good repair projects and major expansion projects. The prioritization process shall, for state of good repair projects, be based upon transit asset management principles, including federal requirements for Transit Asset Management pursuant to 49 U.S.C. § 5326. The prioritization process shall, for major expansion projects, be based on an objective and quantifiable analysis that considers the following factors relative to the cost of a major expansion project: congestion mitigation, economic development, accessibility, safety, environmental quality, and land use.*

*2. The Board shall solicit input from localities, metropolitan planning organizations, transit authorities, transportation authorities, and other stakeholders in its development of the prioritization process pursuant to this subsection. Further, the Board shall explicitly consider input provided by an applicable metropolitan planning organization or the Northern Virginia Transportation Authority when developing the prioritization process set forth in subdivision 1 for a metropolitan planning area with a population of over 200,000 individuals.*

*B. 1. The Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of the process set forth in subdivision 2. The Transit Service Delivery Advisory Committee shall elect a chairman from among its membership. The Department of Rail and Public Transportation shall provide administrative support to the Transit Service Delivery Advisory Committee. The Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation.*

*2. The Department of Rail and Public Transportation, in conjunction with the Transit Service Delivery Advisory Committee, shall develop a process for the distribution of the funds allocated pursuant to subdivision C 1 of § 33.2-1526.1 and the incorporation by transit systems of the service delivery factors set forth therein into their transit development plans. Prior to the Board approving service delivery factors, the Director of the Department of Rail and Public Transportation and the Chairman of the Transit Service Delivery Advisory Committee shall brief the House Committees on Appropriations and Transportation and the Senate Committees on Finance and Transportation regarding the findings and recommendations of the Transit Service Delivery Advisory Committee and the Department of Rail and Public Transportation. Before redefining any component of the service delivery factors, the Board shall consult with the Director of the Department of Rail and Public Transportation, the Transit Service Delivery Advisory Committee, and interested stakeholders, and shall provide for a 45-day public comment period. The process required to be delivered by this subsection shall be adopted no later than July 1, 2019, and shall apply beginning with the fiscal year 2020-2025 Six-Year Improvement Program.*

*§ 33.2-286. Urban transit agency strategic plans.*

*A. The Department of Rail and Public Transportation shall develop guidelines, subject to the approval of the Board, for the development of strategic plans for transit agencies that (i) serve an urbanized area with a population of 50,000 or more and (ii) have a bus fleet consisting of at least 20 buses.*

*B. As a condition of receiving funds from the Commonwealth Mass Transit Fund, any transit agency that meets the criteria of subsection A shall develop, and update at least once every five years, a strategic plan using the guidelines approved by the Board.*

*C. The guidelines shall require the following:*

- 1. An assessment of state of good repair needs;*
- 2. A review of the performance of fixed-route bus service, including schedules, route design, connectivity, and vehicle sizes;*
- 3. An evaluation of opportunities to improve operating efficiency of the transit network, including reliability of trips and travel speed;*
- 4. An examination and identification of opportunities to share services where multiple transit providers' services overlap; and*
- 5. An examination of opportunities to improve service in underserved areas.*

*D. In addition to developing and updating a strategic plan pursuant to this section, in all planning districts with transit systems collectively serving population areas of not less than 1.5 million nor more than 2 million, such transit systems shall develop a regional transit planning process coordinated by the federally designated Metropolitan Planning Organization. Such planning process shall include the identification and prioritization of projects, the establishment of performance benchmarks that incorporate state and federal requirements, the development and implementation of a regional subsidy allocation model, and the distribution of funds solely designated for transit and rail and that are administered by a regional body authorized by this Code to enter into agreements for the operation and maintenance of transit and rail facilities.*

*§ 33.2-1526.1. Use of the Commonwealth Mass Transit Fund.*

*A. All funds deposited pursuant to §§ [58.1-638](#), [58.1-638.3](#), [58.1-815.4](#), and [58.1-2289](#) into the Commonwealth Mass Transit Fund (the Fund), established pursuant to subdivision A 4 of § [58.1-638](#), shall be allocated as set forth in this section.*

*B. The Board may establish policies for the implementation of this section, including the determination of the state share of operating, capital, and administrative costs related to mass transit. For purposes of this section, capital costs may include debt service payments on local or agency transit bonds. Funds may be paid to any local governing body,*

*transportation district commission, or public service corporation for the purposes as set forth in this section. No funds from the Fund shall be allocated without a local match from the recipient.*

*C. Each year the Director of the Department of Rail and Public Transportation shall make recommendations to the Board for the allocation of funds from the Fund. Such recommendations, and the final allocations approved by the Board, shall adhere to the following:*

*1. Thirty-one percent of the funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency as established by the Board. Such measures and their relative weight shall be evaluated every three years and, if redefined by the Board, shall be published and made available for public comment at least one year in advance of being applied. The Washington Metropolitan Area Transit Authority (WMATA) shall not be eligible for an allocation of funds pursuant to this subdivision.*

*2. Twelve and one-half percent of the funds shall be allocated for capital purposes and distributed utilizing the transit capital prioritization process established by the Board pursuant to § 33.2-214.3. The Washington Metropolitan Area Transit Authority shall not be eligible for an allocation of funds pursuant to this subdivision.*

*3. Fifty-three and one-half percent of the funds shall be allocated to the Northern Virginia Transportation Commission for distribution to WMATA for capital purposes and operating assistance, as determined by the Commission.*

*4. Three percent of the funds shall be allocated for special programs, including ride-sharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation. Remaining funds may also be used directly by the Department of Rail and Public Transportation to (i) finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout the Commonwealth or (ii) finance up to 80 percent of the cost of development and implementation of projects with a purpose of enhancing the provision and use of public transportation services.*

*D. The Board may consider the transfer of funds from subdivisions C 2 and 4 to subdivision C 1 in times of statewide economic distress or statewide special need.*

*E. The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Fund revenues in order to ensure stability in providing operating and cap-*

*ital funding to transit entities from year to year, provided that such balance shall not exceed five percent of revenues in a given biennium.*

*F. The Board may allocate up to 3.5 percent of the funds set aside for the Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.*

*G. Funds allocated to the Northern Virginia Transportation Commission (NVTC) for WMATA pursuant to subdivision C 3 shall be credited to the Counties of Arlington and Fairfax and the Cities of Alexandria, Fairfax, and Falls Church. Beginning in the fiscal year when service starts on Phase II of the Silver Line, such funds shall also be credited to Loudoun County. Funds allocated pursuant to this subsection shall be credited as follows:*

*1. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC, which shall use 95 percent state aid for these payments.*

*2. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Local transit subsidies and local capital costs of Loudoun County shall not be included. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.*

*H. Appropriations from the Fund are intended to provide a stable and reliable source of revenue, as defined by P.L. 96-184.*

*I. Notwithstanding any other provision of law, funds allocated to WMATA may be disbursed by the Department of Rail and Public Transportation directly to WMATA or to any other transportation entity that has an agreement to provide funding to WMATA.*

*J. In any year that the total Virginia operating assistance in the approved WMATA budget increases by more than 3 percent from the total operating assistance in the prior year's approved WMATA budget, the Board shall withhold an amount equal to 35 percent of the funds available under subdivision C 3. The following items shall not be included in the calculation of any WMATA budget increase: (i) any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any capital project approved by the WMATA Board before or after the effective date of this provision; and (iii) any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity.*

*§ 33.2-1936. Transportation districts with unique needs.*

*The General Assembly finds that transportation districts that (i) have a population of 1.7 million or more, as shown by the most recent United States Census, (ii) have not less than 1.5 million motor vehicles registered therein, and (iii) have a total transit ridership of not less than 75 million riders per year across all transit systems within the transportation district and in which a rapid heavy rail commuter mass transportation system operating on an exclusive right-of-way and a bus commuter mass transportation system are owned, operated, or controlled by an agency or commission as defined in § [33.2-1901](#) have unique transportation needs.*

§ [33.2-2400](#). Northern Virginia Transportation District Fund.

A. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Northern Virginia Transportation District Fund, referred to in this chapter as "the Fund," consisting of transfers pursuant to § [58.1-816](#) of annual collections of the state recordation taxes attributable to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William; however, this dedication shall not affect the local recordation taxes under subsection B of § [58.1-802](#) and § [58.1-814](#). The Fund shall also include any public rights-of-way use fees appropriated by the General Assembly; any state or local revenues, including any funds distributed pursuant to § [33.2-366](#), that may be deposited into the Fund pursuant to a contract between a jurisdiction participating in the Northern Virginia Transportation District Program and the Commonwealth Transportation Board; and any other funds as may be appropriated by the General Assembly and designated for the Fund and all interest, dividends, and appreciation that may accrue thereto. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund, subject to the determination by the Commonwealth Transportation Board that a Category 2, 3, or 4 project may be funded.

B. Allocations from the Fund may be paid (i) to any authority, locality, or commission for the purposes of paying the costs of the Northern Virginia Transportation District Program, which consists of the following: the Fairfax County Parkway, the Route 234 Bypass, Metrorail capital improvements attributable to Fairfax County including Metro parking expansions, Metrorail capital improvements including the Franconia-Springfield Metrorail Station and new rail car purchases, the Route 7 improvements in Loudoun County and Fairfax County, the Route 50/Courthouse Road interchange improvements in Arlington County, the Route 28/Route 625 interchange improvements in Loudoun County, Metrorail capital improvements attributable to the City of Alexandria including

the King Street Metrorail Station access, Metrorail capital improvements attributable to Arlington County including Ballston Station improvements, the Route 15 safety improvements in Loudoun County, the Route 28 parallel roads in Loudoun County, the Route 28/Sterling Boulevard interchange in Loudoun County, the Route 1/Route 123 interchange improvements in Prince William County, the Lee Highway improvements in the City of Fairfax, the Route 123 improvements in Fairfax County, the Telegraph Road improvements in Fairfax County, the Route 123 Occoquan River Bridge, Gallows Road in Fairfax County, the Route 1/Route 234 interchange improvements in Prince William County, the Potomac-Rappahannock Transportation Commission bus replacement program, and the Dulles Corridor Enhanced Transit program and (ii) for Category 4 projects as provided in § 2 of the act or acts authorizing the issuance of Bonds for the Northern Virginia Transportation District Program.

C. On or before July 15, 1994, \$19 million shall be transferred to the Fund. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$19 million in the event such an amount is not included for the Fund in the general appropriation act enacted by the 1994 Session of the General Assembly. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 (§ [58.1-800](#) et seq.) of Title 58.1 designated for the Fund by this section and § [58.1-816](#).

*D. Beginning in fiscal year 2019, \$20 million each year shall be transferred from the Fund to the Washington Metropolitan Area Transit Authority Capital Fund established pursuant to § 33.2-3401.*

§ [33.2-2401](#). Northern Virginia Transportation District Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for the costs of providing an adequate, modern, safe, and efficient transportation network in Northern Virginia that shall be known as the Northern Virginia Transportation District Program (the Program), including environmental and engineering studies, rights-of-way acquisition, construction, improvements to all modes of transportation, and financing costs. The Program consists of the projects listed in clause (i) of subsection B of § [33.2-2400](#).

B. Allocations to the Program from the Fund shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe and efficient transportation system connecting the communities, businesses, places of employment, and residences of the Commonwealth, thereby enhancing the economic

development potential, employment opportunities, mobility, and quality of life in the Commonwealth.

C. Except in the event that the Fund is insufficient to pay for the costs of the Program, allocations to the Program shall not diminish or replace allocations made from other sources or diminish allocations to which any district, system, or locality would be entitled under other provisions of this title but shall be supplemental to other allocations to the end that transportation improvements in the Northern Virginia Transportation District may be accelerated and augmented. Allocations under this subsection shall be limited to projects specified in subdivision 12 of § [33.2-1700](#).

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection E *and in subsection D of § [33.2-2400](#)*.

E. The Commonwealth Transportation Board is authorized to receive, dedicate, or use (i) first from revenues received from the Fund; (ii) to the extent required, ~~funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which the project or projects to be financed are located or to the city or county in which the project or projects to be financed are located~~ *available for distribution after providing for subsection B of § [33.2-358](#)*; (iii) to the extent required, legally available revenues of the Transportation Trust Fund; and (iv) such other funds that may be appropriated by the General Assembly for the payment of bonds or other obligations, including interest thereon, issued in furtherance of the Program. No such bond or other obligations shall pledge the full faith and credit of the Commonwealth.

§ [33.2-2509](#). Northern Virginia Transportation Authority Fund.

There is hereby created in the state treasury a special nonreverting fund for Planning District 8 to be known as the Northern Virginia Transportation Authority Fund, referred to in this chapter as "the Fund." The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§~~[58.1-638](#), [58.1-802.2](#), and [58.1-1742](#)~~, any other funds that may be appropriated by the General Assembly, and any funds that may be received for the credit of the Fund from any other source shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The amounts dedicated to the Fund pursuant to §§~~[58.1-638](#), [58.1-802.2](#), and [58.1-1742](#)~~ shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to

the Authority as soon as practicable for use in accordance with § [33.2-2510](#). If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to § [33.2-2510](#), the Authority may invest such excess moneys to the same extent as provided in subsection A of § [33.2-1525](#) for excess funds in the Transportation Trust Fund.

The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

*CHAPTER 31.01.*

*METRO REFORM COMMISSION.*

*§ 33.2-3100.1. Metro Reform Commission established; membership; duties.*

*A. As used in this chapter, unless the context requires a different meaning:*

*"Commission" means the Metro Reform Commission.*

*"WMATA" means the Washington Metropolitan Area Transit Authority.*

*B. There is hereby created the Metro Reform Commission. The Commission shall consist of four members appointed as follows: two members appointed by the Speaker of the House of Delegates and two members appointed by the Senate Committee on Rules. Members of the Commission may or may not be members of the General Assembly. Members shall be citizens of the Commonwealth, but shall not be required to reside in the area served by WMATA. Members shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties pursuant to §§ [2.2-2813](#) and [2.2-2825](#).*

*C. The Commission shall advise and make recommendations to the Signatories of the Washington Metropolitan Area Transit Authority Compact of 1966 on reforms to the National Capital Area Interest Arbitration Standards Act.*

*CHAPTER 34.*

*WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY CAPITAL FUND.*

*§ 33.2-3400. Definitions.*

*As used in this chapter:*

*"Fund" means the Washington Metropolitan Area Transit Authority Capital Fund.*

*"NVTTC" means the Northern Virginia Transportation Commission.*

*"WMATA" means the Washington Metropolitan Area Transit Authority.*

*§ 33.2-3401. Washington Metropolitan Area Transit Authority Capital Fund.*

*A. There is hereby created in the state treasury a special nonreverting fund for the benefit of the Northern Virginia Transportation District to be known as the Washington Metropolitan Area Transit Authority Capital Fund. The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to §§ [33.2-2400](#), [33.2-3404](#), [58.1-802.3](#), [58.1-1741](#), [58.1-1743](#), and [58.1-2299.20](#) shall be paid into the state treasury and credited to the Fund as set forth in subsection B and shall be used for the payment of capital purposes incurred, or to be incurred, by WMATA. Interest on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Comptroller shall disburse funds to WMATA on a monthly basis if NVTC has provided the certification required by subsection B of § 33.2-3402.*

*B. 1. Within the Fund, there shall be established a separate, segregated account into which revenues dedicated to the Fund pursuant to §§ [33.2-2400](#) and [58.1-1741](#) shall be deposited (the Restricted Account). Revenues deposited into the Restricted Account shall be available for use by WMATA for capital purposes other than for the payment of, or security for, debt service on bonds or other indebtedness of WMATA.*

*2. Within the Fund, there shall be established a separate, segregated account into which revenues dedicated to the Fund pursuant to §§ [33.2-3404](#), [58.1-802.3](#), [58.1-1743](#), and [58.1-2299.20](#) shall be deposited (the Non-Restricted Account). Revenues deposited into the Non-Restricted Account shall be available for use by WMATA for capital purposes, including for the payment of, or security for, debt service on bonds or other indebtedness of WMATA, or for any other WMATA capital purposes.*

*C. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.*

*§ 33.2-3402. NVTC oversight.*

*A. In any year that funds are deposited into the Fund, the NVTC shall request certain documents and reports from WMATA to confirm the benefits of the WMATA system to per-*

*sons living, traveling, commuting, and working in the localities that the NVTC comprises. Such documents and reports shall include:*

- 1. WMATA's annual capital budget;*
- 2. WMATA's annual independent financial audit;*
- 3. WMATA's National Transit Data annual profile; and*
- 4. Single audit reports issued in accordance with the Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards (2 C.F.R. Part 200).*

*B. NVTC shall be responsible for coordinating the delivery of such documents and reports with WMATA. Funding of the Commonwealth to support WMATA pursuant to § 33.2-1526.1 shall be contingent on WMATA providing the documents and reports described in subsection A, and NVTC shall provide annual certification to the Comptroller that such documents and reports have been received.*

*§ 33.2-3403. NVTC report.*

*By November 1 of each year that funds are deposited into the Fund, NVTC shall report to the Governor and the General Assembly on the performance and condition of WMATA. Such report shall contain, at a minimum, documentation of the following:*

- 1. The safety and reliability of the rapid heavy rail mass transportation system and bus network;*
- 2. The financial performance of WMATA related to the operations of the rapid heavy rail mass transportation system, including farebox recovery, service per rider, and cost per service hour;*
- 3. The financial performance of WMATA related to the operations of the bus mass transportation system, including farebox recovery, service per rider, and cost per service hour;*
- 4. Potential strategies to reduce the growth in such costs and to improve the efficiency of WMATA operations;*
- 5. Use of the funds provided from the Fund to improve the safety and condition of the rapid heavy rail mass transportation system; and*
- 6. Ridership of the rapid heavy rail mass transportation system and the bus mass transportation system.*

*§ 33.2-3404. Local transportation support for WMATA.*

*A. Each county or city that (i) is located in a transportation district that as of January 1, 2018, meets the criteria established in § 33.2-1936 and (ii) has financial obligations to a transit system that operates a rapid heavy rail mass transit system operating on an exclusive right-of-way that is funded and controlled in part by such transportation district shall annually pay to the Fund an amount as determined by subsection B.*

*B. The amount to be paid by each local government pursuant to subsection A shall be determined by multiplying \$27.12 million by a fraction the numerator of which shall be such local government's share of capital funding for WMATA and the denominator of which shall be the total share of capital funding for WMATA for all local governments in the Commonwealth.*

*C. A locality subject to subsection A shall pay the amount determined by subsection B by transferring a portion of the revenues received pursuant to subsection B of § [33.2-2510](#) to the Fund. However, in any fiscal year in which a locality subject to subsection A has adopted a budget and a corresponding resolution to provide the amount of funds determined pursuant to subsection B from a source other than the revenues received pursuant to subsection B of § [33.2-2510](#), such locality may provide the funds for that fiscal year from such other source, and shall not be required to transfer funds received pursuant to subdivision B of § [33.2-2510](#).*

CHAPTER 35.

COMMUTER RAIL OPERATING AND CAPITAL FUND.

§ 33.2-3500. Commuter Rail Operating and Capital Fund.

*A. The General Assembly declares it to be in the public interest that developing and continuing commuter rail operations and developing rail infrastructure, rolling stock, and support facilities to support commuter rail service are important elements of a balanced transportation system in the Commonwealth and further declares that retaining, maintaining, improving, and developing commuter rail-related infrastructure improvements and operations are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.*

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Commuter Rail Operating and Capital Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller and shall consist of funds deposited into the Fund pursuant to § [58.1-2299.20](#) and other funds as may be set forth in a general appropriation act or allocated by the Commonwealth Transportation Board. Such funds shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Comptroller shall disburse funds in the Fund monthly to transportation districts established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) that on July 1, 2018, jointly operate a commuter rail system. The amount distributed to each transportation district shall be determined by*

*multiplying the total amount of funds available for disbursement by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding provided by both transportation districts for such commuter rail service.*

*C. If the transportation districts described in subsection B determine that such moneys distributed to the districts exceed the amount required to meet the current capital and operating needs of the commuter rail system, they may invest such excess moneys to the same extent as provided in subsection A of § [33.2-1525](#) for excess funds in the Transportation Trust Fund.*

*D. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating jurisdictions. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined. Any amounts deposited pursuant to § [58.1-2299.20](#) shall be considered local funds when used to make a required match for state or federal transportation grant funds.*

*§ 33.2-3501. Use of revenues in the Fund.*

*A. The transportation districts described in subsection B of § 33.2-3500 shall administer and expend, or commit, funds from the Fund to support the cost of operating commuter rail service; acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for commuter rail transportation purposes whenever such transportation districts have determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Funds provided in this section may also be used as matching funds for federal grants to support commuter rail projects.*

*B. Capital projects, including tracks and facilities constructed, and property, equipment, and rolling stock purchased, with funds from the Fund pursuant to this section shall be owned, leased, or otherwise subject to the continuing use of the transportation districts described in subsection B of § 33.2-3500 for the useful life of the projects and property, equipment, and rolling stock, as determined by such transportation districts, and shall be made available for use by all commuter rail operations and common carriers using the railway system to which they connect under the trackage rights or operating agreements*

*between the parties. Such transportation districts may transfer ownership of any tracks or property to the Commonwealth. Projects undertaken pursuant to this section shall be limited to those providing benefits to a region of the Commonwealth, the Commonwealth as a whole, or an adjacent jurisdiction served by commuter rail originating in the Commonwealth.*

§ 33.2-3502. *Authority to issue bonds.*

*The transportation districts described in subsection B of § 33.2-3500 may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of Article 5 (§ [33.2-1920](#) et seq.) of Chapter 19 shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available in the Fund, provided that the total amount of debt service for all outstanding bonds may not exceed 66 percent of the revenues dedicated to the Fund pursuant to § [58.1-2299.20](#).*

§ [58.1-638](#). Disposition of state sales and use tax revenue.

A. The Comptroller shall designate a specific revenue code number for all the state sales and use tax revenue collected under the preceding sections of this chapter.

1. The sales and use tax revenue generated by the one-half percent sales and use tax increase enacted by the 1986 Special Session of the General Assembly shall be paid, in the manner hereinafter provided in this section, to the Transportation Trust Fund as defined in § [33.2-1524](#). Of the funds paid to the Transportation Trust Fund, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund as provided in this section; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund as provided in this section; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund as provided in this section. The Fund's share of such net revenue shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

2. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Port Fund.

a. The Commonwealth Port Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the

Fund and be credited to it. Funds may be paid to any authority, locality or commission for the purposes hereinafter specified.

b. The amounts allocated pursuant to this section shall be allocated by the Commonwealth Transportation Board to the Board of Commissioners of the Virginia Port Authority to be used to support port capital needs and the preservation of existing capital needs of all ocean, river, or tributary ports within the Commonwealth. Expenditures for such capital needs are restricted to those capital projects specified in subsection B of § [62.1-132.1](#).

c. Commonwealth Port Fund revenue shall be allocated by the Board of Commissioners to the Virginia Port Authority in order to foster and stimulate the flow of maritime commerce through the ports of Virginia, including but not limited to the ports of Richmond, Hopewell, and Alexandria.

3. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be part of the Transportation Trust Fund and which shall be known as the Commonwealth Airport Fund. The Commonwealth Airport Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. The funds so allocated shall be allocated by the Commonwealth Transportation Board to the Virginia Aviation Board. The funds shall be allocated by the Virginia Aviation Board to any Virginia airport which is owned by the Commonwealth, a governmental subdivision thereof, or a private entity to which the public has access for the purposes enumerated in § [5.1-2.16](#), or is owned or leased by the Metropolitan Washington Airports Authority (MWAA), as follows:

Any new funds in excess of \$12.1 million which are available for allocation by the Virginia Aviation Board from the Commonwealth Transportation Fund, shall be allocated as follows: 60 percent to MWAA, up to a maximum annual amount of \$2 million, and 40 percent to air carrier airports as provided in subdivision A 3 a. Except for adjustments due to changes in enplaned passengers, no air carrier airport sponsor, excluding MWAA, shall receive less funds identified under subdivision A 3 a than it received in fiscal year 1994-1995.

Of the remaining amount:

a. Forty percent of the funds shall be allocated to air carrier airports, except airports owned or leased by MWAA, based upon the percentage of enplanements for each airport to total enplanements at all air carrier airports, except airports owned or leased by MWAA. No air carrier airport sponsor, however, shall receive less than \$50,000 nor more than \$2 million per year from this provision.

b. Forty percent of the funds shall be allocated by the Aviation Board for air carrier and reliever airports on a discretionary basis, except airports owned or leased by MWA.

c. Twenty percent of the funds shall be allocated by the Aviation Board for general aviation airports on a discretionary basis.

3a. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be a part of the Transportation Trust Fund and that shall be known as the Commonwealth Space Flight Fund. The Commonwealth Space Flight Fund shall be established on the books of the Comptroller and the funds remaining in such Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund.

Interest earned on such funds shall remain in the Fund and be credited to it.

a. The amounts allocated to the Commonwealth Space Flight Fund pursuant to [§ 33.2-1526](#) shall be allocated by the Commonwealth Transportation Board to the Board of Directors of the Virginia Commercial Space Flight Authority to be used to support the capital needs, maintenance, and operating costs of any and all facilities owned and operated by the Virginia Commercial Space Flight Authority.

b. Commonwealth Space Flight Fund revenue shall be allocated by the Board of Directors to the Virginia Commercial Space Flight Authority in order to foster and stimulate the growth of the commercial space flight industry in Virginia.

4. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the Commonwealth Mass Transit Fund.

a. The Commonwealth Mass Transit Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall be credited to the Fund. ~~If funds in subdivision 4 b (1)(c) or 4 b (2)(d) are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of [§ 33.2-214.1](#). Funds may be paid to any local governing body, transportation district commission, or public service corporation for the purposes hereinafter specified.~~

b. The amounts allocated pursuant to ~~this section~~ [§ 33.2-1526.1](#) shall be used to support the operating, capital, and administrative costs of public transportation at a state share determined by the Commonwealth Transportation Board, and these amounts may be used to support the capital project costs of public transportation and ridesharing equipment, facilities, and associated costs at a state share determined by the Commonwealth Transportation Board. Capital costs may include debt service payments on local or agency transit bonds. ~~In making these determinations, the Commonwealth~~

Transportation Board shall confer with the Director of the Department of Rail and Public Transportation. In development of the Director's recommendation and subsequent allocation of funds by the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation and the Commonwealth Transportation Board shall adhere to the following:

(1) For the distribution of revenues from the Commonwealth Mass Transit Fund, of those revenues generated in 2014 and thereafter, the first \$160 million in revenues or the maximum available revenues if less than \$160 million shall be distributed by the Commonwealth Transportation Board as follows:

(a) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:

(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.

(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.

(b) At least 72 percent of the funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for the purposes specified in subdivision 4 b.

(c) Twenty-five percent of the funds shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of the Department of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments will be included in the tier that applies to the capital asset that is leveraged.

~~(d) Transfer of funds from funding categories in subdivisions 4 b (1)(a) and 4 b (1)(c) to 4 b (1)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.~~

~~(2) The Commonwealth Transportation Board shall allocate the remaining revenues after the application of the provisions set forth in subdivision 4 b (1) generated for the Commonwealth Mass Transit Fund for 2014 and succeeding years as follows:~~

~~(a) Funds pursuant to this section shall be distributed among operating, capital, and special projects in order to respond to the needs of the transit community.~~

~~(b) Of the funds pursuant to this section, at least 72 percent shall be allocated to support operating costs of transit providers and distributed by the Commonwealth Transportation Board based on service delivery factors, based on effectiveness and efficiency, as established by the Commonwealth Transportation Board. These measures and their relative weight shall be evaluated every three years and, if redefined by the Commonwealth Transportation Board, shall be published and made available for public comment at least one year in advance of being applied. In developing the service delivery factors, the Commonwealth Transportation Board shall create for the Department of Rail and Public Transportation a Transit Service Delivery Advisory Committee, consisting of two members appointed by the Virginia Transit Association, one member appointed by the Community Transportation Association of Virginia, one member appointed by the Virginia Municipal League, one member appointed by the Virginia Association of Counties, and three members appointed by the Director of the Department of Rail and Public Transportation, to advise the Department of Rail and Public Transportation in the development of a distribution process for the funds allocated pursuant to this subdivision 4 b (2)(b) and how transit systems can incorporate these metrics in their transit development plans. The Transit Service Delivery Advisory Committee shall elect a Chair. The Department of Rail and Public Transportation shall provide administrative support to the committee. Effective July 1, 2013, the Transit Service Delivery Advisory Committee shall meet at least annually and consult with interested stakeholders and hold at least one public hearing and report its findings to the Director of the Department of Rail and Public Transportation. Prior to the Commonwealth Transportation Board approving the service delivery factors, the Director of the Department of Rail and Public Transportation along with the Chair of the Transit Service Delivery Advisory Committee shall brief the Senate Committee on Finance, the House Appropriations Committee, and the Senate and House Committees on Transportation on the findings of the Transit Service Delivery Advisory Committee and the Department's recommendation. Before redefining any component of the service delivery factors, the Commonwealth Transportation Board shall~~

consult with the Director of the Department of Rail and Public Transportation, Transit Service Delivery Advisory Committee, and interested stakeholders and provide for a 45-day public comment period. Prior to approval of any amendment to the service delivery measures, the Board shall notify the aforementioned committees of the pending amendment to the service delivery factors and its content.

~~(c) Funds for special programs, which shall include ridesharing, transportation demand management programs, experimental transit, public transportation promotion, operation studies, and technical assistance, shall not exceed 3 percent of the funds pursuant to this section and may be allocated to any local governing body, planning district commission, transportation district commission, or public transit corporation, or may be used directly by the Department of Rail and Public Transportation for the following purposes and aid of public transportation services:~~

~~(i) To finance a program administered by the Department of Rail and Public Transportation designed to promote the use of public transportation and ridesharing throughout Virginia.~~

~~(ii) To finance up to 80 percent of the cost of the development and implementation of projects where the purpose of such project is to enhance the provision and use of public transportation services.~~

~~(d) Of the funds pursuant to this section, 25 percent shall be allocated and distributed utilizing a tiered approach evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation and established by the Commonwealth Transportation Board for capital purposes based on asset need and anticipated state participation level and revenues. The tier distribution measures may be evaluated by the Transit Service Delivery Advisory Committee along with the Director of Rail and Public Transportation every three years and, if redefined by the Board, shall be published at least one year in advance of being applied. Funds allocated for debt service payments shall be included in the tier that applies to the capital asset that is leveraged.~~

~~(e) Transfer of funds from funding categories in subdivisions 4 b (2)(c) and 4 b (2)(d) to 4 b (2)(b) shall be considered by the Commonwealth Transportation Board in times of statewide economic distress or statewide special need.~~

~~(f) The Department of Rail and Public Transportation may reserve a balance of up to five percent of the Commonwealth Mass Transit Fund revenues under this subsection in order to assure better stability in providing operating and capital funding to transit entities from year to year.~~

~~(3) The Commonwealth Mass Transit Fund shall not be allocated without requiring a local match from the recipient.~~

c. There is hereby created in the Department of the Treasury a special nonreverting fund known as the Commonwealth Transit Capital Fund. The Commonwealth Transit Capital Fund shall be part of the Commonwealth Mass Transit Fund. The Commonwealth Transit Capital Fund subaccount shall be established on the books of the Comptroller and consist of such moneys as are appropriated to it by the General Assembly and of all donations, gifts, bequests, grants, endowments, and other moneys given, bequeathed, granted, or otherwise made available to the Commonwealth Transit Capital Fund. Any funds remaining in the Commonwealth Transit Capital Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Commonwealth Transit Capital Fund. Interest earned on funds within the Commonwealth Transit Capital Fund shall remain in and be credited to the Commonwealth Transit Capital Fund. Proceeds of the Commonwealth Transit Capital Fund may be paid to any political subdivision, another public entity created by an act of the General Assembly, or a private entity as defined in § [33.2-1800](#) and for purposes as enumerated in subdivision 7 of § [33.2-1701](#) or expended by the Department of Rail and Public Transportation for the purposes specified in this subdivision. Revenues of the Commonwealth Transit Capital Fund shall be used to support capital expenditures involving the establishment, improvement, or expansion of public transportation services through specific projects approved by the Commonwealth Transportation Board. ~~If revenues of the Commonwealth Transit Capital Fund are allocated to the construction of a new fixed rail project, such project shall be evaluated according to the process established pursuant to subsection B of § [33.2-214.1](#).~~ The Commonwealth Transit Capital Fund shall not be allocated without requiring a local match from the recipient.

~~d. The Commonwealth Transportation Board may allocate up to three and one-half percent of the funds set aside for the Commonwealth Mass Transit Fund to support costs of project development, project administration, and project compliance incurred by the Department of Rail and Public Transportation in implementing rail, public transportation, and congestion management grants and programs.~~

~~5. Funds for Metro shall be paid by the Northern Virginia Transportation Commission (NVTC) to the Washington Metropolitan Area Transit Authority (WMATA) and be a credit to the Counties of Arlington and Fairfax and the Cities of Alexandria, Falls Church, and Fairfax in the following manner:~~

~~a. Local obligations for debt service for WMATA rail transit bonds apportioned to each locality using WMATA's capital formula shall be paid first by NVTC. NVTC shall use 95 percent state aid for these payments.~~

~~b. The remaining funds shall be apportioned to reflect WMATA's allocation formulas by using the related WMATA-allocated subsidies and relative shares of local transit subsidies. Capital costs shall include 20 percent of annual local bus capital expenses. Hold harmless protections and obligations for NVTC's jurisdictions agreed to by NVTC on November 5, 1998, shall remain in effect.~~

~~Appropriations from the Commonwealth Mass Transit Fund are intended to provide a stable and reliable source of revenue as defined by Public Law 96-184.~~

~~6. Notwithstanding any other provision of law, funds allocated to Metro may be disbursed by the Department of Rail and Public Transportation directly to Metro or to any other transportation entity that has an agreement to provide funding to Metro.~~

B. The sales and use tax revenue generated by a one percent sales and use tax shall be distributed among the counties and cities of the Commonwealth in the manner provided in subsections C and D.

C. The localities' share of the net revenue distributable under this section among the counties and cities shall be apportioned by the Comptroller and distributed among them by warrants of the Comptroller drawn on the Treasurer of Virginia as soon as practicable after the close of each month during which the net revenue was received into the state treasury. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received into the state treasury during each month, and such distribution shall be made as soon as practicable after the close of each such month.

D. The net revenue so distributable among the counties and cities shall be apportioned and distributed upon the basis of the latest yearly estimate of the population of cities and counties ages five to 19, provided by the Weldon Cooper Center for Public Service of the University of Virginia. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who are domiciled in orphanages or charitable institutions or who are dependents living on any federal military or naval reservation or other federal property within the school division in which the institutions or federal military or naval reservation or other federal property is located. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for members of the military services who are under 20 years of age within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon

Cooper Center for Public Service of the University of Virginia shall account for individuals receiving services in state hospitals, state training centers, or mental health facilities, persons who are confined in state or federal correctional institutions, or persons who attend the Virginia School for the Deaf and the Blind within the school division in which the parents or guardians of such persons legally reside. Such population estimate produced by the Weldon Cooper Center for Public Service of the University of Virginia shall account for persons who attend institutions of higher education within the school division in which the student's parents or guardians legally reside. To such estimate, the Department of Education shall add the population of students with disabilities, ages two through four and 20 through 21, as provided to the Department of Education by school divisions. The revenue so apportionable and distributable is hereby appropriated to the several counties and cities for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, which shall be considered as funds raised from local resources. In any county, however, wherein is situated any incorporated town constituting a school division, the county treasurer shall pay into the town treasury for maintenance, operation, capital outlays, debt and interest payments, or other expenses incurred in the operation of the public schools, the proper proportionate amount received by him in the ratio that the school population of such town bears to the school population of the entire county. If the school population of any city or of any town constituting a school division is increased by the annexation of territory since the last estimate of school population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school population of such city or town as shown by the last such estimate and a proper reduction made in the school population of the county or counties from which the annexed territory was acquired.

E. Beginning July 1, 2000, of the remaining sales and use tax revenue, the revenue generated by a two percent sales and use tax, up to an annual amount of \$13 million, collected from the sales of hunting equipment, auxiliary hunting equipment, fishing equipment, auxiliary fishing equipment, wildlife-watching equipment, and auxiliary wildlife-watching equipment in Virginia, as estimated by the most recent U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, shall be paid into the Game Protection Fund established under § [29.1-101](#) and shall be used, in part, to defray the cost of law enforcement. Not later than 30 days after the close of each quarter, the Comptroller shall transfer to the Game Protection Fund the appropriate amount of collections to be dedicated to such Fund. At any time that the balance in the

Capital Improvement Fund, established under § [29.1-101.01](#), is equal to or in excess of \$35 million, any portion of sales and use tax revenues that would have been transferred to the Game Protection Fund, established under § [29.1-101](#), in excess of the net operating expenses of the Board, after deduction of other amounts which accrue to the Board and are set aside for the Game Protection Fund, shall remain in the general fund until such time as the balance in the Capital Improvement Fund is less than \$35 million.

F. 1. Of the net revenue generated from the one-half percent increase in the rate of the state sales and use tax effective August 1, 2004, pursuant to enactments of the 2004 Special Session I of the General Assembly, the Comptroller shall transfer from the general fund of the state treasury to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#) an amount equivalent to one-half of the net revenue generated from such one-half percent increase as provided in this subdivision. The transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund under this subdivision shall be for one-half of the net revenue generated (and collected in the succeeding month) from such one-half percent increase for the month of August 2004 and for each month thereafter.

2. Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the revenue generated by a 0.125 percent sales and use tax shall be distributed to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund established under § [58.1-638.1](#), and be used for the state's share of Standards of Quality basic aid payments.

3. For the purposes of the Comptroller making the required transfers under subdivision 1 and 2, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Public Education Standards of Quality/Local Real Estate Property Tax Relief Fund.

G. (Contingent expiration date) Beginning July 1, 2013, of the remaining sales and use tax revenue, an amount equal to the following percentages of the revenue generated by a one-half percent sales and use tax, such as that paid to the Transportation Trust Fund as provided in subdivision A 1, shall be paid to the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530:

1. For fiscal year 2014, an amount equal to 10 percent;
2. For fiscal year 2015, an amount equal to 20 percent;
3. For fiscal year 2016, an amount equal to 30 percent; and
4. For fiscal year 2017 and thereafter, an amount equal to 35 percent.

The Highway Maintenance and Operating Fund's share of the net revenue distributable under this subsection shall be computed as an estimate of the net revenue to be received into the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the Fund on the last day of each month.

H. (Contingent expiration date) 1. The additional revenue generated by increases in the state sales and use tax from Planning District 8 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2509](#).

2. The additional revenue generated by increases in the state sales and use tax from Planning District 23 pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited by the Comptroller in the fund established under § [33.2-2600](#).

3. The additional revenue generated by increases in the state sales and use tax in any other Planning District pursuant to §§ [58.1-603.1](#), [58.1-604.01](#), [58.1-604.1](#), and [58.1-614](#) shall be deposited into special funds that shall be established by appropriate legislation.

4. The net revenues distributable under this subsection shall be computed as an estimate of the net revenue to be received by the state treasury each month, and such estimated payment shall be adjusted for the actual net revenue received in the preceding month. All payments shall be made to the appropriate funds on the last day of each month.

I. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next quarter or for subsequent quarters.

J. The term "net revenue," as used in this section, means the gross revenue received into the general fund or the Transportation Trust Fund of the state treasury under the preceding sections of this chapter, less refunds to taxpayers.

§ 58.1-802.3. *Regional transportation improvement fee.*

*In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional WMATA capital fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city that is a member of the Northern Virginia Transportation Authority is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The rate of the fee, when the consideration or value of the interest, whichever is greater, equals or exceeds \$100, shall be \$0.15 for each \$100 or fraction thereof, exclusive of the value of any lien or encumbrance remain-*

*ing thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance.*

*The fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.*

*No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.*

*Fees imposed by this section shall be collected by the clerk of the court. For fees collected in a county or city located in a transportation district established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) of Title 33.2 that as of January 1, 2018, meets the criteria established in § 33.2-1936 shall be transferred to the state treasury as soon as practicable and deposited into the fund established in § 33.2-3401. The fees collected in any other county or city in which the fee is imposed shall be retained by the county or city, and shall be used solely for transportation purposes.*

§ [58.1-811](#). (Contingent expiration date) Exemptions.

A. The taxes imposed by §§ [58.1-801](#) and [58.1-807](#) shall not apply to any deed conveying real estate or lease of real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;
2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § [57-16.1](#), where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;
3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;
4. To the Virginia Division of the United Daughters of the Confederacy;
5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;
6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;
7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the Internal Revenue Code as it exists at the time of liquidation;

8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

15. When it is a deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

16. When it is a deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ [58.1-803](#) and [58.1-804](#) shall not apply to any deed of trust or mortgage:

1. Given by an incorporated college or other incorporated institution of learning not conducted for profit;
2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § [57-16.1](#);
3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;
4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;
5. Securing a loan made by an organization described in subdivision A 14;
6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home; or
7. Given by any entity organized pursuant to Chapter 9.1 (§ [56-231.15](#) et seq.) of Title 56.

C. The tax imposed by § [58.1-802](#) and the fee imposed by §§ [58.1-802.2](#) [58.1-802.3](#) shall not apply to any:

1. Transaction described in subdivisions A 6 through 13, 15, and 16;
2. Instrument or writing given to secure a debt;
3. Deed conveying real estate from an incorporated college or other incorporated institution of learning not conducted for profit;
4. Deed conveying real estate from the United States, the Commonwealth or any county, city, town, district, or other political subdivision thereof;
5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other political subdivision thereof, if such political unit is required by law to reimburse the parties taxable pursuant to § [58.1-802](#) or subject to the fee under § [58.1-802.2](#) [58.1-802.3](#); or
6. Deed conveying real estate from the trustee or trustees of a church or religious body or from an incorporated church or religious body, or from a corporation mentioned in § [57-16.1](#).

D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed shall state therein that it is a deed of gift.

E. The tax imposed by § [58.1-807](#) shall not apply to any lease to the United States, the Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

F. The taxes and fees imposed by §§ [58.1-801](#), [58.1-802](#), [58.1-802.2](#), [58.1-802.3](#), [58.1-807](#), [58.1-808](#), and [58.1-814](#) shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural, or open space areas.

G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the trustees mentioned in § [57-8](#) and the ecclesiastical officers mentioned in § [57-16](#).

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement, release, or other document recorded in connection with a concession pursuant to the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) or similar federal law.

J. No recordation tax shall be required for the recordation of any transfer on death deed or any revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act (§ [64.2-621](#) et seq.) when no consideration has passed between the parties.

§ [58.1-815.4](#). (Contingent expiration dates) Distribution of recordation tax for certain transportation-related purposes.

Of the state recordation taxes imposed pursuant to §§ [58.1-801](#) and [58.1-803](#), the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

- ~~1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b (1)(b) of § [58.1-638](#); and~~
- ~~2. The revenues collected from \$0.01 of the total tax shall be deposited into the Commonwealth Mass Transit Capital Fund established pursuant to subdivision A 4-e of § [58.1-638](#).~~

§ [58.1-815.4](#). (Contingent effective date, and contingent expiration date) Distribution of recordation tax for certain transportation-related purposes.

Effective July 1, 2008, of the state recordation taxes imposed pursuant to §§ [58.1-801](#) and [58.1-803](#), the revenues collected each fiscal year from \$0.03 of the total tax imposed under each section shall be deposited by the Comptroller as follows:

1. The revenues collected from \$0.02 of the total tax shall be deposited into the Commonwealth Mass Transit Fund pursuant to subdivision A 4 b-(1)(b) of § [58.1-638](#); and
2. The revenues collected from \$0.01 of the total tax shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#).

§ [58.1-1741](#). (Contingent expiration date) Disposition of revenues.

A. After the direct costs of administering this article are recovered by the Department of Taxation, the remaining revenues collected hereunder by the Tax Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this article, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction, and maintenance of highways and the regulation of traffic thereon and for no other purpose.

However, (i) all funds collected from the additional tax imposed by subdivision A 2 of § [58.1-1736](#) on the rental of daily rental vehicles shall be distributed quarterly to the county, city, or town wherein such vehicle was delivered to the rentee; (ii) except as provided in clause (iii), an amount equivalent to the net additional revenues from the motor vehicle rental tax generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ [46.2-694](#), [46.2-697](#), and by §§ [58.1-1735](#), [58.1-1736](#) and this section, shall be distributed to and paid into the Transportation Trust Fund established pursuant to § [33.2-1524](#), a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iii) all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 1 of § [58.1-1736](#) at the tax rate in effect on December 31, 1986, shall be paid by the Tax Commissioner into the state treasury and two-thirds of which shall be paid into the Rail Enhancement Fund established by § [33.2-1601](#) and one-third of which shall be deposited into the ~~Transportation Trust Fund established pursuant to § [33.2-1524](#) and set aside for state of good repair purposes pursuant to § [33.2-369](#)~~ *Washington Metropolitan Area Transit Authority Capital Fund* pursuant to § [33.2-3401](#); and (iv) all additional revenues resulting from the fee imposed under subdivision A 3 of § [58.1-1736](#) shall be used

to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § [58.1-638](#), of the funds becoming part of the Transportation Trust Fund pursuant to ~~clause (ii) of subsection~~ *subdivision A 2*, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.7 percent shall be set aside as the Commonwealth Mass Transit Fund.

*Article 11.*

*Transportation Transient Occupancy Taxes.*

§ 58.1-1743. *Transportation district transient occupancy tax.*

*In addition to all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city located in a transportation district established pursuant to Chapter 19 (§ [33.2-1900](#) et seq.) of Title 33.2 that as of January 1, 2018, meets the criteria established in § 33.2-1936.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer into the state treasury pursuant to § [2.2-806](#) and transferred by the Comptroller into special funds established by law. In the case of the Northern Virginia Transportation District, the revenue generated and collected therein shall be deposited into the fund established in § 33.2-3401. For additional transportation districts that may become subject to this section, funds shall be established by appropriate legislation.*

§ 58.1-1744. *Local transportation transient occupancy tax.*

*In addition to all other fees and taxes imposed under law, there is hereby imposed an additional transient occupancy tax at the rate of two percent of the amount of the charge for the occupancy of any room or space occupied in any county or city that is a member of the Northern Virginia Transportation Authority that is not described in § 58.1-1743.*

*The tax imposed under this section shall be imposed only for the occupancy of any room or space that is suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.*

*The tax imposed under this section shall be administered by the locality in which the room or space is located in the same manner as it administers the tax authorized by § [58.1-3819](#) or [58.1-3840](#), mutatis mutandis, except as herein provided. The revenue generated and collected from the tax shall be deposited by the local treasurer and may be used only for public transportation purposes.*

**§ [58.1-2289](#). (For contingent expiration, see note) Disposition of tax revenue generally.**

A. Unless otherwise provided in this section, all taxes and fees, including civil penalties, collected by the Commissioner pursuant to this chapter, less a reasonable amount to be allocated for refunds, shall be promptly paid into the state treasury and shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds.

The Governor is hereby authorized to transfer out of such fund an amount necessary for the inspection of gasoline and motor grease measuring and distributing equipment, and for the inspection and analysis of gasoline for purity.

B. The tax collected on each gallon of aviation fuel sold and delivered or used in this Commonwealth, less refunds, shall be paid into a special fund of the state treasury. Proceeds of this special fund within the Commonwealth Transportation Fund shall be disbursed upon order of the Department of Aviation, on warrants of the Comptroller, to defray the cost of the administration of the laws of this Commonwealth relating to aviation, for the construction, maintenance and improvement of airports and landing fields to which the public now has or which it is proposed shall have access, and for the promotion of aviation in the interest of operators and the public generally.

C. One-half cent of the tax collected on each gallon of fuel on which a refund has been paid for gasoline, gasohol, diesel fuel, blended fuel, or alternative fuel, for fuel consumed in tractors and unlicensed equipment used for agricultural purposes shall be paid into a special fund of the state treasury, known as the Virginia Agricultural Foundation Fund, to be disbursed to make certain refunds and defray the costs of the research and educational phases of the agricultural program, including supplemental salary payments to certain employees at Virginia Polytechnic Institute and State University, the Department

of Agriculture and Consumer Services and the Virginia Truck and Ornamentals Research Station, including reasonable expenses of the Virginia Agricultural Council. D. One and one-half cents of the tax collected on each gallon of fuel used to propel a commercial watercraft upon which a refund has been paid shall be paid to the credit of the Game Protection Fund of the state treasury to be made available to the Board of Game and Inland Fisheries until expended for the purposes provided generally in subsection C of § [29.1-701](#), including acquisition, construction, improvement and maintenance of public boating access areas on the public waters of this Commonwealth and for other activities and purposes of direct benefit and interest to the boating public and for no other purpose. However, one and one-half cents per gallon on fuel used by commercial fishing, oystering, clamming, and crabbing boats shall be paid to the Department of Transportation to be used for the construction, repair, improvement and maintenance of the public docks of this Commonwealth used by said commercial watercraft. Any expenditures for the acquisition, construction, improvement and maintenance of the public docks shall be made according to a plan developed by the Virginia Marine Resources Commission.

From the tax collected pursuant to the provisions of this chapter from the sales of gasoline used for the propelling of watercraft, after deduction for lawful refunds, there shall be paid into the state treasury for use by the Marine Resources Commission, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Commonwealth Transportation Board to (i) improve the public docks as specified in this section, (ii) improve commercial and sports fisheries in Virginia's tidal waters, (iii) make environmental improvements including, without limitation, fisheries management and habitat enhancement in the Chesapeake and its tributaries, and (iv) further the purposes set forth in § [33.2-1510](#), a sum as established by the General Assembly.

E. Of the remaining revenues deposited into the Commonwealth Transportation Fund pursuant to this chapter less refunds authorized by this chapter: (i) 80 percent shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § [33.2-1530](#), (ii) 11.3 percent shall be deposited into the Transportation Trust Fund established pursuant to § [33.2-1524](#), (iii) four percent shall be deposited into the Priority Transportation Fund, (iv) ~~3.11~~ 3.7 percent shall be deposited into the Commonwealth *Mass Transit-Capital* Fund established pursuant to subdivision A 4-e of § [58.1-638](#), and (v) one percent shall be transferred to a special fund within the Commonwealth Transportation Fund in the state treasury, to be used to meet the necessary expenses of the Department of Motor Vehicles, ~~(vi) 0.35 of one percent shall be deposited into the Commonwealth-Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated~~

to subdivision A 4 b (1)(b), and (vii) 0.24 of one percent shall be deposited into the Commonwealth Mass Transit Fund established pursuant to subdivision A 4 of § [58.1-638](#) and allocated to subdivision A 4 b (1)(a).

**§ [58.1-2299.20](#). (Contingent expiration date) Disposition of tax revenues.**

A. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in *clause (i) of subdivision A 1 of § [58.1-2295](#)*, after subtraction of the direct costs of administration by the Department, shall be deposited *each month as follows*:

1. *One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500;*

2. *a. Until June 30, 2019, an amount equal to the increase in taxes, interest, and civil penalties paid to the Commissioner each month, compared with the same month for fiscal year 2018, minus any amounts deposited pursuant to subdivision 1, shall be deposited into the Washington Metropolitan Area Transit Capital Fund established pursuant to § 33.2-3401; and*

*b. Beginning on July 1, 2019, an amount equal to one-twelfth of the increase in taxes, interest, and civil penalties paid to the Commissioner in fiscal year 2019 compared to fiscal year 2018, minus any amounts deposited pursuant to subdivision A 1, shall be deposited in the Washington Metropolitan Area Transit Authority Capital Fund established pursuant to § 33.2-3401; and*

3. *All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_." The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § [33.2-1915](#), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district which was established on or before January 1, 1986, and is also subject to subsection C of § [33.2-1915](#), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction. ~~The direct costs of administration shall be credited to the funds appropriated to the Department.~~*

B. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in clause (ii) of subdivision A 1 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited each month as follows:

1. One-twelfth of an amount determined by multiplying \$15 million by a fraction, the numerator of which shall be such transportation district's share of funding for the commuter rail service jointly operated by the two transportation districts and the denominator of which shall be the total funding share for such commuter rail service, shall be deposited in the Commuter Rail Operating and Capital Fund established pursuant to § 33.2-3500; and

2. All remaining funds shall be deposited in a special fund entitled the "Special Fund Account of the Transportation District of \_\_\_\_\_." The amounts deposited in the special fund shall be distributed monthly to the applicable transportation district commission of which the county or city is a member to be applied to the operating deficit, capital, and debt service of the mass transit system of such district or, in the case of a transportation district subject to the provisions of subsection C of § [33.2-1915](#), to be applied to and expended for any transportation purpose of such district. In the case of a jurisdiction which, after July 1, 1989, joins a transportation district that was established on or before January 1, 1986, and is also subject to subsection C of § [33.2-1915](#), the funds collected from that jurisdiction shall be applied to and expended for any transportation purpose of such jurisdiction.

C. All taxes, interest, and civil penalties paid to the Commissioner pursuant to this chapter for the sale of fuels at wholesale to retail dealers for retail sale in any county or city set forth in subdivision A 2 of § [58.1-2295](#), after subtraction of the direct costs of administration by the Department, shall be deposited into special funds established by law. In the case of Planning District 23, the revenue generated and collected therein shall be deposited into the fund established in § [33.2-2600](#). For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

D. The direct cost of administration of this section shall be credited to the funds appropriated to the Department.

§ [58.1-3221.3](#). Classification of certain commercial and industrial real property and taxation of such property by certain localities.

A. Beginning January 1, 2008, and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities that are wholly embraced by the

Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

B. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, annually impose on all real property in the locality specially classified in subsection A: an amount of real property tax, in addition to such amount otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Upon appropriation, all revenues generated from the additional real property tax imposed shall be used to benefit the locality imposing the tax solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, ~~or~~ (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii), *or (v) for a locality subject to § 33.2-3404, any other transportation pur-*

*poses, provided that the amount used does not exceed the amount such locality is required to transfer pursuant to § 33.2-3404; and*

(2) The additional real property tax imposed shall be levied, administered, enforced, and collected in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as a separate class of real property for local taxation in accordance with the provisions of this section.

C. Beginning January 1, 2008, in lieu of the authority set forth in subsections A and B above and solely for the purposes of imposing the tax authorized pursuant to this section, in the counties and cities wholly embraced by the Northern Virginia Transportation Authority and the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code, all real property used for or zoned to permit commercial or industrial uses is hereby declared to be a separate class of real property for local taxation. Such classification of real property shall exclude all residential uses and all multifamily residential uses, including but not limited to single family residential units, cooperatives, condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

D. In addition to all other taxes and fees permitted by law, (i) the governing body of any locality embraced by the Northern Virginia Transportation Authority may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property located in special regional transportation tax districts specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.125 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all real property used for or zoned to permit commercial or industrial uses; and, (ii) the governing body of any locality wholly embraced by the Hampton Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code may, by ordinance, create within its boundaries, one or more special regional transportation tax districts and, thereafter, may, by ordinance, impose upon the real property specially classified in subsection C within such special regional transportation tax districts: an amount of real property tax, in addition to such amounts otherwise authorized by law, at a rate not to exceed \$0.10 per \$100 of assessed value as the governing body may, by ordinance, impose upon the annual assessed value of all

real property used for or zoned to permit commercial or industrial uses. The authority granted in this subsection shall be subject to the following conditions:

(1) Notwithstanding any other provisions of law to the contrary, upon appropriation, all revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall be used for transportation purposes that benefit the special regional transportation tax district to which such revenue is attributable and solely for (i) new road construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing roads that add new capacity, service, or access, (ii) new public transit construction and associated planning, design, and right-of-way acquisition, including new additions to, expansions, or extensions of existing public transit projects that add new capacity, service, or access, (iii) other capital costs related to new transportation projects that add new capacity, service, or access and the operating costs directly related to the foregoing, ~~or~~ (iv) the issuance costs and debt service on bonds that may be issued to support the capital costs permitted in subdivisions (i), (ii), or (iii), *or (v) for a locality subject to § 33.2-3404, any other transportation purposes, provided that the amount used does not exceed the amount such locality is required to transfer pursuant to § 33.2-3404;*

(2) Any local ordinance adopted in accordance with the provisions of subsection C and this subsection shall include the requirement that the additional real property taxes so authorized are to be imposed annually in accordance with applicable law;

(3) Any locality that imposes the additional real property taxes set forth in subsections A and B shall not be permitted to also impose the additional real property taxes set forth in subsection C and this subsection. In addition, any locality electing to impose the additional real property taxes on all real property located in such locality that is specially classified in subsections A and B must do so in the manner prescribed in subsections A and B and not by creation of a special transportation tax district as set forth in subsection C and this subsection. The creation of such special regional transportation tax districts shall not, however, affect the authority of a locality to establish tax districts pursuant to other provisions of law;

(4) The total revenues generated from the additional real property taxes imposed in accordance with subsection C and this subsection shall not be less than 85% of the revenues estimated to be generated when imposing the additional real property taxes in accordance with subsections A and B at the rate of \$0.125 per \$100 of assessed value in any locality embraced by the Northern Virginia Transportation Authority and at the rate of \$0.10 per \$100 of assessed value in any locality wholly embraced by the Hampton

Roads metropolitan planning area as of January 1, 2008, pursuant to § 134 of Title 23 of the United States Code; and

(5) The additional real property taxes imposed pursuant to subsection C and this subsection shall be levied, administered, enforced, and collected, in the same manner as set forth in Subtitle III of Title 58.1 for the levy, administration, enforcement, and collection of all local taxes. In addition, the local assessor shall separately assess and set forth upon the locality's land book the fair market value of that portion of property that is defined as separate class of real property for local taxation in accordance with the provisions of this section.

2. That § 3 of the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended and reenacted as follows:

§ 3. The net proceeds of the Bonds *authorized by § 2* shall be used exclusively for the purpose of providing funds for paying the costs incurred or to be incurred for construction or funding of transportation projects pursuant to § ~~33.1-23.4-01~~ [33.2-365](#) of the Code of Virginia, including but not limited to environmental and engineering studies, rights-of-way acquisition, improvements to all modes of transportation, acquisition, construction and related improvements, and any financing costs and other financing expenses. Such costs may include the payment of interest on the Bonds for a period during construction and not exceeding one year after completion of construction of the projects.

3. That the second enactment of Chapter 896 of the Acts of Assembly of 2007, as amended by Chapter 830 of the Acts of Assembly of 2011, is amended by adding sections numbered 3.1 and 3.2 as follows:

*§ 3.1. The Commonwealth Transportation Board is hereby further authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the Transportation Development and Revenue Bond Act (§ [33.2-1700](#) et seq. of the Code of Virginia), as amended from time to time, revenue obligations of the Commonwealth to be designated "Commonwealth of Virginia Transportation Capital Projects Revenue Bonds, Series ...." at one time in an aggregate principal amount not to exceed an additional \$50 million for a total authorization of \$3.05 billion, plus costs. The issuance of any bonds under this act is subject to the provisions of subsection C of § [33.2-1527](#) of the Code of Virginia.*

*§ 3.2. The net proceeds of the additional bonds authorized in § 3.1 of this enactment shall be used exclusively for the Commonwealth of Virginia to match federal funds provided for capital projects by the Washington Metropolitan Area Transit Authority.*

4. That § [58.1-802.2](#) and Article 10 (§ [58.1-1742](#)) of Chapter 17 of Title 58.1 of the Code of Virginia are repealed.

5. That each county or city that is a member of the Potomac Rappahannock Transportation Commission, but not a member of the Northern Virginia Transportation Authority, as of January 1, 2018, shall expend or disburse for the support of public transportation an amount that is at least equal to the average annual amount expended or disbursed for such purposes by the county or city, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2015, and June 30, 2018.

6. That the provisions of this act, except for §§ 33.2-214.3, 33.2-286, and 33.2-1526.1 of the Code of Virginia, as created by this act, and § [58.1-638](#) of the Code of Virginia, as amended by this act, shall not become effective until 30 days after the District of Columbia and the State of Maryland each enact legislation or take actions to provide dedicated funding for the Washington Metropolitan Area Transit Authority (WMATA). The percentage of funding provided by the Commonwealth for its share of WMATA funding pursuant to this act beginning with the fiscal year that this act becomes effective, and each fiscal year thereafter, shall be proportional to the amount of funding provided by the District of Columbia and Maryland relative to their respective share of WMATA funding in that fiscal year.

7. That the Commonwealth Transportation Board shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the Code of Virginia, as created by this act, if (i) any alternate directors participate or take action at an official Washington Metropolitan Area Transit Authority (WMATA) Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of Directors has not adopted bylaws that would prohibit such participation by alternate directors.

8. That, beginning July 1, 2019, the Commonwealth Transportation Board (the Board) shall withhold 20 percent of the funds available pursuant to subdivision C 3 of § 33.2-1526.1 of the Code of Virginia, as created by this act, each year unless (i) the Washington Metropolitan Area Transit Authority (WMATA) has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the Northern Virginia Transportation Commission, and (ii) WMATA has adopted or updated a strategic plan within the preceding 36

months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by the Northern Virginia Transportation Commission. In order to satisfy the requirements of clause (ii) of this enactment, the first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017.

9. That the Department of Rail and Public Transportation shall develop a prioritization process as required by § 33.2-214.3 of the Code of Virginia, as created by this act, for the Commonwealth Transportation Board's consideration. The Board shall implement the prioritization process required by § 33.2-214.3 of the Code of Virginia, as created by this act, no later than July 1, 2019, and use such process for the development of the Six-Year Improvement Program for fiscal years 2020 through 2025.

10. That the Commonwealth Transportation Board shall (i) adopt the guidelines required by § 33.2-286 of the Code of Virginia, as created by this act, by December 1, 2018, and (ii) develop and adopt a plan for phased implementation of the requirements for submissions of the strategic plans required to be developed over a period of five years. No agency subject to § 33.2-286 of the Code of Virginia, as created by this act, shall be penalized for not submitting a strategic plan pursuant to such section, provided that the agency is in compliance with the phased implementation schedule adopted by the Commonwealth Transportation Board.

11. That notwithstanding the provisions of subdivision C 1 of § 33.2-1526.1 of the Code of Virginia, as created by this act, for fiscal year 2019 the funds allocated to support the operating costs of transit shall be distributed as follows: (i) the first \$54 million of such funds shall be distributed to each transit property in the same proportion as its operating expenses bear to the total statewide operating expenses and shall be spent for purposes deemed to be eligible by the Board and (ii) the remaining amount of such funds shall be allocated to support operating costs of transit providers and shall be distributed by the Board on the basis of service delivery factors, based on effectiveness and efficiency, as established by the Board.

12. That (i) the Washington Metropolitan Area Transit Authority (WMATA) was established pursuant to an interstate compact between Virginia, Maryland, and the District of Columbia to operate a regional mass transit system in the Washington, D.C., metropolitan area; (ii) WMATA is currently the second largest rapid heavy rail mass transportation system and the sixth largest bus mass transportation system in the United

States; (iii) Section 16 of the WMATA compact embodies the funding principle that "the payment of the costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments"; (iv) the operation of the rapid heavy rail mass transportation system and the bus mass transportation system by WMATA provides particular and substantial benefit to the persons living, traveling, commuting, and working in those localities embraced by the Northern Virginia Transportation Commission; (v) the benefits to such persons include not only access to the rapid heavy rail mass transportation system and the bus mass transportation system operated by WMATA but also the lessened congestion on roadways and highways as a result of such operations; and (vi) on a typical weekday more than 340,000 trips are taken on WMATA in Virginia. On the basis of these facts, the General Assembly finds that dedicated funding is appropriate and necessary to support the capital needs of WMATA's rapid heavy rail mass transportation system.

13. That Virginia shall seek to appoint members to the Washington Metropolitan Area Transit Authority (WMATA) Board of Directors (i) with experience in transit, transportation, or land use planning; transit, transportation, or other public-sector management; engineering; finance; public safety; homeland security; human resources; or the law and (ii) who are familiar with the WMATA system.

14. That, for projects initiated by the Washington Metropolitan Area Transit Authority on and after July 1, 2018, and located solely within the Commonwealth, bidders, offers, contractors, or subcontractors (i) shall not, as a condition of the contract, be required to enter into or adhere to or prohibited from entering into or adhering to agreements with one or more labor organizations and (ii) shall not otherwise be discriminated against for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations.

15. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions shall remain in effect.

16. That should any provision of this act changing the allocation of existing revenues in the Code of Virginia be declared invalid by a court of competent jurisdiction, the amendments to the relevant section of the Code of Virginia made by this act shall expire, and such section shall revert to the language in the Code of Virginia in effect on January 1, 2018.

17. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

18. That the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015 is amended and reenacted as follows:

12. That the provisions of this act amending §§ [33.2-1530](#), [58.1-815.4](#), [58.1-1741](#), and [58.1-2289](#) of the Code of Virginia shall expire if the Commonwealth collects sales and use tax from remote sellers on sales made into the Commonwealth pursuant to legislation enacted by the federal government that grants states that meet minimum simplification requirements specified in such legislation the authority to compel remote retailers to collect sales and use tax on sales made into the respective state.

## Uncodified Acts of Assembly - 2018

### Chapter 1 Budget Bill.

#### VIRGINIA ACTS OF ASSEMBLY - CHAPTER 1

An Act to amend and reenact Chapter 836 of the 2017 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2017, and the thirtieth day of June, 2018.

[\[H 5001\]](#)

Approved June 7, 2018

Be it enacted by the General Assembly of Virginia:

### Chapter 2 Budget Bill.

#### VIRGINIA ACTS OF ASSEMBLY - CHAPTER 2

An Act for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § [2.2-1509](#), Code of Virginia, and to provide a portion of revenues for the two years ending respectively on the thirtieth day of June, 2019, and the thirtieth day of June, 2020, and an Act to amend and reenact §§ [33.2-1904](#), [33.2-](#)

[1907](#), and [33.2-2502](#) of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered §§ [32.1-332.01](#) and [32.1-332.02](#).

[\[H 5002\]](#)

Approved June 7, 2018

Be it enacted by the General Assembly of Virginia:

## Uncodified Acts of Assembly - 2019

### Chapter 56 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2019; created.

An Act to authorize the issuance of bonds, in an amount up to \$17,500,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[\[S 1319\]](#)

Approved February 19, 2019

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion

that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§1. Title.

This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2019."

§ 2. Authorization of bonds and bond anticipation notes.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ...." in an aggregate principal amount not exceeding \$17,500,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:

<u>Institution</u>	<u>Project Title</u>	<u>Amount</u>
<u>Radford University</u>	<u>Acquire Property for Campus Expansion</u>	<u>\$17,500,000</u>
<u>Total</u>		<u>\$17,500,000</u>

§ 3. Application of proceeds.

The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving,

and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.

§ 4. Details, sale of bonds and BANs.

Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.

In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."

§ 5. Execution of bonds and BANs.

Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN, such persons may not have been such officers.

§ 6. Sources for payment of expenses.

All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.

§ 7. Revenues.

The institution of higher education named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.

§ 8. Investments and contracts.

A.

Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any

BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.

B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.

C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.

#### § 9. Security for bonds and BANs.

The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the

Governor shall direct payment therefor from the general fund revenues of the Commonwealth.

§ 10. Exemption of interest from tax.

The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.

§ 11. Refunding bonds and BANs.

The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia. Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.

§ 12. Defeasance.

Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.

§ 13. Severability.

The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 59 Trooper Mark Barrett Memorial Bridge; designating as bridge on Meadow Road over Interstate 64.**

An Act to designate the bridge on Meadow Road over Interstate 64 at mile marker 202 in Henrico County the "Trooper Mark Barrett Memorial Bridge."

[S 1690]

Approved February 19, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The bridge on Meadow Road over Interstate 64 at mile marker 202 in Henrico County is hereby designated the "Trooper Mark Barrett Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.

## **Chapter 67 License plates, special; PROTECT SEA LIFE.**

An Act to authorize the issuance of special license plates for supporters of the Virginia Aquarium bearing the legend PROTECT SEA LIFE; fees.

[H 1637]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Special license plates for supporters of the Virginia Aquarium bearing the legend PROTECT SEA LIFE; fees.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § 46.2-725 of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of the Virginia Aquarium bearing the legend PROTECT SEA LIFE.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia Aquarium Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Aquarium and Marine Science Center Foundation and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

## **Chapter 70 License plates, special; issuance for supporters of Va. State Parks.**

An Act to authorize the issuance of special license plates for supporters of Virginia State Parks bearing the legend VIRGINIA STATE PARKS; fees.

[H 1709]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Special license plates for supporters of Virginia State Parks bearing the legend VIRGINIA STATE PARKS; fees.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § 46.2-725 of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of Virginia State Parks bearing the legend VIRGINIA STATE PARKS.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Virginia State Parks Fund established within the Department of Accounts. These funds shall be paid annually to the Virginia Department of Conservation and Recreation and used to support its operation and

programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

## **Chapter 73 Forestry, Department of; conveyance of easement in Buckingham County.**

An Act to authorize the conveyance of an easement by the Department of Forestry in Buckingham County.

[H 1783]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That in accordance with the provisions of § 10.1-1107 of the Code of Virginia, the Department of Forestry is hereby authorized to convey, upon such terms as the Department deems proper, a perpetual right-of-way across a portion of the Appomattox-Buckingham State Forest, identified as tax map parcel number 176-12 in Buckingham County, to Robert H. Whistleman and Karen L. Whistleman. Such easement shall be 40 feet in width and run with the existing road in the location described to the greatest extent possible. The final easement may vary as necessary to reach the boundary of the Whistlemans' property and as deemed necessary by both parties as an improvement in the road location. The purpose of the conveyance from the Department of Forestry to Robert H. Whistleman and Karen L. Whistleman is to provide a right-of-way for ingress and egress and access for utilities from State Route 24 to the Whistlemans' parcel, identified as tax map parcel number 176-6.

§ 2. The granting and conveying of the easements and rights-of-way shall be made in a form that complies with the provisions of § 2.2-1151 of the Code of Virginia. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.

## **Chapter 108 Newport News, City of; amending charter, inaugural meeting of newly elected council.**

An Act to amend and reenact § 4.05, as amended, of Chapter 576 of the Acts of Assembly of 1978, which provided a charter for the City of Newport News, relating to time of inaugural meeting of newly elected city council.

[S 1045]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 4.05, as amended, of Chapter 576 of the Acts of Assembly of 1978 is amended and reenacted as follows:

§ 4.05. Inaugural meetings; induction of members and election of vice-mayor.

The first meeting of a newly elected council shall take place on the date of the first regularly scheduled meeting of the city council in the month of July following the election at ~~10:00 a.m. at a place~~ a time and location specified for same in the notice sent to the council members in accord with the manner set forth in § 4.06 of this charter for special meetings. At or before this first meeting, the oath of office shall be administered to the duly elected members as provided by law. In the absence of the mayor, the meeting may be called to order by the city clerk. The first business of the council shall be the election of a vice-mayor and the adoption of rules of procedure. Until this business has been completed, the council shall not adjourn for a period longer than forty-eight hours.

## **Chapter 109 Hopewell, City of; amending charter, appointment of president of city council.**

An Act to amend and reenact § 4, as amended, of Chapter IV of Chapter 431 of the Acts of Assembly of 1950, which provided a charter for the City of Hopewell, relating to appointment of president of city council.

[S 1191]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 4, as amended, of Chapter IV of Chapter 431 of the Acts of Assembly of 1950 is amended and reenacted as follows:

§ 4. ~~Election~~ Appointment and terms of president (ex officio mayor), vice-president (ex officio vice-mayor) and members of boards and commissions; quorum; journal; etc.

(a) On the first Tuesday in January next following the regular municipal election, or as soon thereafter as may be practicable, the newly elected council shall proceed to ~~choose~~ appoint by majority vote of all the members thereof one of their number to be president, who shall be ex officio mayor, and another as vice-president, who shall be ex officio vice-mayor, of the council, each of whom shall serve for a period of two years from the first day of the January next following the regular municipal election and until their successor or successors as mayor or vice-mayor have been ~~elected~~ appointed and qualified; ~~provided, however, that the terms of the president and vice-president set to expire on June 30, 2012, shall be extended to December 31, 2012, and until their successors have been elected and qualified.~~

(b) Appointment of boards and commissions; enumeration, term. The school board, library board, and dock commission shall each consist of five members of the board of such regional free library system as are permitted under the inter-jurisdictional contract establishing the regional library system as that contract may be amended from time to time.

The council shall appoint the members of such boards and commissions as are provided for in this charter, or as may be established by the council or by general law on a date and for such terms as may be established by ordinance.

The members of the boards and commissions shall serve until their successors have been appointed and qualified.

(c) Elections to be by viva voce vote; rules of procedure; punishment of members for misconduct, etc.; quorum; eligibility of members for other office; journal of proceedings. All elections by the council shall be viva voce and the vote recorded in the journal of the council.

The council may determine its own rules of procedure; in the absence of established rules of procedure, Robert's Rules of Order shall prevail. Council may punish its members for misconduct and may compel the attendance of members in such manner and under such penalties as may be prescribed by ordinance. It shall keep a journal of its proceedings. A majority of all the members of the council shall constitute a quorum to do business, but a smaller number may adjourn from time to time.

No person, now a member or who may hereafter be elected to the council, shall during his tenure of office, or during the term for which he was elected as such member, be eligible to any office to be filled by the council by election or appointment.

## **Chapter 110 Richmond, City of; amending charter, runoff elections.**

An Act to amend and reenact § 3.01.1 and § 3.04, as amended, of Chapter 116 of the Acts of Assembly of 1948, which provided a charter for the City of Richmond, relating to runoff elections.

[S 1193]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 3.01.1 and § 3.04, as amended, of Chapter 116 of the Acts of Assembly of 1948 are amended and reenacted as follows:

§ 3.01.1 Election of mayor.

On the first Tuesday after the first Monday in November 2004, and every four years thereafter, a general election shall be held to elect the mayor. All persons seeking to have their names appear on the ballot as candidates for mayor must comply with the provisions of Chapter 5 (§ 24.2-500 et seq.) of Title 24.2 of the Code of Virginia and must file with their declaration of candidacy a petition containing a minimum of 500 signatures of qualified voters of the city, to include at least 50 qualified voters from each of the nine election districts. However, these filing requirements shall only apply to the initial, general election and not to any runoff election that may subsequently become necessary. In the general election, the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. Should no one be elected, then the two persons receiving the highest total of votes city wide shall be considered nominated for a runoff election. The runoff election shall be held on the sixth Tuesday after the November general election between the two nominees. The date of any such runoff election shall, as soon as possible, be posted at the courthouse and published at least once in a newspaper of general circulation in the city. In any such runoff election, write-in votes shall not be counted, and the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. In the event the two candidates in a

runoff election shall each win an equal number of council districts, the candidate receiving the most votes city wide shall be elected mayor. An elected term shall run four years. Anyone eligible to serve on city council may serve as mayor, except no one may be elected mayor for three consecutive full terms, and no one may simultaneously hold the office of mayor and any other elected position.

The procedures and deadlines for voter registration, applying for an absentee ballot, and casting an absentee ballot for any runoff election shall be as provided in Chapters 4 (§ 24.2-400 et seq.), 4.1 (§ 24.2-451 et seq.), and 7 (§ 24.2-700 et seq.) of Title 24.2 of the Code of Virginia for general elections.

§ 3.04. Vacancies in office of councilman or mayor.

A. Vacancies in the office of councilman, from whatever cause arising, shall be filled in accordance with general law applicable to interim appointments and special elections, provided that, any provision in the general law to the contrary notwithstanding, a special election may be called to fill any such vacancy if the vacancy occurs more than one year prior to the expiration of the full term of the office to be filled.

B. A vacancy in the office of mayor shall be filled by special election conducted according to the rules herein provided for the general election and held within 60 days, but no sooner than 30 days, from the date of the vacancy. Any runoff, should one be necessary, shall be held on the first Tuesday after the fifth day following the date that voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. However, if the date by which either the special election or possible runoff election for the office of mayor must be conducted should fall within 60 days prior to a primary election or general election, then the special or runoff election shall be held on the same day as the primary or general election, if allowed by general law, or, if not allowed by general law, then the special election shall be held on the first Tuesday after the fifth day following the date that voting machines used in the primary or general election may be unsealed pursuant to § 24.2-659 of the Code of Virginia. Any runoff that may be necessary shall be held on the first Tuesday after the fifth day following the date that the voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. The president of the council shall serve as acting mayor until a successor is elected.

C. The procedures and deadlines for voter registration, applying for an absentee ballot, and casting an absentee ballot for any runoff election as may be necessary after a special election for mayor shall be as provided in Chapters 4 (§ 24.2-400 et seq.), 4.1 (§

24.2-451 et seq.), and 7 (§ 24.2-700 et seq.) of Title 24.2 of the Code of Virginia for general elections.

## **Chapter 113 Irvington, Town of; amending charter, updates town's boundary description, etc.**

An Act to amend and reenact § 1 of Article II and §§ 2, as amended, 7, 11, 13, and 15 of Article III of Chapter 366 of the Acts of Assembly of 1958, which provided a charter for the Town of Irvington in Lancaster County, relating to corporate limits, town council and mayor.

[S 1350]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Article II and §§ 2, as amended, 7, 11, 13, and 15 of Article III of Chapter 366 of the Acts of Assembly of 1958 are amended and reenacted as follows:

Article II. Corporate Limits.

§ 1. The territory embraced within the limits of the town of Irvington is as follows: Beginning at a point on the westerly side of Virginia State Highway # 3 (renumbered as Virginia State Highway 200), which leads from the Town of Irvington to the Town of Kilmarnock, Virginia, where the land now or formerly belonging to the Leland estate corners with the land of Thomas Banks, which said point of beginning is designated by a cement corner stone; thence running along the line separating the property of the Leland Estate from the Banks property South 82° 20' 20" West 340.11 feet to an old axle; thence continuing along said line South 81° 45' 50" West 153.14 feet to a pipe; thence continuing along said line South 81° 32' 50" West 749.20 feet to an old pipe; thence continuing along said line separating the said Leland and Banks properties South 80° 39' 50" West 940.52 feet to a marked Poplar tree, thence continuing along said line South 79° 54' 20" West 414.11 feet to a cement marker; thence continuing along the same course a distance of approximately 180 feet to the center of Church Branch of Carters Creek; thence running in a Southerly direction down the center of said Branch by the Leland property, property of Dew and Henderson, property of E. A. Stephens and others to a point opposite the property of Warner Moore; thence running in an easterly direction along with center line of the eastern branch of Carters Creek by a Black buoy, the old

ferry slip, by the Yarbrough property, the James property to a point in the center of said Creek opposite the property of M. J. Alga; thence running in a Northerly direction along the center of said Eastern Branch of Carters Creek by the lands of Crosby Miller, T. D. McGinnes, through the center of a certain bridge located on Virginia State Highway # 3, (renumbered as Virginia State Highway 200) which leads from the Town of Irvington to the Town of White Stone, Virginia, and continuing in a Northerly direction up the center of said Branch, known as Old Mill Cove, and continuing in a general Northerly direction up the center of said swamp by the S. A. Buchan estate to the Southern boundary of the land of Earl M. Pittman; thence running North 85° 29' 30" West approximately sixty feet to a cement marker; thence continuing North 85° 20' 30" West 2948.16 feet to another cement marker on the Eastern edge of Virginia State Highway # 3 (renumbered as Virginia State Highway 200) which leads from the Town of Irvington to the town of Kilmarnock, Virginia, thence continuing same course approximately 110 feet across said highway to the Leland property; thence running along the western edge of Virginia State Highway # 3 (renumbered as Virginia State Highway 200) in a northerly direction approximately 955.50 feet to a cement marker, the point of beginning, the said property embraced within the Town of Irvington being shown on a certain plat of survey made by T. D. Wilkinson, III, Certified Surveyor, dated the 3rd day of May, 1956, which said plat is of record in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, Instrument number 180001509, and also shown on a certain plat of survey of a portion of the boundary of Irvington, made by Robert C. Buckley, Jr., Certified Surveyor, dated October 28, 1994, which said plat is of record in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, Instrument number CLR 940000938.

Article III. Administration and Government.

~~§ 2. On the second Tuesday in June, 1962, and every two years thereafter, there shall be elected by the qualified voters of the town, one elector of the town, who shall be denominated mayor and six other such electors who shall be councilmen and constitute the town council.~~ On the first Tuesday in May 2020, and every four years thereafter, there shall be elected by the qualified voters of the town one elector of the town who shall be denominated the mayor and three other such electors, all of whom shall serve terms of four years. On the first Tuesday in May 2022, and every four years thereafter, there shall be elected by the qualified voters of the town an additional three electors, who shall serve terms of four years. The six electors other than the mayor shall constitute the town council. They shall enter upon the duties of their offices on the first day of September July next succeeding their election and shall continue in office until their successors are

duly elected and qualified. Every person so elected shall take an oath faithfully to execute and discharge the duties of his office to the best of his judgment and the mayor shall take the oath prescribed by the law for State officers. The failure of any person elected or appointed under the provisions of this charter to qualify or to take the oath required, within the time prescribed for entering upon the discharge of the duties of the office to which he is elected or appointed, shall vacate such office, and the council shall proceed and is hereby vested with power to fill such vacancy in the manner herein prescribed.

§ 7. The mayor shall preside at the meetings of the council, voting only in case of a tie, and perform such other duties as are prescribed by this charter and by general law and such as may be imposed by the council consistent with his office. He shall take care and see that the by-laws, ordinances, acts and resolutions of the council are faithfully executed and obeyed. He shall be ex officio conservator of the peace within the town and within one mile of its corporate limits. He shall see that peace and good order are preserved and that persons and property within the town are protected. He shall authenticate by his signature such documents and instruments as the council, this charter, or the laws of the Commonwealth require. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town.

§ 11. The council shall appoint at its first regular meeting in ~~September~~ July after its election, a clerk of the council who shall hold office at the pleasure of the council. He shall attend the meetings of the council and keep its minutes and records and have charge of the corporate seal and shall attest the same. He shall keep all papers required to be kept by the council, shall publish reports and ordinances as are required to be published and shall perform such other duties as the council may require. His compensation shall be fixed by the council. Any vacancy in this office shall be filled by the council.

§ 13. The council shall appoint at its first meeting in ~~September~~ July, or as soon as practicable thereafter, a treasurer who shall hold office for a term of two years. The council may provide a salary for the treasurer. He shall give such bond, with surety and in such penalty as the council prescribes. He shall receive all money belonging to the town, and keep correct accounts of all receipts from all sources and of all expenditures of all departments. He shall be responsible for the collection of all taxes, license fees, levies and charges due to the town, and shall disburse the moneys of the town in the manner prescribed by the council as it may by ordinance direct. The treasurer shall make such reports and at such time as the council may prescribe. The books and accounts of the treasurer shall be examined and audited at such times as the council may direct, such examination and audit to be reported to the council.

§ 15. The council may appoint at its first regular meeting in ~~September~~ July or as soon as practicable thereafter, a town sergeant, who shall also be chief of police and have all the powers vested in town sergeants by general law. He shall hold office at the pleasure of the council. His duties shall be such as the council prescribes. He shall be vested with the powers of a conservator of the peace. His compensation shall be fixed by the council.

## **Chapter 127 Waynesboro, City of; amending charter, city council procedures, real estate tax assessments.**

An Act to amend and reenact §§ 2.3, 3.4, and 3.5 of Chapters 629 and 674 of the Acts of Assembly of 2005, which provided a charter for the City of Waynesboro, relating to city council procedures; real estate tax assessments.

[S 1396]

Approved February 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.3, 3.4, and 3.5 of Chapters 629 and 674 of the Acts of Assembly of 2005 are amended and reenacted as follows:

§ 2.3. Financial powers.

(a) Generally. In accordance with the Constitutions of the Commonwealth of Virginia and the United States, the city may raise annual taxes and assessments on property, persons and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the city are necessary to pay the debts, defray the expense, accomplish the purposes, and perform the functions of the city, in such manner as the council deems necessary or expedient. The city shall impose no tax on its bonds.

(b) Consumer utility tax, etc. The city shall have power to impose, levy, and collect, in such manner as its council shall deem expedient, a consumer or subscriber tax upon the amount paid for the use within the city of water, electricity, gas, telephone, television, cell phone, wireless, and any public utility service, or the amount paid for any one or more of such public utility services used within the city, and the council may provide that such tax shall be added to and collected with bills rendered consumers for such services.

(c) Assessments for local improvements. The city may impose special or local assessments for local improvements and enforce payment thereof, subject, however, to such

limitations prescribed by the Constitution of Virginia as may be in force at the time of the imposition of such special or local assessments.

(d) Water, lights and sewerage, rates; rates and charges for public utilities or services, etc., operated, etc., by city. The city may establish, impose, and enforce water, light and sewerage rates, and rates and charges for public utilities, or other service, products, or conveniences, operated, rendered, or furnished by the city; assess, or cause to be assessed, water, light, sewerage, and other public utility rates and charges directly against the owner or owners of the buildings, or against the proper tenant or tenants; and in event such rates and charges shall be assessed against a tenant, then the said council may, by an ordinance, require of such tenant a deposit of such reasonable amount as may be by such ordinance prescribed before furnishing such services to such tenant.

(e) Imposition of license taxes; fine or penalty for doing business without license; fees to be paid on grant or transfer of license.

(1) License taxes may be imposed by ordinance on businesses, trades, professions, and callings and upon the persons, firms, associations, and corporations engaged therein, and the agents thereof, except in cases where taxation by the locality shall be prohibited by general law, and nothing herein shall be construed to repeal or amend any general law with respect to taxation.

(2) The council may subject any person, who, without having obtained a license therefor, shall do any act or follow any business, occupation, vocation, pursuit, or calling in the city for which a license may be required by ordinance, to such fine or penalty as it is authorized to impose for any violation of its laws.

(3) For every city license granted or transferred by the commissioner of revenue under this Charter, the commissioner shall charge a fee to be prescribed by an ordinance. Such license or transfer may be withheld until the fees are paid into the city treasury for city purposes.

(f) Levy on other property. It is hereby expressly provided that said council shall, in its discretion, be authorized to fix such annual levy on property subject to taxation in the City of Waynesboro, for city purposes, without any limit as to the rate thereof, any provisions of the general laws of the state to the contrary notwithstanding, provided that said council shall not fix such levy on property partially segregated to the state for purposes of state taxation at a higher rate than is or may be permitted by the general laws relating thereto.

(g) Issuance of bonds, notes, and evidence of debt.

(1) For the execution of its powers and duties, the city council may, in the name and for the use of the city, contract loans and cause to be issued certificates of debts or bonds, provided no such certificate of debt or bonds shall be issued except by ordinance

adopted in accordance with Section 7 of Article VII of the Constitution of Virginia, and otherwise in accordance with the requirements of the Virginia "Public Finance Act." No such certificate or bonds shall be issued prior to city council holding a public hearing on the question, duly advertised at least ten (10) days in advance in a general newspaper of local circulation, and the ordinance authorizing any such certificate or bonds shall be introduced at one meeting of city council and adopted at a second meeting at least seven (7) calendar days after such introduction.

(2) Notwithstanding the foregoing paragraph, no bonds, notes, or other obligations shall be issued until their issuance shall have been authorized by a majority of the qualified voters of the city voting on the question at an election held for the purpose in the manner provided by general law, except as follows:

(i) The council may authorize the issuance of refunding bonds or refunding notes by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of a majority of all members of the council.

(ii) The council may authorize, by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of four-fifths (4/5) of all members of the council, the issuance of bonds and other obligations of a type excluded from the computation of indebtedness of cities under Section 10 (a) of Article VII of the Constitution by complying with the conditions for exclusion set forth therein.

(iii) The city shall have the authority without a vote of the people to make temporary loans not in excess of what may be paid out of current revenues for the fiscal year in which made.

(iv) Bonds which are secured by a lien on the property being purchased may be issued for the purchase of real or personal property without a vote of the people.

(v) The city shall have the authority, by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of four-fifths (4/5) of all members of the council, to issue without a vote of the people bonds or interest-bearing obligations which, including existing general obligation indebtedness, do not exceed ten percent (10%) of the assessed valuation of the real estate in the city subject to taxation, as shown by the last preceding assessment for taxes.

(h) Liens for taxes, levies, and assessments. There shall be a lien on all real estate within the corporate limits for taxes, levies, and assessments, in favor of the city, assessed thereon, from the commencement of the year for which the same were assessed, and there shall also be a lien on the real estate on which local assessments for improvements may be made for the amount of such assessments from the time the same is levied by the city council. Any person aggrieved by an assessment made by the

assessor of real estate shall have the right to a hearing before the city assessor. After the hearing before the city assessor, if a person is still aggrieved by the assessment, such person may apply to the board of equalization for a hearing. Application for relief to the board of equalization in the year for which the assessment is challenged and disposition of such application by the board of equalization shall continue to be prerequisites to the jurisdiction of the circuit court to hear an appeal with respect to a real estate assessment for that year. The council may by ordinance permit taxes to be paid in semi-annual installments.

(i) Additional powers. The city, the financial officers, and all deputies and agents charged with the duty of collecting any and all taxes, licenses, and assessments due the city shall have all the powers provided by law for the collection thereof to cities and towns and their respective officers thereof, and in addition shall have all the rights, powers, and remedies provided to any state officers for the collection of taxes. It is further expressly provided that the treasurer, commission of the revenue, and court clerk shall proceed under the general law for handling of delinquent lands, the sale thereof, the purchase of same with the required reports of sale and all provisions for redemption, or if not redeemed for the making of a tax title deed, in accordance with the provisions of the tax code of Virginia. In addition to the lien for the principal amount of such taxes, the city shall have a lien, with all the priorities provided therefor, for any and all penalties, interest, and costs accrued by reason of delinquency in the payment of such taxes.

§ 3.4. Organizational rules; election of mayor.

~~(a) At nine o'clock ante meridian on the first day of July following a regular municipal election, or if such day is a Sunday, then on the day following, the council shall meet at the usual place for holding the meetings of the legislative board of the city.~~ The city council shall assemble for an organizational meeting at its first regular session in July each year for the purposes set forth in § 15.2-1416 of the Code of Virginia, at which time the newly elected council members, after first having taken oaths prescribed by law, shall assume the duties of the office. Thereafter, the council shall meet at such times as may be prescribed by ordinance or resolution, except that they shall regularly meet not less than once each month. The mayor, any member of the council, or the city manager may call special meetings of the council at any time (on at least twelve (12) hours written notice), with the purpose of said meeting stated therein, to each member served personally or left at such member's usual place of business or residence. No business other than that mentioned in the call shall be considered at such meeting, except upon the consent of no fewer than four-fifths (4/5) of the members of the council.

(b) All meetings of the council shall be public except, if otherwise authorized by general law. Any citizen may have access to the minutes and records thereof at all reasonable times.

(c) The council shall elect one of its members as chairman, who shall be ex officio mayor.

(d) The mayor shall be elected by the council for a term of two (2) years and shall preside at meetings of the council and perform such other duties consistent with the office as may be imposed by the council. The mayor shall have a vote and voice in the proceedings, but no veto. The mayor shall be the official head of the city but shall have no jurisdiction or authority to hear, determine, or try any civil or criminal matters. In times of public danger or emergency, the mayor, or during the mayor's absence or disability, the city manager, may take command of the police and maintain order and enforce the laws, and for this purpose, may deputize such assistant police officers as may be necessary. During absence or disability, except as above provided, the city manager's duties shall be performed by another member appointed by the council. The mayor shall authenticate by signature such instruments as the council, this Charter, or the laws of the state shall require.

(e) On the ~~first~~ day of the first regular meeting in July following the regular municipal election and organization of the council, or as soon thereafter as may be practicable, the council shall elect a city manager, city clerk, city attorney, city assessor, and such other officers as may come within their jurisdiction, each of whom shall serve at the pleasure of the council, provided that the council may elect the city clerk, city manager, city attorney, city assessor, and such other officers for terms of one year each, beginning July 1, subject to removal by the council for cause, and in no event shall the council elect any officer for a term extending beyond June 30 next succeeding each regular biennial municipal election for members of the council.

#### § 3.5. Ordinances and resolutions.

(a) Except in dealing with parliamentary procedure, the council shall act only by ordinance or resolution, and with the exception of ordinances making appropriations or authorizing the contracting of indebtedness, shall be confined to one subject, although nothing shall prevent council from acting collectively on a number of resolutions or ordinances by one comprehensive action approving a consent agenda containing all such resolutions and ordinances.

(b) Each proposed ordinance or resolution shall be introduced in a written or printed form, and the enacting clause of all ordinances passed by the council shall substantially be, "Be it ordained by the council of the City of Waynesboro, Virginia."

(c) ~~No~~ Except as provided herein, no ordinance, or resolution having the effect of an ordinance, or resolution suspending an ordinance, unless it is an emergency measure, shall be passed until it has been considered at two meetings not less than one week apart, one of which shall be a regular meeting and the other of which may be either an adjourned or called meeting. Any ordinance or resolution considered at one such meeting may be amended and passed as amended at the next such meeting, provided that the amendment does not materially change the ordinance. No ordinance shall be amended unless such section or sections as are intended to be amended shall be reenacted. Nonetheless, an ordinance, or resolution having the effect of an ordinance, wherein the city is the recipient of money, funds, or a grant may be passed upon one consideration at a meeting open to the public. The ayes and noes shall be taken and recorded upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the council. Except as otherwise provided in this Charter, an affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinance or resolution.

(d) Effective date of ordinances; emergency measures. No ordinance passed by the council shall take effect until at least ten (10) days from the date of its passage, except that the council may, by the affirmative vote of the majority of its members, pass emergency measures to take effect at the time indicated therein or specifically provide that a nonemergency ordinance take effect immediately upon its passage.

(e) Recordation and authentication of ordinances; publication of ordinances; introduction of ordinances in evidence.

(1) Every ordinance, or resolution having the effect of an ordinance, when passed shall be recorded by the city clerk in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the city clerk.

(2) Every ordinance of a general or permanent nature shall be published in full once within ten (10) days after its final passage by posting a copy thereof at the front door of the municipal building and at two other public places in the city or, when ordered by the council, by publication in a newspaper published or circulated in the city for such time as the council may direct, provided that the foregoing requirements as to publication shall not apply to ordinances reordained in or by a general compilation or codification of ordinances printed by authority of the council.

(3) A record or entry made by the city clerk or a copy of such record or entry duly certified by said clerk shall be prima facie evidence of the terms of the ordinance and its due publication. All ordinances and resolutions of the council may be read in evidence in all courts and in all other proceedings in which it may be necessary to refer thereto, either

from the original record thereof, from a copy thereof, certified by the city clerk, or from any volume of ordinances printed by authority of the council.

(f) Publication of indexed ordinances. The council shall from time to time direct the publication, with suitable index, of the city ordinances.

## **Chapter 143 Career and Technical Education Work-Based Learning Guide; Bd of Education shall review and revise.**

An Act to require the Board of Education to review and revise its Career and Technical Education Work-Based Learning Guide.

[H 2018]

Approved February 22, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Board of Education shall review and revise its Career and Technical Education Work-Based Learning Guide (the Guide) to expand the opportunities available for students to earn credit for graduation through high-quality work-based learning experiences such as job shadowing, mentorships, internships, and externships. In performing such review, the Board shall consult with (i) stakeholders representing a variety of industries and (ii) organizations representing the business community and shall consider (a) the diversity of school divisions across the Commonwealth, (b) the need for local flexibility to establish credit-bearing work-based learning experiences through a variety of methods, and (c) the needs of industries across the Commonwealth.

§ 2. The Board of Education shall complete its work to revise the Guide no later than December 1, 2019.

## **Chapter 156 Trooper Mark Barrett Memorial Bridge; designating as bridge on Meadow Road over Interstate 64.**

An Act to designate the bridge on Meadow Road over Interstate 64 at mile marker 202 in Henrico County the "Trooper Mark Barrett Memorial Bridge."

[H 2226]

Approved February 27, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The bridge on Meadow Road over Interstate 64 at mile marker 202 in Henrico County is hereby designated the "Trooper Mark Barrett Memorial Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.

### **Chapter 186 New Kent County; Department of Forestry's conveyance of easement.**

An Act to authorize the conveyance of an easement by the Department of Forestry in New Kent County.

[H 2016]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That in accordance with the provisions of § 10.1-1107 of the Code of Virginia, the Department of Forestry is hereby authorized to convey, upon such terms as the Department deems proper, a permanent easement and right-of-way across a portion of the New Kent Forestry Center to John D. Tolley and Laurie L. Tolley. Such easement shall be 50 feet in width and run with the existing road in the location described to the greatest extent possible. The final easement may vary as necessary to reach the boundary of the Tolleys' parcel and as deemed necessary by both parties as an improvement in the road location. The purpose of the conveyance from the Department of Forestry to John D. Tolley and Laurie L. Tolley is to provide a nonexclusive easement for ingress and egress from State Route 60 to the Tolleys' parcel, identified as Tax Map Parcel Number 43-40A.

§ 2. The granting and conveying of the easement and right-of-way shall be made in a form that complies with the provisions of § 2.2-1151 of the Code of Virginia. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and

deliver such deed and other documents as may be necessary to accomplish the conveyance.

## **Chapter 187 Commonwealth of Virginia Institutions of Higher Education Bond Act of 2019; created.**

An Act to authorize the issuance of bonds, in an amount up to \$17,500,000 plus financing costs, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, for paying costs of acquiring, constructing, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth; to authorize the Treasury Board, by and with the consent of the Governor, to fix the details of such bonds, to provide for the sale of such bonds, and to issue notes to borrow money in anticipation of the issuance of the bonds; to provide for the pledge of the net revenues of such capital projects and the full faith, credit, and taxing power of the Commonwealth for the payment of such bonds; and to provide that the interest income on such bonds and notes shall be exempt from all taxation by the Commonwealth and any political subdivision thereof.

[H 2357]

Approved March 5, 2019

Whereas, Article X, Section 9 (c) of the Constitution of Virginia provides that the General Assembly may authorize the creation of debt secured by a pledge of net revenues derived from rates, fees, or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue-producing capital projects, including their enlargement or improvement, at, among others, institutions of higher education of the Commonwealth; and

Whereas, in accordance with Article X, Section 9 (c) of the Constitution of Virginia, the Governor has certified in writing, filed with the Auditor of Public Accounts, his opinion that the anticipated net revenues of each of the capital projects identified below to be pledged to the payment of the principal of and the interest on that portion of such debt issued for each such project will be sufficient to meet such payments as the same become due and to provide such reserves as may be required by law and that each of the capital projects complies with the requirements of Article X, Section 9 (c) of the Constitution of Virginia; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§1. Title.

This act shall be known and may be cited as the "Commonwealth of Virginia Institutions of Higher Education Bond Act of 2019."

§ 2. Authorization of bonds and bond anticipation notes.

The Treasury Board is hereby authorized, by and with the consent of the Governor, to sell and issue, pursuant to Article X, Section 9 (c) of the Constitution of Virginia, at one time or from time to time, bonds of the Commonwealth, to be designated "Commonwealth of Virginia Institutions of Higher Education Bonds, Series ...." in an aggregate principal amount not exceeding \$17,500,000, plus amounts needed to fund issuance costs, reserve funds, construction period interest, and other financing expenses. The Treasury Board is further hereby authorized, by and with the consent of the Governor, to borrow money in anticipation of the issuance of bonds by the issuance of bond anticipation notes (BANs), including BANs issued as commercial paper. The proceeds of such bonds and BANs, excluding amounts needed to fund issuance costs, reserve funds, and other financing expenses, shall be used exclusively for the purpose of providing funds, with any other available funds, for paying all or a portion of the costs of acquiring, constructing, renovating, enlarging, improving, and equipping revenue-producing capital projects at institutions of higher education of the Commonwealth as follows:

<u>Institution</u>	<u>Project Title</u>	<u>Amount</u>
<u>Radford University</u>	<u>Acquire Property for Campus Expansion</u>	<u>\$17,500,000</u>
<u>Total</u>		<u>\$17,500,000</u>

§ 3. Application of proceeds.

The proceeds, including any premium, of bonds and BANs (except the proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs), shall be deposited in a special capital outlay fund in the state treasury and, together with the investment income thereon, shall be disbursed by the State Treasurer for paying costs of acquiring, constructing, renovating, enlarging, improving, and equipping the authorized capital projects, including financing costs. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs shall be used to pay such BANs, refunded bonds, and refunded BANs.

§ 4. Details, sale of bonds and BANs.

Bonds and BANs shall be dated and may be made redeemable before their maturity or maturities at such price or prices or within such price parameters, all as may be

determined by the Treasury Board, by and with the consent of the Governor. Bonds and BANs shall be in such form, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as determined by the Treasury Board or, when authorized by the Treasury Board, the State Treasurer. The principal of and premium, if any, and the interest on bonds and BANs shall be payable in lawful money of the United States of America. Bonds and BANs may be certificated or uncertificated as determined by the Treasury Board. The Treasury Board may contract for services of such registrars, transfer agents, or other authenticating agents as it deems appropriate to maintain a record of the persons entitled to the bonds and BANs. Bonds and BANs issued in certificated form may be issued under a system of book entry for recording the ownership and transfer of ownership of rights to receive payments on the bonds and BANs. The Treasury Board shall fix the authorized denomination or denominations of the bonds and the place or places of payment of certificated bonds and BANs, which may be at the Office of the State Treasurer or at any bank or trust company within or without the Commonwealth. Bonds shall mature at such time or times not exceeding 30 years from their date or dates, and BANs shall mature at such time or times not exceeding five years from their date or dates. The Treasury Board may sell bonds and BANs in such manner, by competitive bidding, negotiated sale, or private placement, and for such price or within such price parameters as it may determine, by and with the consent of the Governor, to be in the best interest of the Commonwealth.

In the discretion of the Treasury Board, bonds and BANs may be issued at one time or from time to time and may be sold and issued at the same time with other general obligation bonds and BANs, respectively, of the Commonwealth authorized pursuant to Article X, Section 9 (a) (3), (b), and (c) of the Constitution of Virginia, as separate issues or as a combined issue, designated "Commonwealth of Virginia General Obligation Bonds Bond Anticipation Notes, Series ....."

§ 5. Execution of bonds and BANs.

Certificated bonds and BANs shall be signed on behalf of the Commonwealth by the Governor and by the State Treasurer, or shall bear their facsimile signatures, and shall bear the lesser seal of the Commonwealth or a facsimile thereof. If the bonds or BANs bear the facsimile signature of the State Treasurer, they shall be signed by such administrative assistant as the State Treasurer shall determine or by such registrar or paying agent as may be designated to sign them by the Treasury Board. If any officer whose signature or facsimile signature appears on any bonds or BANs ceases to be such officer before delivery, such signature or facsimile signature shall nevertheless be valid and

sufficient for all purposes the same as if such officer had remained in office until such delivery, and any bond or BAN may bear the facsimile signature of, or may be signed by, such persons as at the actual time of execution are the proper officers to sign such bond or BAN, although at the date of such bond or BAN, such persons may not have been such officers.

§ 6. Sources for payment of expenses.

All expenses incurred under this act shall be paid from the proceeds of bonds or BANs, from payments made by the institutions for which the capital projects were authorized in § 2, or from any other available funds as the Treasury Board shall determine.

§ 7. Revenues.

The institution of higher education named in § 2 is hereby authorized (i) to fix, revise, charge, and collect rates, fees, and charges for or in connection with the use, occupancy, and services of each capital project named in § 2 or the system of which such capital project is a part and (ii) to pledge to the portion of the bonds or BANs issued for such capital project the net revenues resulting from such rates, fees, and charges and remaining after payment of the expenses of operating the project or system, as the case may be. The institution is further authorized to create debt service and sinking funds for the payments of the principal of, premium, if any, and interest on the bonds and other reserves required by any agency of the United States of America purchasing the bonds or any portion thereof.

§ 8. Investments and contracts.

A.

Pending the application of the proceeds of the bonds or BANs (including refunding bonds and BANs) to the purpose for which they have been authorized and the application of funds set aside for the purpose to the payment of bonds or BANs, they may be invested by the State Treasurer in securities that are legal investments under the laws of the Commonwealth for public funds and sinking funds, as the case may be. Whenever the State Treasurer receives interest from the investment of the proceeds of bonds or any BANs, such interest shall become a part of the principal of the bonds or any BANs and shall be used in the same manner as required for principal of the bonds or BANs.

B. The Commonwealth may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the Commonwealth, as represented by bonds, BANs, or investments, in whole or in part, on the interest rate, cash flow, or other basis desired by the Commonwealth. Such contract or other arrangement may include, without limitation, contracts commonly known as interest rate swap agreements and futures or contracts providing for payments based on levels

of, or changes in, interest rates. These contracts or arrangements may be entered into by the Commonwealth in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or BANs or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Commonwealth, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board or any public funds manager with professional investment capabilities duly authorized by the Treasury Board to make such determinations.

C. Any money set aside and pledged to secure payments of bonds, BANs, or any of the contracts entered into pursuant to this section may be invested in accordance with subsection A and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to subsection B.

#### § 9. Security for bonds and BANs.

The net revenues of the capital projects set forth above and the full faith and credit of the Commonwealth are hereby irrevocably pledged for the payment of the principal of and the interest on bonds and BANs (unless the Treasury Board, by and with the consent of the Governor, shall provide otherwise) issued under this act. The proceeds of (i) bonds the issuance of which has been anticipated by BANs, (ii) refunding bonds, and (iii) refunding BANs are hereby irrevocably pledged for the payment of principal of and interest and any premium on the BANs or bonds to be paid or redeemed thereby. In the event the net revenues pledged to the payment of the bonds or BANs are insufficient in any fiscal year for the timely payment of the principal of, premium, if any, and interest on the bonds or BANs, where the full faith and credit of the Commonwealth have been pledged, the General Assembly shall appropriate a sum sufficient therefor or the Governor shall direct payment therefor from the general fund revenues of the Commonwealth.

#### § 10. Exemption of interest from tax.

The bonds and BANs issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any county, city, or town, or other political subdivision thereof. The Treasury Board is authorized to take or refrain from taking any and all actions and to covenant to such effect, and to require the participating institutions to do and to covenant likewise, to the extent that, in the judgment of

the Treasury Board, it is appropriate in order that interest on the bonds and BANs may be exempt from federal income tax. Alternatively, interest on bonds and BANs may be made subject to inclusion in gross income of the holders thereof for federal income tax purposes.

§ 11. Refunding bonds and BANs.

The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, at one time or from time to time, refunding bonds and BANs of the Commonwealth and to refund any or all of the bonds and BANs, respectively, issued under this act or otherwise authorized pursuant to Article X, Section 9 (c) of the Constitution of Virginia.

Refunding bonds and BANs may be issued in a principal amount up to the amount necessary to pay at maturity or redeem the bonds and BANs to be refunded and pay all issuance costs and other financing expenses of the refunding. Such refunding bonds and BANs may be issued whether or not the obligations to be refunded are then subject to redemption.

§ 12. Defeasance.

Any bond or BAN for which cash or direct obligations of the United States of America shall have been set aside in escrow with the State Treasurer or a bank or trust company, within or without the Commonwealth, shall be deemed no longer outstanding under the applicable authorizing instrument, this act, and Article X, Section 9 (c) or (b), as the case may be, of the Constitution of Virginia.

§ 13. Severability.

The provisions of this act or the application thereof to any person or circumstance that are held invalid shall not affect the validity of other provisions or applications of this act which can be given effect without the invalid provisions or applications.

2. That an emergency exists and this act is in force from its passage.

## **Chapter 198 Newport News, City of; amending charter, inaugural meeting of newly elected council.**

An Act to amend and reenact § 4.05, as amended, of Chapter 576 of the Acts of Assembly of 1978, which provided a charter for the City of Newport News, relating to time of inaugural meeting of newly elected city council.

[H 1766]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 4.05, as amended, of Chapter 576 of the Acts of Assembly of 1978 is amended and reenacted as follows:

§ 4.05. Inaugural meetings; induction of members and election of vice-mayor.

The first meeting of a newly elected council shall take place on the date of the first regularly scheduled meeting of the city council in the month of July following the election at ~~10:00 a.m. at a place~~ a time and location specified for same in the notice sent to the council members in accord with the manner set forth in § 4.06 of this charter for special meetings. At or before this first meeting, the oath of office shall be administered to the duly elected members as provided by law. In the absence of the mayor, the meeting may be called to order by the city clerk. The first business of the council shall be the election of a vice-mayor and the adoption of rules of procedure. Until this business has been completed, the council shall not adjourn for a period longer than forty-eight hours.

## **Chapter 207 Hopewell, City of; amending charter, appointment of president of city council.**

An Act to amend and reenact § 4, as amended, of Chapter IV of Chapter 431 of the Acts of Assembly of 1950, which provided a charter for the City of Hopewell, relating to appointment of president of city council.

[H 2002]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 4, as amended, Chapter IV of Chapter 431 of the Acts of Assembly of 1950 is amended and reenacted as follows:

§ 4. ~~Election~~ Appointment and terms of president (ex officio mayor), vice-president (ex officio vice-mayor) and members of boards and commissions; quorum; journal; etc.

(a) On the first Tuesday in January next following the regular municipal election, or as soon thereafter as may be practicable, the newly elected council shall proceed to ~~choose~~ appoint by majority vote of all the members thereof one of their number to be president, who shall be ex officio mayor, and another as vice-president, who shall be ex officio vice-mayor, of the council, each of whom shall serve for a period of two years from

the first day of the January next following the regular municipal election and until their successor or successors as mayor or vice-mayor have been elected appointed and qualified; ~~provided, however, that the terms of the president and vice-president set to expire on June 30, 2012, shall be extended to December 31, 2012, and until their successors have been elected and qualified.~~

(b) Appointment of boards and commissions; enumeration, term. The school board, library board, and dock commission shall each consist of five members of the board of such regional free library system as are permitted under the inter-jurisdictional contract establishing the regional library system as that contract may be amended from time to time. The council shall appoint the members of such boards and commissions as are provided for in this charter, or as may be established by the council or by general law on a date and for such terms as may be established by ordinance.

The members of the boards and commissions shall serve until their successors have been appointed and qualified.

(c) Elections to be by viva voce vote; rules of procedure; punishment of members for misconduct, etc.; quorum; eligibility of members for other office; journal of proceedings. All elections by the council shall be viva voce and the vote recorded in the journal of the council.

The council may determine its own rules of procedure; in the absence of established rules of procedure, Robert's Rules of Order shall prevail. Council may punish its members for misconduct and may compel the attendance of members in such manner and under such penalties as may be prescribed by ordinance. It shall keep a journal of its proceedings. A majority of all the members of the council shall constitute a quorum to do business, but a smaller number may adjourn from time to time.

No person, now a member or who may hereafter be elected to the council, shall during his tenure of office, or during the term for which he was elected as such member, be eligible to any office to be filled by the council by election or appointment.

## **Chapter 233 Career and Technical Education Work-Based Learning Guide; Bd of Education shall review and revise.**

An Act to require the Board of Education to review and revise its Career and Technical Education Work-Based Learning Guide.

[S 1434]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Board of Education shall review and revise its Career and Technical Education Work-Based Learning Guide (the Guide) to expand the opportunities available for students to earn credit for graduation through high-quality work-based learning experiences such as job shadowing, mentorships, internships, and externships. In performing such review, the Board shall consult with (i) stakeholders representing a variety of industries and (ii) organizations representing the business community and shall consider (a) the diversity of school divisions across the Commonwealth, (b) the need for local flexibility to establish credit-bearing work-based learning experiences through a variety of methods, and (c) the needs of industries across the Commonwealth.

§ 2. The Board of Education shall complete its work to revise the Guide no later than December 1, 2019.

## **Chapter 239 Waynesboro, City of; amending charter, city council procedures, real estate tax assessments.**

An Act to amend and reenact §§ 2.3, 3.4, and 3.5 of Chapters 629 and 674 of the Acts of Assembly of 2005, which provided a charter for the City of Waynesboro, relating to city council procedures; real estate tax assessments.

[H 1893]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.3, 3.4, and 3.5 of Chapters 629 and 674 of the Acts of Assembly of 2005 are amended and reenacted as follows:

§ 2.3. Financial powers.

(a) Generally. In accordance with the Constitutions of the Commonwealth of Virginia and the United States, the city may raise annual taxes and assessments on property, persons and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the city are necessary to pay the debts, defray the expense,

accomplish the purposes, and perform the functions of the city, in such manner as the council deems necessary or expedient. The city shall impose no tax on its bonds.

(b) Consumer utility tax, etc. The city shall have power to impose, levy, and collect, in such manner as its council shall deem expedient, a consumer or subscriber tax upon the amount paid for the use within the city of water, electricity, gas, telephone, television, cell phone, wireless, and any public utility service, or the amount paid for any one or more of such public utility services used within the city, and the council may provide that such tax shall be added to and collected with bills rendered consumers for such services.

(c) Assessments for local improvements. The city may impose special or local assessments for local improvements and enforce payment thereof, subject, however, to such limitations prescribed by the Constitution of Virginia as may be in force at the time of the imposition of such special or local assessments.

(d) Water, lights and sewerage, rates; rates and charges for public utilities or services, etc., operated, etc., by city. The city may establish, impose, and enforce water, light and sewerage rates, and rates and charges for public utilities, or other service, products, or conveniences, operated, rendered, or furnished by the city; assess, or cause to be assessed, water, light, sewerage, and other public utility rates and charges directly against the owner or owners of the buildings, or against the proper tenant or tenants; and in event such rates and charges shall be assessed against a tenant, then the said council may, by an ordinance, require of such tenant a deposit of such reasonable amount as may be by such ordinance prescribed before furnishing such services to such tenant.

(e) Imposition of license taxes; fine or penalty for doing business without license; fees to be paid on grant or transfer of license.

(1) License taxes may be imposed by ordinance on businesses, trades, professions, and callings and upon the persons, firms, associations, and corporations engaged therein, and the agents thereof, except in cases where taxation by the locality shall be prohibited by general law, and nothing herein shall be construed to repeal or amend any general law with respect to taxation.

(2) The council may subject any person, who, without having obtained a license therefor, shall do any act or follow any business, occupation, vocation, pursuit, or calling in the city for which a license may be required by ordinance, to such fine or penalty as it is authorized to impose for any violation of its laws.

(3) For every city license granted or transferred by the commissioner of revenue under this Charter, the commissioner shall charge a fee to be prescribed by an ordinance. Such license or transfer may be withheld until the fees are paid into the city treasury for city purposes.

(f) Levy on other property. It is hereby expressly provided that said council shall, in its discretion, be authorized to fix such annual levy on property subject to taxation in the City of Waynesboro, for city purposes, without any limit as to the rate thereof, any provisions of the general laws of the state to the contrary notwithstanding, provided that said council shall not fix such levy on property partially segregated to the state for purposes of state taxation at a higher rate than is or may be permitted by the general laws relating thereto.

(g) Issuance of bonds, notes, and evidence of debt.

(1) For the execution of its powers and duties, the city council may, in the name and for the use of the city, contract loans and cause to be issued certificates of debts or bonds, provided no such certificate of debt or bonds shall be issued except by ordinance adopted in accordance with Section 7 of Article VII of the Constitution of Virginia, and otherwise in accordance with the requirements of the Virginia "Public Finance Act." No such certificate or bonds shall be issued prior to city council holding a public hearing on the question, duly advertised at least ten (10) days in advance in a general newspaper of local circulation, and the ordinance authorizing any such certificate or bonds shall be introduced at one meeting of city council and adopted at a second meeting at least seven (7) calendar days after such introduction.

(2) Notwithstanding the foregoing paragraph, no bonds, notes, or other obligations shall be issued until their issuance shall have been authorized by a majority of the qualified voters of the city voting on the question at an election held for the purpose in the manner provided by general law, except as follows:

(i) The council may authorize the issuance of refunding bonds or refunding notes by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of a majority of all members of the council.

(ii) The council may authorize, by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of four-fifths (4/5) of all members of the council, the issuance of bonds and other obligations of a type excluded from the computation of indebtedness of cities under Section 10 (a) of Article VII of the Constitution by complying with the conditions for exclusion set forth therein.

(iii) The city shall have the authority without a vote of the people to make temporary loans not in excess of what may be paid out of current revenues for the fiscal year in which made.

(iv) Bonds which are secured by a lien on the property being purchased may be issued for the purchase of real or personal property without a vote of the people.

(v) The city shall have the authority, by an ordinance adopted in the manner set forth in subdivision (g) (1) by the affirmative vote of four-fifths (4/5) of all members of the council,

to issue without a vote of the people bonds or interest-bearing obligations which, including existing general obligation indebtedness, do not exceed ten percent (10%) of the assessed valuation of the real estate in the city subject to taxation, as shown by the last preceding assessment for taxes.

(h) Liens for taxes, levies, and assessments. There shall be a lien on all real estate within the corporate limits for taxes, levies, and assessments, in favor of the city, assessed thereon, from the commencement of the year for which the same were assessed, and there shall also be a lien on the real estate on which local assessments for improvements may be made for the amount of such assessments from the time the same is levied by the city council. Any person aggrieved by an assessment made by the assessor of real estate shall have the right to a hearing before the city assessor. After the hearing before the city assessor, if a person is still aggrieved by the assessment, such person may apply to the board of equalization for a hearing. Application for relief to the board of equalization in the year for which the assessment is challenged and disposition of such application by the board of equalization shall continue to be prerequisites to the jurisdiction of the circuit court to hear an appeal with respect to a real estate assessment for that year. The council may by ordinance permit taxes to be paid in semi-annual installments.

(i) Additional powers. The city, the financial officers, and all deputies and agents charged with the duty of collecting any and all taxes, licenses, and assessments due the city shall have all the powers provided by law for the collection thereof to cities and towns and their respective officers thereof, and in addition shall have all the rights, powers, and remedies provided to any state officers for the collection of taxes. It is further expressly provided that the treasurer, commission of the revenue, and court clerk shall proceed under the general law for handling of delinquent lands, the sale thereof, the purchase of same with the required reports of sale and all provisions for redemption, or if not redeemed for the making of a tax title deed, in accordance with the provisions of the tax code of Virginia. In addition to the lien for the principal amount of such taxes, the city shall have a lien, with all the priorities provided therefor, for any and all penalties, interest, and costs accrued by reason of delinquency in the payment of such taxes.

§ 3.4. Organizational rules; election of mayor.

~~(a) At nine o'clock ante meridian on the first day of July following a regular municipal election, or if such day is a Sunday, then on the day following, the council shall meet at the usual place for holding the meetings of the legislative board of the city.~~ The city council shall assemble for an organizational meeting at its first regular session in July each year for the purposes set forth in § 15.2-1416 of the Code of Virginia, at which time the

newly elected council members, after first having taken oaths prescribed by law, shall assume the duties of the office. Thereafter, the council shall meet at such times as may be prescribed by ordinance or resolution, except that they shall regularly meet not less than once each month. The mayor, any member of the council, or the city manager may call special meetings of the council at any time (on at least twelve (12) hours written notice), with the purpose of said meeting stated therein, to each member served personally or left at such member's usual place of business or residence. No business other than that mentioned in the call shall be considered at such meeting, except upon the consent of no fewer than four-fifths (4/5) of the members of the council.

(b) All meetings of the council shall be public except, if otherwise authorized by general law. Any citizen may have access to the minutes and records thereof at all reasonable times.

(c) The council shall elect one of its members as chairman, who shall be ex officio mayor.

(d) The mayor shall be elected by the council for a term of two (2) years and shall preside at meetings of the council and perform such other duties consistent with the office as may be imposed by the council. The mayor shall have a vote and voice in the proceedings, but no veto. The mayor shall be the official head of the city but shall have no jurisdiction or authority to hear, determine, or try any civil or criminal matters. In times of public danger or emergency, the mayor, or during the mayor's absence or disability, the city manager, may take command of the police and maintain order and enforce the laws, and for this purpose, may deputize such assistant police officers as may be necessary. During absence or disability, except as above provided, the city manager's duties shall be performed by another member appointed by the council. The mayor shall authenticate by signature such instruments as the council, this Charter, or the laws of the state shall require.

(e) On the ~~first~~ day of the first regular meeting in July following the regular municipal election and organization of the council, or as soon thereafter as may be practicable, the council shall elect a city manager, city clerk, city attorney, city assessor, and such other officers as may come within their jurisdiction, each of whom shall serve at the pleasure of the council, provided that the council may elect the city clerk, city manager, city attorney, city assessor, and such other officers for terms of one year each, beginning July 1, subject to removal by the council for cause, and in no event shall the council elect any officer for a term extending beyond June 30 next succeeding each regular biennial municipal election for members of the council.

§ 3.5. Ordinances and resolutions.

(a) Except in dealing with parliamentary procedure, the council shall act only by ordinance or resolution, and with the exception of ordinances making appropriations or authorizing the contracting of indebtedness, shall be confined to one subject, although nothing shall prevent council from acting collectively on a number of resolutions or ordinances by one comprehensive action approving a consent agenda containing all such resolutions and ordinances.

(b) Each proposed ordinance or resolution shall be introduced in a written or printed form, and the enacting clause of all ordinances passed by the council shall substantially be, "Be it ordained by the council of the City of Waynesboro, Virginia."

(c) ~~No~~ Except as provided herein, no ordinance, or resolution having the effect of an ordinance, or resolution suspending an ordinance, unless it is an emergency measure, shall be passed until it has been considered at two meetings not less than one week apart, one of which shall be a regular meeting and the other of which may be either an adjourned or called meeting. Any ordinance or resolution considered at one such meeting may be amended and passed as amended at the next such meeting, provided that the amendment does not materially change the ordinance. No ordinance shall be amended unless such section or sections as are intended to be amended shall be reenacted. Nonetheless, an ordinance, or resolution having the effect of an ordinance, wherein the city is the recipient of money, funds, or a grant may be passed upon one consideration at a meeting open to the public. The ayes and noes shall be taken and recorded upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the council. Except as otherwise provided in this Charter, an affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinance or resolution.

(d) Effective date of ordinances; emergency measures. No ordinance passed by the council shall take effect until at least ten (10) days from the date of its passage, except that the council may, by the affirmative vote of the majority of its members, pass emergency measures to take effect at the time indicated therein or specifically provide that a nonemergency ordinance take effect immediately upon its passage.

(e) Recordation and authentication of ordinances; publication of ordinances; introduction of ordinances in evidence.

(1) Every ordinance, or resolution having the effect of an ordinance, when passed shall be recorded by the city clerk in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the city clerk.

(2) Every ordinance of a general or permanent nature shall be published in full once within ten (10) days after its final passage by posting a copy thereof at the front door of

the municipal building and at two other public places in the city or, when ordered by the council, by publication in a newspaper published or circulated in the city for such time as the council may direct, provided that the foregoing requirements as to publication shall not apply to ordinances reordained in or by a general compilation or codification of ordinances printed by authority of the council.

(3) A record or entry made by the city clerk or a copy of such record or entry duly certified by said clerk shall be prima facie evidence of the terms of the ordinance and its due publication. All ordinances and resolutions of the council may be read in evidence in all courts and in all other proceedings in which it may be necessary to refer thereto, either from the original record thereof, from a copy thereof, certified by the city clerk, or from any volume of ordinances printed by authority of the council.

(f) Publication of indexed ordinances. The council shall from time to time direct the publication, with suitable index, of the city ordinances.

## **Chapter 249 Chesapeake Hospital Authority; investment of funds.**

An Act to amend and reenact § 7.1 of Chapter 396 of the Acts of Assembly of 1987, as amended by Chapter 658 of the Acts of Assembly of 2006, relating to Chesapeake Hospital Authority.

[H 2286]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 7.1 of Chapter 396 of the Acts of Assembly of 1987, as amended by Chapter 658 of the Acts of Assembly of 2006, is amended and reenacted as follows:

§ 7.1. The Authority shall have the following powers to carry out the purposes and intent of this act:

- (1) To provide or assist in providing medical care and related services in its service area.
- (2) To promote, develop, improve and increase the commerce and economic development of the City of Chesapeake and its environs.
- (3) To assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities, and to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any

domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities organized for any purpose, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability company, partnership, limited partnership, association, foundation or other supporting organization, joint venture or other entity organized for any purpose or any individual. The investment of funds held by the Authority, or contributed to its affiliated foundations, shall be exempt from the application of the Investment of Public Funds Act, Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 of the Code of Virginia. The investments of any entity wholly owned or controlled by the Authority that is an "institution," as such term is defined in § 55-268.12, shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.) of the Code of Virginia.

(4) To provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the Authority with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this act.

(5) To make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities.

(6) To make contracts or guarantees, incur liabilities, borrow money, or secure any obligations of others.

(7) To transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities, facilities that will assist or aid the Authority in carrying out the purposes and intent of this act.

(8) To participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities for providing medical care or related services or other activities that the Authority may undertake to the extent that such undertakings assist the Authority in carrying out the purposes and intent of this act.

(9) To conduct or engage in any lawful business, activity, effort or project, necessary or convenient for the purposes of the Authority or for the exercise of any of its powers.

(10) To exercise all other powers granted to nonstock corporations pursuant to § 13.1-826 of the Code of Virginia, as amended.

(11) To procure such insurance, participate in such insurance plans, or provide such self-insurance, or any combination thereof, as it deems necessary or convenient to carry out the purposes and provisions of this act. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its members, officers, directors, employees, or agents are otherwise entitled.

## **Chapter 250 Chesapeake Hospital Authority; investment of funds.**

An Act to amend and reenact § 7.1 of Chapter 396 of the Acts of Assembly of 1987, as amended by Chapter 658 of the Acts of Assembly of 2006, relating to Chesapeake Hospital Authority.

[S 1088]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 7.1 of Chapter 396 of the Acts of Assembly of 1987, as amended by Chapter 658 of the Acts of Assembly of 2006, is amended and reenacted as follows:

§ 7.1. The Authority shall have the following powers to carry out the purposes and intent of this act:

(1) To provide or assist in providing medical care and related services in its service area.

(2) To promote, develop, improve and increase the commerce and economic development of the City of Chesapeake and its environs.

(3) To assist in or provide for the creation of domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities, and to purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, shares of or other interests in, or obligations of, any domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities organized for any purpose, or direct or indirect

obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability company, partnership, limited partnership, association, foundation or other supporting organization, joint venture or other entity organized for any purpose or any individual. The investment of funds held by the Authority, or contributed to its affiliated foundations, shall be exempt from the application of the Investment of Public Funds Act, Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 of the Code of Virginia. The investments of any entity wholly owned or controlled by the Authority that is an "institution," as such term is defined in § 55-268.12, shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.) of the Code of Virginia.

(4) To provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the Authority with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this act.

(5) To make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities.

(6) To make contracts or guarantees, incur liabilities, borrow money, or secure any obligations of others.

(7) To transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities, facilities that will assist or aid the Authority in carrying out the purposes and intent of this act.

(8) To participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations or other entities for providing medical care or related services or other activities that the Authority may undertake to the extent that such undertakings assist the Authority in carrying out the purposes and intent of this act.

(9) To conduct or engage in any lawful business, activity, effort or project, necessary or convenient for the purposes of the Authority or for the exercise of any of its powers.

(10) To exercise all other powers granted to nonstock corporations pursuant to § 13.1-826 of the Code of Virginia, as amended.

(11) To procure such insurance, participate in such insurance plans, or provide such self-insurance, or any combination thereof, as it deems necessary or convenient to carry out the purposes and provisions of this act. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its members, officers, directors, employees, or agents are otherwise entitled.

### **Chapter 303 State correctional facilities; visitors wearing tampons or menstrual cups.**

An Act to require the Director of the Department of Corrections to review and revise the Department's visitation policies concerning visitors at state correctional facilities; wearing of tampons or menstrual cups.

[H 1884]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Director of the Department of Corrections shall review the Department's visitation policies concerning visitors' wearing of tampons or menstrual cups at state correctional facilities and shall revise such policies as necessary to permit such visitors to wear tampons or menstrual cups. The Department shall make the policy available to the public as soon as practicable and shall provide a copy to the Chairmen of the House Committee on Militia, Police and Public Safety and the Senate Committee on Rehabilitation and Social Services by November 1, 2019.

### **Chapter 306 Richmond, City of; amending charter, runoff elections.**

An Act to amend and reenact § 3.01.1 and § 3.04, as amended, of Chapter 116 of the Acts of Assembly of 1948, which provided a charter for the City of Richmond, relating to runoff elections.

[H 2052]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 3.01.1 and § 3.04, as amended, of Chapter 116 of the Acts of Assembly of 1948 are amended and reenacted as follows:

§ 3.01.1 Election of mayor.

On the first Tuesday after the first Monday in November 2004, and every four years thereafter, a general election shall be held to elect the mayor. All persons seeking to have their names appear on the ballot as candidates for mayor must comply with the provisions of Chapter 5 (§ 24.2-500 et seq.) of Title 24.2 of the Code of Virginia and must file with their declaration of candidacy a petition containing a minimum of 500 signatures of qualified voters of the city, to include at least 50 qualified voters from each of the nine election districts. However, these filing requirements shall only apply to the initial, general election and not to any runoff election that may subsequently become necessary. In the general election, the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. Should no one be elected, then the two persons receiving the highest total of votes city wide shall be considered nominated for a runoff election. The runoff election shall be held on the sixth Tuesday after the November general election between the two nominees. The date of any such runoff election shall, as soon as possible, be posted at the courthouse and published at least once in a newspaper of general circulation in the city. In any such runoff election, write-in votes shall not be counted, and the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. In the event the two candidates in a runoff election shall each win an equal number of council districts, the candidate receiving the most votes city wide shall be elected mayor. An elected term shall run four years. Anyone eligible to serve on city council may serve as mayor, except no one may be elected mayor for three consecutive full terms, and no one may simultaneously hold the office of mayor and any other elected position.

The procedures and deadlines for voter registration, applying for an absentee ballot, and casting an absentee ballot for any runoff election shall be as provided in Chapters 4 (§ 24.2-400 et seq.), 4.1 (§ 24.2-451 et seq.), and 7 (§ 24.2-700 et seq.) of Title 24.2 of the Code of Virginia for general elections.

§ 3.04. Vacancies in office of councilman or mayor.

A. Vacancies in the office of councilman, from whatever cause arising, shall be filled in accordance with general law applicable to interim appointments and special elections, provided that, any provision in the general law to the contrary notwithstanding, a special election may be called to fill any such vacancy if the vacancy occurs more than one year prior to the expiration of the full term of the office to be filled.

B. A vacancy in the office of mayor shall be filled by special election conducted according to the rules herein provided for the general election and held within 60 days, but no sooner than 30 days, from the date of the vacancy. Any runoff, should one be necessary, shall be held on the first Tuesday after the fifth day following the date that voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. However, if the date by which either the special election or possible runoff election for the office of mayor must be conducted should fall within 60 days prior to a primary election or general election, then the special or runoff election shall be held on the same day as the primary or general election, if allowed by general law, or, if not allowed by general law, then the special election shall be held on the first Tuesday after the fifth day following the date that voting machines used in the primary or general election may be unsealed pursuant to § 24.2-659 of the Code of Virginia. Any runoff that may be necessary shall be held on the first Tuesday after the fifth day following the date that the voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. The president of the council shall serve as acting mayor until a successor is elected.

C. The procedures and deadlines for voter registration, applying for an absentee ballot, and casting an absentee ballot for any runoff election as may be necessary after a special election for mayor shall be as provided in Chapters 4 (§ 24.2-400 et seq.), 4.1 (§ 24.2-451 et seq.), and 7 (§ 24.2-700 et seq.) of Title 24.2 of the Code of Virginia for general elections.

## **Chapter 308 Berryville, Town of; amending charter, reorganizes charter.**

An Act to amend and reenact §§ 1.2 and 2.2, § 2.3, as amended, § 3.1, § 3.2, as amended, §§ 3.3 through 3.9, 3.12, 3.15, and 4.1, § 4.2, as amended, §§ 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, and 7.2, § 7.3, as amended, and §§ 8.4, 8.6, 8.7, 8.10, and 8.11 of Chapter 112 of the Acts of Assembly of 1971; to amend Chapter 112 of the Acts of Assembly of 1971 by adding a section numbered 3.1:1; and to repeal §§ 5.3 and 5.4, Chapter 6 (§§

6.1, 6.2, and 6.3), and §§ 8.2, 8.3, and 8.5 of Chapter 112 of the Acts of Assembly of 1971, which provided a charter for the Town of Berryville in Clarke County, relating to boundaries, town powers, town council, town officers, appointments, and actions against town.

[H 2572]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 1.2 and 2.2, § 2.3, as amended, § 3.1, § 3.2, as amended, §§ 3.3 through 3.9, 3.12, 3.15, and 4.1, § 4.2, as amended, §§ 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, and 7.2, § 7.3, as amended, and §§ 8.4, 8.6, 8.7, 8.10, and 8.11 of Chapter 112 of the Acts of Assembly of 1971 are amended and reenacted and that Chapter 112 of the Acts of Assembly of 1971 is amended by adding a section numbered 3.1:1 as follows:

§ 1.2. Boundaries.

The corporate boundaries of the town of Berryville shall be as follows:

Beginning at a pipe in the west side of North Buckmarsh Street (U.S. Route No. 340), such point being at the intersection of the west right-of-way line of North Buckmarsh Street and an extension of the north lot line of the Episcopal parsonage; thence along the west right-of-way line of North Buckmarsh Street, N 27° 43' E. a distance of 634.47 feet to a pipe; thence N. 45° 42' W. 2241.36 feet along the rear lot lines on the north side of Walnut Street to a pipe; thence S. 56° 34' 30" W. a distance of 160.38 feet to a pipe; thence S. 45° 45' 30" W. a distance of 4490.77 feet to a pipe in the orchard of H. F. Byrd, such line crossing West Main Street (Va. Route 7); thence, still through the orchards of H. F. Byrd and other properties, S. 57° 25' E. a distance of 3754.92 feet to a spike in the center line of South Church Street; thence S. 53° 42' E. a distance of 1736.86 feet to a pipe, such line crossing the Norfolk and Western Railway right-of-way; thence along a 13° 13' curve, parallel to the Norfolk and Western Railway, such curve having a tangent bearing of N. 62° 10' E. and a tangent distance of 250.80 feet to a pipe and point of intersection; thence still parallel to the Norfolk and Western Railway N. 49° 03' E. a distance of 2484.97 feet to a point of intersection of a 15° 38' curve, the corporate limits following the curve; thence N. 64° 44' E. a distance of 585.77 feet to a pipe; thence N. 49° 41' W. a distance of 3315.36 feet to a pipe and the place of beginning. In addition: Annexation Area A, 350 acres, Deed Book 193, Page 226; Annexation Area B1, 7.691 acres, Deed Book 227, Page 779; Annexation Area B2, 8.965 acres, Deed Book 237, Page 794;

Annexation Area B3, 63.0898 acres, Deed Book 258, Page 156; Annexation Area B4, 10.5316 acres, Deed Book 279, Page 257; Annexation Area B5, 196.5 acres, Deed Book 308, Page 685; Annexation Area B6, 114.38 acres, Deed Book 364, Page 501; Annexation Area B7, 42.2588 acres, Deed Book 421, Page 722; Annexation Area B8, 41.81 acres, Deed Book 472, Page 284.

§ 2.2. Adoption of certain sections of Code of Virginia.

The powers set forth in §§ ~~15.1-837~~ 15.2-1100 through ~~15.1-915~~ 15.2-1133, both inclusive, of Chapter ~~18~~ 11 of Title ~~15.1~~ 15.2 of the Code of Virginia, as in force on January 1, ~~1971~~ 2019, are hereby conferred on and vested in the town of Berryville.

§ 2.3. Eminent domain.

The powers of eminent domain set forth in ~~Title 15.1~~ Chapter 19 (§ 15.2-1901 et seq.) of Title 15.2, Title ~~25~~ 25.1, Chapter ~~1.1~~ and §§ ~~33.1-121~~ through ~~33.1-132~~, Chapter ~~1~~, and Chapter 10 (§ 33.2-1000 et seq.) of Title 33.2 of the Code of Virginia, as amended, and all acts amendatory thereof and supplemental thereto, mutatis mutandis, are hereby conferred upon the town of Berryville subject to the provisions of § ~~25-233~~ 25.1-200 of the Code of Virginia.

(a) In any case in which a petition for condemnation is filed by or on behalf of the town, a true copy of a resolution or ordinance duly adopted by the town council declaring the necessity for any taking or damaging of any property, within or without the town, for the public purposes of the town, shall be filed with the petition and shall constitute sufficient evidence of the necessity of the exercise of the powers of eminent domain by the town. The town may employ the procedures conferred by the foregoing laws, mutatis mutandis, and may, in addition thereto, proceed as hereinafter provided.

(b) Certificates issued pursuant to §§ ~~33.1-121~~ to ~~33.1-132~~ 33.2-1019 through 33.2-1029, inclusive, of the Code of Virginia, as amended, and acts amendatory thereof and supplemental thereto, may be issued by the town council, signed by the mayor and countersigned by the town treasurer. Such certificate shall have the same effect as certificates issued by the Commonwealth Transportation Commissioner, under the aforesaid laws, and may be issued in any case in which the town proposes to acquire property or interest therein by the exercise of its powers of eminent domain for any lawful public purpose, whether within or without the town; provided, that the condemnation authority shall be subject to the provisions of § ~~25-233~~ 25.1-200 of the Code of Virginia.

(c) In addition to the powers conferred by the aforesaid laws, such certificates may be amended or canceled by the court having jurisdiction of the proceedings, upon petition of the town, at any time after the filing thereof; provided, that the court shall have jurisdiction to make such order for the payment of costs and damages, if any, or the refund

of any excessive sums theretofore paid pursuant to such certificate as shall, upon due notice and hearing, appear just. The court shall have jurisdiction to require refunding bonds, for good cause shown by the town or any other person or party in interest, prior to authorizing any distribution of funds pursuant to any certificate issued or deposit made by the town.

### Chapter 3.

Mayor, ~~Recorder~~ Vice Mayor, and Town Council.

§ 3.1. Composition of council; qualifications of mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members.

The town of Berryville shall be governed by a town council composed of the mayor, the ~~recorder~~ vice mayor, and four ~~councilmen~~ council members. The mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall be residents and qualified voters of the town. The mayor and ~~recorder~~ vice mayor shall be elected from the town at large. The four ~~councilmen~~ council members shall reside one in each ward of the town, but shall be elected by all of the qualified voters of the town.

§ 3.1:1. Office of recorder continued as office of vice mayor.

The office of vice mayor shall become effective on July 1, 2022, and the previously established office of recorder shall remain effective until July 1, 2022.

§ 3.2. Election and term of office of mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members.

Elections for mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall be held on the first Tuesday in May of each even-numbered year. On the first Tuesday in May, ~~1972~~ 2020, a mayor and ~~councilmen~~ council members from Wards 1 and 3 shall be elected for a term of four years; and a recorder and councilmen from Wards 2 and 4 shall be elected for a term of two years. On the first Tuesday in May, ~~1974~~ 2022, a recorder vice mayor and ~~councilmen~~ council members from Wards 2 and 4 shall be elected for terms of four years. ~~Thereafter, the mayor, recorder and all councilmen shall be elected for terms of four years.~~

§ 3.3. When terms of office to begin.

The terms of office for the mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall begin on the first day of July next following their election.

§ 3.4. Oath of office.

The mayor, ~~recorder~~ vice mayor, and ~~councilmen~~ council members shall each, before entering upon the duties of their office, make oath or affirmation that they will truly, faith-

fully, and impartially discharge the duties of their offices to the best of their abilities, so long as they shall continue therein.

§ 3.5. Vacancies in office.

Vacancies in the office of mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member shall be filled within forty-five days for the unexpired terms by a majority vote of the remaining members of the town council.

§ 3.6. When new election for mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member required.

If any person who shall have been duly elected mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member shall not be eligible, as herein prescribed, or shall refuse to take the oath or affirmation required under this Charter within two weeks from the day of the beginning of ~~his~~ the term of office, the town council shall declare ~~his~~ the office vacant; and shall order a new election for mayor, ~~recorder~~ vice mayor, or ~~councilman~~ council member, as the case may be.

§ 3.7. Powers and duties of mayor.

The mayor ~~shall be a member of the town council~~, shall preside over the meetings of the town council, and shall have the same right to speak and vote therein as other members of the town council. ~~He~~ The mayor shall be recognized as the head of the town government for all ceremonial purposes, for the purposes of military law, and for the service of civil processes. The mayor shall have no power of veto over the ordinances and resolutions of the town council.

§ 3.8. Powers and duties of ~~recorder~~ vice mayor; ~~recorder~~ vice mayor to act as mayor during absence, disability, etc., of mayor.

The ~~recorder~~ vice mayor shall be a member of the town council and shall have the same right to speak and vote therein as other members of the town council. ~~The recorder shall keep the journal of the proceedings of the town council and have charge of and preserve the records of the town.~~ In the absence from the town, or disqualification, inability, or sickness of the mayor, or during any vacancy in the office of mayor, the ~~recorder~~ vice mayor shall perform the duties of the mayor and be vested with all ~~his~~ of the mayor. The recorder shall have the powers and duties of the vice mayor as set forth in this section until July 1, 2022.

§ 3.9. Absence or disability of mayor and ~~recorder~~ vice mayor.

If both the mayor and ~~recorder~~ vice mayor are absent or unable to act, the town council shall, by a majority vote of the members present, elect from its members a person to serve as acting mayor until either the mayor or ~~recorder~~ vice mayor is present and able

to act. The person so elected shall possess the powers and discharge the duties of the mayor during such period of time.

§ 3.12. Meetings of council.

The town council shall fix the time of ~~their stated~~ its regular meetings, ~~and they shall meet at least once a month.~~ Special meetings may be called at any time by the mayor or by three members of the town council; ~~provided,~~ that all members shall be duly notified a reasonable period of time prior to any special meeting.

§ 3.15. Council to fix salaries.

The town council is hereby authorized to fix the salaries of each of the members of the town council, ~~members of boards or commissions,~~ and all appointed officers. The salaries of the mayor, ~~recorder vice mayor,~~ and ~~councilmen~~ council members shall not be ~~charged~~ changed during the term for which they were elected.

§ 4.1. Appointment and qualifications.

There shall be a town manager, who shall be the executive officer of the town and shall be responsible to the town council for the proper administration of the town government. ~~He~~ The town manager shall be appointed by the town council for an indefinite term. ~~He~~ and shall serve at the pleasure of the town council. The town manager shall be chosen solely on the basis of his executive and administrative qualifications, with special reference to his actual experience in or knowledge of accepted practice in respect to the duties of his the office. At the time of ~~his~~ the appointment, ~~he~~ the town manager need not be a resident of the town or the Commonwealth, but during ~~his~~ the tenure of office, ~~he~~ shall reside within Clarke County.

§ 4.2. Duties.

It shall be the duty of the town manager to:

- (a) Attend all meetings of the town council, with the right to speak but not to vote.
- (b) Keep the town council advised of the financial condition and the future needs of the town and of all matters pertaining to its proper administration, and make such recommendations as may seem ~~to him~~ desirable.
- (c) Prepare and submit the annual budget to the town council and be responsible for its administration after its adoption.
- (d) Present adequate financial and activity reports as required by the town council.
- (e) Arrange for an annual audit by a certified public accountant, the selection of whom shall be approved by the town council.
- (f) Be responsible for the supervision of all town employees.
- (g) Perform such other duties as may be prescribed by this charter or required of him the town manager in accordance therewith by the town council or which may be required of

the chief executive officer of a town by the general laws of the Commonwealth, other than the duties conferred on the mayor by this charter.

§ 4.3. Powers as to town officers and employees.

All officers and employees of the town, except those appointed by the town council pursuant to this charter or the general laws of the Commonwealth, shall be appointed and may be removed by the town manager, who shall ~~report~~ advise the town council of each appointment or removal to the town council at the next meeting thereof promptly following any such appointment or removal.

§ 4.5. Council not to interfere in appointments or removals; relationship with council.

Neither the town council nor any of its members, including the mayor and vice mayor, shall direct or request, the appointment of any person to or ~~his~~ removal from any office or employment by the town manager or by any ~~of his~~ subordinates or in any way take part in the appointment or for removal of officers and employees of the town, except as specifically provided in this charter. Except for the purpose of inquiry, the town council and its members shall deal with the administrative services solely through the town manager, and neither the town council nor any member thereof shall give orders, either publicly or privately, to any subordinate of the town manager. ~~Any councilman violating the provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to be a councilman.~~

§ 4.6. Relations with boards, commissions and agencies.

The town manager shall have the right to attend and participate in the proceedings of, but not vote in, the meetings of all boards, commissions, or agencies created by this charter or by ordinance and any other board or commission the town council may designate.

§ 4.7. Acting town manager.

The town council shall designate by resolution a person to act as town manager in case of the extended absence, incapacity, death, or resignation of the town manager, until ~~his~~ the town manager's return to duty or the appointment of ~~his~~ a successor.

§ 5.1. Appointment.

The town council may appoint ~~such~~ the following officers of the town as ~~they~~ the town council may deem necessary. ~~Such officers may include, but shall not be limited to, a town manager, a town attorney, a town treasurer, a town assessor, a judge of the municipal court and justices of the peace:~~ town manager, assistant town manager for administration/treasurer, assistant town manager for community development/operations, and town attorney. Such officers shall be appointed for an indefinite term and shall serve at

the pleasure of the town council. The enumeration of officers in this section shall not be construed to require the appointment of any of such officers herein named. Officers appointed by the town council shall perform such duties as may be specified ~~in this charter~~ by the town council.

§ 5.2. Deputies and assistants.

The town council may ~~appoint such deputies and assistants to~~ establish a deputy or assistant position for the appointive offices as the town council may deem necessary.

The town manager shall appoint and supervise such deputies and assistants.

§ 7.2. Actions against town for damages, etc.

(a) No action shall be maintained against the town for damages for any injury to any person ~~or~~ or property alleged to have been sustained by reason of the negligence of the town, or any officer, agent, or employee thereof, unless ~~a written statement, verified by oath of the claimant, his agent or attorney, or the personal representative of any decedent whose death is a result of the alleged negligence of the town, its officers, agents or employees, of the nature of the claim and the time and place at which the injury is alleged to have occurred, or to have been received, shall have been filed with the mayor or an attorney appointed by the town council for this purpose, and the town is hereby authorized to appoint such an attorney, within sixty days after such cause of action shall have accrued. Where the claimant is an infant or non compos mentis, or the injured party dies within such sixty days, such statement may be filed within one hundred twenty days; provided, that if the complainant is compos mentis during such sixty day period but is able to establish by clear and convincing evidence that due to the injury sustained for which a claim is asserted that he was physically or mentally unable to give such notice within the sixty day period, then the time for giving notice shall be tolled until the claimant sufficiently recovers from such injury so as to be able to give such notice. No officer, agent or employee of the town shall have authority to waive such conditions precedent or any of them~~ notice is given to the town in accordance with § 15.2-209 of the Code of Virginia.

(b) In any action against the town to recover damages against it for any negligence in the construction or maintenance of its streets, alleys, lanes, parks, public places, sewers, reservoirs, or water mains, water treatment plant, wastewater treatment plant, stormwater system, or other town facilities, where any person or corporation is liable with the town for such negligence, every such person or corporation shall be joined as defendant with the town in such action brought to recover damages for such negligence, and where there is a judgment or verdict against the town, as well as the other defendant, it shall be

ascertained by the court or jury which of the defendants is primarily liable for the damages assessed.

(c) If it is ascertained by the judgment of the court that some person or corporation other than the town is primarily liable, there shall be a stay of execution against the town until execution against such person or persons or corporation or corporations shall have been returned without realizing the full amount of such judgment.

(d) If the town, when not primarily liable, shall pay such judgment in whole or in part, the plaintiff shall, to the extent that such judgment is paid by the town, assign the judgment to the town, without recourse on the plaintiff, and the town shall be entitled to have execution issued for its benefit against the other defendant or defendants who have been ascertained to be primarily liable, or may institute any suit to enforce such judgment or an action at law, or scire facias to revive such judgment.

(e) No order shall be entered or made, and no injunction shall be awarded by any court or judge, to stay proceedings of the town in the prosecution of their works, unless it be manifest that they, their officers, agents, or servants are transcending the authority given them in this charter, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

(f) The town council is authorized and empowered to compromise any claim for damages or any suit or action brought against the town.

#### § 7.3 Creation of debt; issuance of bonds.

The town council by a majority vote is authorized to cause the town ~~by a majority vote~~ to incur debt and to issue bonds, notes, and other evidences of indebtedness for the purposes and in the manner set forth for towns in the Constitution of the Commonwealth of Virginia and the Public Finance Act of 1991, Chapter 5.1 (§ 15.2-2600 et seq. of Title-~~15.1~~ 15.2 of the Code of Virginia of 1950, as amended), or any acts amendatory thereof or supplemental thereto.

#### § 8.4. Bonds of officers and employees.

The town council may require all or any officers and employees of the town to give bond for the faithful and proper discharge of their duties. As used herein, the words "officers and employees" shall include officers and employees paid solely or partly by the town. The town ~~may~~ shall pay the premium on such bonds from the town funds and may provide for individual surety bonds or for a bond covering all officers and employees or any group thereof. The bond shall be payable to the town as its interest may appear in event of breach of the conditions thereof.

#### § 8.6. United States government employees.

No person, otherwise eligible, shall be disqualified, by reason of his accepting or holding an office, post, trust, or emolument under the United States government, from serving as an officer or employee of the town, or as a member, officer, or employee of any board or commission.

§ 8.7. Acceptance of federal aid, contributions, etc.

The town shall have the power to receive and accept from any federal agency grants of any kind for or in aid of the construction of any project, the procuring or reserving of park land, open spaces or any recreational facility, and to do all such things or make any covenants or agreements which may be necessary or required in order to obtain and use such federal grants. The town may receive and accept aid or contributions from any source or money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made.

§ 8.10. Ordinances continued in force.

All ordinances now in force in the town of Berryville, not inconsistent with this charter, shall be and remain in force until altered, amended, or repealed by the town council.

§ 8.11. Severability of provisions.

If any clause, sentence, paragraph or part of this charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this charter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

2. That §§ 5.3 and 5.4, Chapter 6 (§§ 6.1, 6.2, and 6.3), and §§ 8.2, 8.3, and 8.5 of Chapter 112 of the Acts of Assembly of 1971 are repealed.

## **Chapter 309 Glasgow, Town of; amending charter, replaces references to town sergeant.**

An Act to amend and reenact §§ 4 through 7 of Chapter 486 of the Acts of Assembly of 1892, which provided a charter for the Town of Glasgow in Rockbridge County, relating to chief of police.

[H 2660]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 4 through 7 of Chapter 486 of the Acts of Assembly of 1892 are amended and reenacted as follows:

§ 4. Appointment, compensation, duties, and bonds of chief of police, clerk, and treasurer.

The council shall appoint annually a ~~sergeant~~ chief of police, clerk, and treasurer; and shall fix their compensation and prescribe their duties; and require such bonds as may be deemed proper.

§ 5. Chief of police to have powers of sheriff as to collection of taxes, levies, and fines and service and return of process.

The ~~sergeant~~ chief of police of said town, who shall from time to time be appointed under this ~~act~~ charter, shall have the like rights of distress and a power for collecting the taxes and levies made by said council of said town as sheriffs in similar cases, and shall be entitled to the same or like fees and commissions for collecting said taxes and levies, as are allowed sheriffs for collecting county levies, and in the service and return of all processes, and in the collection of all fines arising under the authority of this ~~act~~ charter, or of any bylaws made in pursuance hereof, he shall have and possess the same rights and powers and be entitled to the same or like fees and commissions as allowed by law to sheriffs for similar services.

§ 6. Chief of police to have powers and liabilities of constable as to collection of money and execution of warrants.

The ~~sergeant~~ chief of police of said town, upon entering into bond in the ~~county~~ general district court of Rockbridge ~~county~~ County, in the manner prescribed by law for constables, and with such conditions as constables are required by law to enter into, shall have all the power and authority of a constable in the collection of money by warrant or otherwise, and to execute any and all process to him directed, or which might have been so directed; and shall and may do and perform all acts, execute and return such warrants, and be liable in the same manner and to the same extent that constables are by laws now in force.

§ 7. Power of chief of police to arrest persons in violation of town ordinances.

The ~~sergeant~~ chief of police of said town shall be conservator of the peace, and shall have power to arrest in said town, or anywhere within Rockbridge ~~county~~ County, upon a warrant issued by the mayor, recorder, or councilmen, any person charged with a violation of the laws or ordinances of said town; and when a violation of the laws or ordinances of said town is committed in his presence, he shall have authority and power, without warrant, forthwith to arrest the offender, and carry him before some conservator of the peace of said town to be dealt with according to law.

## Chapter 310 Dumfries, Town of; amending charter, town council elections, etc.

An Act to amend and reenact § 1.02, § 3.01, as amended, §§ 6.02 and 6.04, and § 10.03, as amended, of Chapter 99 of the Acts of Assembly of 1994, which provided a charter for the Town of Dumfries in Prince William County, relating to boundaries, election, and budget.

[H 2670]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 1.02, § 3.01, as amended, §§ 6.02 and 6.04, and § 10.03, as amended, of Chapter 99 of the Acts of Assembly of 1994 are amended and reenacted as follows:

§ 1.02. Boundaries.

The present boundaries of the Town of Dumfries are as set out in a decree entered in Prince William County Circuit Court Law Case No. 2285, styled "In the Matter of the Annexation of Part of the Territory Known as Dumfries [now known as Potomac] Magisterial District to the Town of Dumfries," on the 30th day of December, 1966. Future boundaries shall be the same unless changed in accordance with law.

§ 3.01. Election, qualification and term of office.

(a) The Town of Dumfries shall be governed by a town council elected at large and composed of a mayor and six other members, all of whom shall be qualified voters of the town. Candidates for town offices shall not be identified on the ballot by political affiliation. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506 of the Code of Virginia (1950), as amended.

(b) On the ~~first Tuesday in May 1994~~ after the first Monday in November 2022, and every four years thereafter, there shall be elected by the qualified voters of the town a mayor and three council members from the town at large. On the ~~first Tuesday in May 1996~~ after the first Monday in November 2020, and every four years thereafter, there shall be elected three council members from the town at large.

(c) The persons elected shall take office on ~~July~~ January 1 succeeding their election and remain in office until their successors have qualified and taken office.

§ 6.02. Submission of budget and budget message.

On or before the ~~fifteenth~~ first day of April of each year, a budget for the ensuing fiscal year and an accompanying message shall be submitted to the council.

§ 6.04. Budget.

(a) The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the council may require. The budget shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed tax levies, user fees, assessments, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual income and expenditures of the preceding fiscal year.

(b) The total of proposed expenditures shall not exceed the total of estimated available funds.

(c) The budget each year will have a midyear review held in February.

§ 10.03. Citation of act.

This act may for all purposes be referred to or cited as the Charter for the Town of Dumfries, Virginia, of ~~2003~~ 2018.

## **Chapter 311 Dumfries, Town of; amending charter, town council elections, etc.**

An Act to amend and reenact § 1.02, § 3.01, as amended, §§ 6.02 and 6.04, and § 10.03, as amended, of Chapter 99 of the Acts of Assembly of 1994, which provided a charter for the Town of Dumfries in Prince William County, relating to boundaries, election, and budget.

[S 1691]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 1.02, § 3.01, as amended, §§ 6.02 and 6.04, and § 10.03, as amended, of Chapter 99 of the Acts of Assembly of 1994 are amended and reenacted as follows:

§ 1.02. Boundaries.

The present boundaries of the Town of Dumfries are as set out in a decree entered in Prince William County Circuit Court Law Case No. 2285, styled "In the Matter of the Annexation of Part of the Territory Known as Dumfries now known as Potomac Magisterial District to the Town of Dumfries," on the 30th day of December, 1966. Future boundaries shall be the same unless changed in accordance with law.

§ 3.01. Election, qualification and term of office.

(a) The Town of Dumfries shall be governed by a town council elected at large and composed of a mayor and six other members, all of whom shall be qualified voters of the town. Candidates for town offices shall not be identified on the ballot by political affiliation. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506 of the Code of Virginia (1950), as amended.

(b) On the ~~first~~ first Tuesday in ~~May 1994~~ after the first Monday in November 2022, and every four years thereafter, there shall be elected by the qualified voters of the town a mayor and three council members from the town at large. On the ~~first~~ first Tuesday in ~~May 1996~~ after the first Monday in November 2020, and every four years thereafter, there shall be elected three council members from the town at large.

(c) The persons elected shall take office on ~~July~~ January 1 succeeding their election and remain in office until their successors have qualified and taken office.

§ 6.02. Submission of budget and budget message.

On or before the ~~fifteenth~~ first day of April of each year, a budget for the ensuing fiscal year and an accompanying message shall be submitted to the council.

§ 6.04. Budget.

(a) The budget shall provide a complete financial plan of all town funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the council may require. The budget shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity, and object. It shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed tax levies, user fees, assessments, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual income and expenditures of the preceding fiscal year.

(b) The total of proposed expenditures shall not exceed the total of estimated available funds.

(c) The budget each year will have a midyear review held in February.

§ 10.03. Citation of act.

This act may for all purposes be referred to or cited as the Charter for the Town of Dumfries, Virginia, of ~~2003~~ 2018.

## **Chapter 313 Kenbridge, Town of; amending charter, staggers election of town council members.**

An Act to amend and reenact § 4, as amended, §§ 5 and 6, §§ 7, 8, and 9, as amended, and § 11 of Chapter 364 of the Acts of Assembly of 1942, which provided a charter for the Town of Kenbridge in Lunenburg County, relating to town council, elections, chief of police, and powers of the town.

[H 2740]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 4, as amended, §§ 5 and 6, §§ 7, 8, and 9, as amended, and § 11 of Chapter 364 of the Acts of Assembly of 1942 are amended and reenacted as follows:

§ 4. Composition of council and vacancies.

The council shall consist of a mayor and six other electors of the town, who shall be denominated the council of the town. The mayor and ~~councilmen~~ council members shall be elected for a term of ~~two~~ four years at a general election held for that purpose on the first Tuesday of May ~~of every even-numbered year as provided by law~~; and the persons so elected shall enter upon the duties of their office on the first day of July next succeeding their election, and shall continue in office until their successors are qualified. Every person elected a ~~councilman~~ council member of the town, shall, on or before the day on which he enters upon the performance of his duties, qualify by taking and subscribing an oath faithfully to execute the duties of his office to the best of his judgment; and the person elected mayor shall take and subscribe the oath prescribed by law for State officers.

Any such oath of ~~councilmen~~ council members and mayor may be taken before any officer authorized by law to administer oaths, and shall, when so taken and subscribed, be forthwith returned to the clerk of the town, who shall enter the same on record in the minute book of the council.

The ~~councilmen~~ council shall be the judge of the election, qualification, and returns of its members; may fine members for disorderly behavior; and, with the concurrence of two-

thirds of its membership, expel a member. If any person ~~be returned~~ is adjudged disqualified or is expelled, ~~the vacancy shall be filled by appointment by the council, a new election to fill the vacancy shall be held in the town on such date as the council may prescribe, except that where there shall be vacancies in the majority of the council, the vacancies shall be filled as provided by law~~ the circuit court of Lunenburg County shall fill such vacancies. Any vacancy occurring otherwise during the term for which any of the persons have been elected may be filled by the council by the appointment of anyone eligible for such office. A vacancy in the office of the mayor may be filled by the council from the electors of the town.

The mayor and council serving at the time of the passage of this act shall continue in office until their successors are elected and qualified. An election shall be held in May of 2020, and every four years thereafter, to elect three council members. An election shall be held in May of 2022, and every four years thereafter, to elect three other council members. An election shall be held for mayor in May of 2020 and every four years thereafter. The council shall declare by ordinance or resolution which three council member seats are up for election in 2020 and which three council member seats are up for election in 2022.

§ 5. Qualification of mayor and ~~councilmen~~ council members.

Any person, qualified to vote in the town in the election in which he or she offers shall be eligible to the office of mayor or ~~councilman~~ council member.

§ 6. Disqualification of mayor and ~~councilmen~~ council members.

Any member of the council who shall have been convicted of a felony while in office shall forfeit his or her office.

§ 7. Organization of meetings of council.

~~At eight o'clock post meridian on the first day in July following a regular municipal election, or if such day be a Saturday, Sunday or legal holiday, then on the day following, the council shall meet at the usual place for holding its meetings, at which time the newly elected mayor and councilmen, after first having taken the oaths prescribed by law, shall assume the duties of their offices. At the regularly scheduled June town council meeting immediately following a regular municipal election, the council shall meet at the usual place for holding its meetings, at which time any newly elected mayor and council members shall take the oath of office. On July 1 immediately following a regular municipal election, such mayor and council members shall assume the duties of their offices. At its first meeting the council shall elect from its members a person to serve as vice-mayor for the following two years. Thereafter the council shall meet at such times as may be prescribed by ordinance or resolution. The mayor or any three members of the council may~~

call special meetings of the council at any time after giving at least twelve hours written notice to the other members of the purpose, place, and time of such special meeting. Special meetings may also be held at any time without notice, provided all members of the council attend.

A majority of all members shall constitute a quorum, but a smaller number may adjourn from time to time, and compel the attendance of absentees.

The council shall fix the compensation of its members and of all other officers and/or agents and employees of the town.

§ 8. Powers of mayor.

The mayor shall be the chief executive officer of the town. He or she shall control the police of the town, and may appoint special police officers when he or she deems it necessary.

All bylaws and ordinances, before they become valid and operative, shall have his or her signature, but the mayor shall vote only in cases where the vote is a tie.

In the absence or disability of the mayor, or in the event of the death or resignation of the mayor, his or her duties shall be performed by the vice-mayor.

In addition to the powers and duties herein specifically enumerated, the mayor shall be vested with all such other powers and charged with all such other duties, not in conflict herewith, as are provided the Constitution and general laws of the State.

§ 9. Law-enforcement officers.

There shall be a chief of police for the town who shall be elected by the council, and who shall serve at the will and pleasure of the council.

~~The chief of police for~~ police chief shall be the chief police officer of the town and shall perform such duties and be invested with such authority as was provided by the common law for constables is provided by the general law for sergeants or police chiefs of towns, and shall perform such other duties and be invested with such other authority as the council may prescribe.

§ 11. Powers of the town.

A. The Town of Kenbridge shall have and may exercise all powers that are now or hereafter may be conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers by this charter shall be held to be exclusive and shall have, exercise, and enjoy all the rights, immunities, powers, and privileges, and be subject to all the duties and obligations, now appertaining to and incumbent on the town as a municipal corporation.

B. The powers set forth in §§ 15.2-1100 through 15.2-1133 of the Code of Virginia, as amended, are hereby conferred on and vested in the Town of Kenbridge.

C. The powers of eminent domain as set forth in Titles 15.2 and 25.1 of the Code of Virginia, as amended, are hereby conferred upon the Town of Kenbridge.

D. In addition to the powers mentioned in this section and in § 1-~~hereof~~ of this charter, the said Town of Kenbridge shall have the following powers:

First: To raise annually by taxes and assessments in said town such sums of money as the council thereof shall deem necessary for the purposes of said town, and in such manner as said council shall deem expedient, in accordance with the Constitution of this State and the United States, and of the general laws of the State in pursuance thereof.

Second: To impose special or local assessments for local improvements and enforce payment thereof, subject however, to such limitations prescribed by the Constitution of Virginia as may be in force at the time of the imposition of such special or local assessments.

Third: To contract debts, borrow money, and make and issue evidence of indebtedness.

Fourth: To expend the money of the town for all lawful purposes.

Fifth: To acquire by purchase, gift, devise, condemnation or otherwise, property, real or personal, or any estate or interest therein, within or without said town for any of the purposes of the town; and to hold, improve, sell, lease, or dispose of the same or any part thereof, including any property now owned by the town.

Sixth: To own, operate, and maintain water works and to acquire within or without said town such water lines, property rights, and riparian rights as the council of said town may deem necessary for the purpose of providing an adequate water supply for said town, and of piping or conducting the same into the town; to lay all necessary mains and service lines, either within or without the corporate limits of said town with which to distribute said water, and to charge and collect water rents therefor; to erect and maintain all necessary dams, pumping stations, filter plants, or other works in connection therewith; to make reasonable rules and regulations for promoting the purity of its said water supply and for protecting the same from pollution; and to do all things necessary in order to provide an adequate public water system for the town.

Seventh: To establish, construct, and maintain sanitary sewers, sewer lines, sewerage disposal plants and systems, and to require the owners or occupiers of real estate within the corporate limits of the town, which may front or abut on the line of any such sewer system to make connection therewith, and to use such sewer facilities as may be furnished by the town, under such ordinances and regulations as the council may deem necessary or proper for the proper disposal of sewerage and to improve and secure

sanitary conditions; to charge, assess and collect reasonable fees, rentals, or assessments or costs of service for connecting with and using such sewers, and to make regulations for the use, enjoyment, protection, and care of such sewers and sewer systems; and the power to enforce the observance of all such ordinances and regulations by the imposition and collection of fines and penalties for noncompliance thereof, as other fines and penalties for violation for the ordinances of the town are collected.

Eighth: In every case where a street, alley, park or public property of the town has been, or shall be, occupied or encroached upon by a fence, building, porch, projection, or otherwise, without first having obtained consent thereto from the town council or a franchise thereof, such occupancy or encroachment shall be deemed a nuisance, and the owner or occupant of the premises encroaching, upon conviction of so doing, shall be fined not less than five (\$5.00) nor more than fifty (\$50.00) dollars, and each day's continuance of the said occupancy or encroachment shall constitute a separate offense, such fine to be recovered in the name of the town and for its use, and the town council may require the owner of the premises encroaching, if know, or if not known, the occupant thereof, to remove the encroachment within a reasonable time, and if such removal be not made within the time prescribed by the council, to cause the encroachment to be removed and collect from the owner, or if the owner be not know, the occupant, all reasonable charges therefor with costs, by the same process that they are authorized by law to collect taxes. No encroachment upon any street or alley, however long continued, shall constitute any adverse possession to, or confer any rights upon the person claiming thereunder, as against the town.

Ninth: To issue bonds in such manner and for such purposes as are provided in ~~Chapter one hundred and twenty-two of the Code of Virginia~~ by general law.

Tenth: To inspect, test, measure, and weigh any commodity or commodities or articles of consumption for use within the town; and to establish, regulate, license, and inspect weights, meters, measures and scales.

Eleventh: To license and regulate the holding and location of shows, circuses, public exhibitions, carnivals, and other similar shows or fairs, or prohibit the holding of the same, or any of them, within the town or within one mile thereof.

Twelfth: To require every owner of motor vehicles residing in the said town, on a date to be designated by the council, to annually register such motor vehicles and to obtain a license to operate the same by making application to the treasurer of the said town, or such other person as may be designated by the council of the said town to issue said license and to require the said owner to pay an annual license fee therefor to be fixed by

the council; provided that the said license fee shall not exceed the amount charged by the State on the said machine.

Thirteenth: To construct, maintain, regulate and operate public improvements of all kinds, including municipal and other buildings, armories, sewage disposal plants, jails, comfort stations, markets, and all buildings and structures necessary or appropriate for the use and proper operation of the various departments of the town; and to acquire by condemnation or otherwise, all lands, riparian and other rights, and easements necessary for such improvements, or any of them, either within or without the town, and to construct, maintain, and aid therein roads and bridges to any property owned by the said town and situated beyond the corporate limits thereof, and to acquire land necessary for the aforesaid purposes, by condemnation or otherwise.

Fourteenth: To charge and collect fees for permits to use public facilities and for public services and privileges. The said town shall have the power and right to charge a different rate for any service rendered or convenience furnished to citizens without the corporate limits from the rates charged for similar service to citizens within the corporate limits.

Fifteenth: To compel the abatement and removal of all nuisances within the town or upon property owned by the town beyond its limits at the expense of the person or persons causing the same, or the owner or occupant of the ground or premises whereon the same may be, and to collect said expense by suit or motion or by distress and sale; to require all lands, lots, or other premises within the town, to be kept clean and sanitary and free from stagnant water, weeds, filth and unsightly deposits, or to make them so at the expense of the owners or occupants thereof, and to collect said expense by suit or motion or by distress and sale; to regulate, or prevent slaughter houses or other noisome or offensive business within the said town, the keeping of hogs or other animals, poultry or other fowl therein, or the exercise of any dangerous or unwholesome business, trade or employment therein; to regulate the transportation of all articles through the streets of the town; to compel the abatement of smoke and dust and prevent unnecessary noise; to regulate the location of stables and the manner in which they shall be kept and constructed; to regulate the location, construction, operation, and maintenance of billboards, signs, advertising, and generally to define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, aesthetic, safety, convenience, and welfare of the inhabitants of the town, and to require all owners or occupants of property having sidewalks in front thereof to keep the same clean and sanitary, and free from all weeds, filth, unsightly deposits, ice and snow.

Sixteenth: To provide for regular and safe construction of houses in the town for the future, and to provide a building code for the town, to provide setback lines on the streets beyond which no building may be constructed, to require the standard of all dwelling houses to be maintained in residential sections in keeping with the majority of residences therein, and to require the standard of all business houses to be maintained in business sections in keeping with the majority of the business houses therein.

Seventeenth: To prevent any person having no visible means of support, paupers, and persons who may be dangerous to the peace and safety of the town, from coming to said town from without the same; and also to expel therefrom any such person who has been in said town less than twelve months.

Eighteenth: To restrain and punish drunkards, vagrants, and street beggars, to prevent and quell riots, disturbances and disorderly assemblages; to suppress houses of ill-fame and gambling houses; to prevent and punish lewd, indecent and disorderly exhibitions in said town; and to expel therefrom persons guilty of such conduct who have not resided therein as much as one year.

Nineteenth: To offer and pay rewards for the apprehension and conviction of criminals.

Twentieth: To enjoin and restrain the violation of any town ordinance or ordinances, although a penalty is provided upon conviction of such violation.

Twenty-first: In so far as not prohibited by general law, to pass and enforce all by-laws, rules, regulations and ordinances which it may deem necessary for the good order and government of the town, the management of its property, the conduct of its affairs, the peace, comfort, convenience, order, morals, health and protection of its citizens of their property and to do such other things and pass such other laws as may be necessary or proper to carry into full effect, all powers, authority, capacity, or jurisdiction, which is or shall be granted to or vested in said town, or in the council, court, or officers thereof, or which may be necessarily incident to a municipal corporation.

Twenty-second: To do all things whatsoever necessary or expedient and lawful to be done for promoting or maintaining the general welfare, comfort, education, morals, peace, government, health, trade, commerce, or industries of the town, or its inhabitants.

Twenty-third: To prescribe any penalty for the violation of any town ordinance, rule, or regulation or of any provision of this charter, not exceeding five hundred dollars fine or twelve months' imprisonment in jail, or both.

Twenty-fourth: To own, operate and maintain electric light works, either within or without the corporate limits of the town and to supply electricity whether the same be generated or purchased by said town, to its customers and consumers both without and within the corporate limits of said town, at such price and upon such terms as it may prescribe, and

to that end it may contract and purchase electricity from the owners thereof upon such terms as it may deem expedient.

Twenty-fifth: To exercise the power of eminent domain within this State with respect to lands and machinery, equipment or improvements thereon, for any lawful purposes of the said town.

Twenty-sixth: Except when prohibited by general law, the town may levy a tax or a license on any person, firm or corporation pursuing or conducting any trade, business, profession, occupation, employment or calling whatsoever within the boundaries of the town, whether a license may be required therefor by the State or not, and may provide penalties for any violation thereof.

Twenty-seventh: A lien shall exist on all real estate within the corporate limits for taxes, levies, and assessments in favor of the town, together with all penalties and interest due thereon, assessed thereon from the commencement of the year for which the same were assessed and the procedure for collecting the said taxes, for selling real estate for town taxes and for the redemption of real estate sold for town taxes shall be the same as provided in the general law for the State, to the same extent as if the provisions of said general law were herein set out at length. The said town shall have the benefit of all other and additional remedies for the collection of town taxes which are now or hereafter may be granted or permitted under the general law.

Twenty-eighth: To extinguish and prevent fires, and to establish, regulate and control a fire department or division, to regulate the size, height, materials, and construction of buildings, fences, walls, retaining walls, and other structures hereafter erected in such a manner as the public safety and convenience may require; to remove and require to be removed or reconstructed any building, structure, or addition thereto, which by reason of dilapidation, defect of structure, or other cause may be dangerous to life or property, or which may be erected contrary to law; to establish and designate from time to time fire limits, within which limits wooden buildings shall not be constructed, added to, enlarged, or repaired and to direct that any or all buildings within such limits shall be constructed of stone, natural or artificial, concrete, brick, iron, or other fireproof material; to construct dams across any of the streams within said town for the purpose of providing an adequate supply of water with which to combat fires, and to prohibit the release of water contained in such dams within said town as may be now owned or hereafter constructed by others, in times of drought, in order to provide an adequate supply of water with which to combat fires; and to enact such laws as may be necessary to provide for the protection of the citizens and property of the town from fire, or for securing the safety of persons from fires in halls and buildings used for public assemblies.

Twenty-ninth: To regulate the keeping of gunpowder, nitro-glycerin, or other explosive or combustible substances; and to regulate or prohibit the exhibition or possession of fireworks, the discharge of fire arms, and the making of bonfires within the said town.

Thirtieth: To prohibit from and punish minors for frequenting, playing in, and loitering in any public pool room, billiard parlor, or bowling alley, and to punish any proprietor or agent thereof for permitting same.

Thirty-first: Except when prohibited by general law, to prohibit any person, firm, or corporation from pursuing or conducting any trade, business, profession, occupation, employment, or calling within the boundaries of the town on the Sabbath.

Thirty-second: Except when prohibited by general law the said town shall have the power to regulate the speed and manner in which all vehicles, motordriven or otherwise, shall operate in the said town.

## **Chapter 315 Capron, Town of; new charter (previous charter repealed).**

An Act to provide a new charter for the Town of Capron in Southampton County and to repeal Chapter 188 of the Acts of Assembly of 1914, which provided a charter for the Town of Capron.

[H 2808]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1.

CHARTER

FOR THE

TOWN OF CAPRON.

CHAPTER 1.

INCORPORATION AND BOUNDARIES.

§ 1.1. Incorporation.

A. Be it enacted by the General Assembly of Virginia that the Town of Capron, in the County of Southampton, as the same has heretofore been or may hereafter be laid off in lots, streets, and alleys, has been made a town corporate by the name of the "Town of

Capron," and by that name has exercised the powers conferred upon towns by the General Assembly and the Code of Virginia, and is subject to all the provisions of said Code, and to all laws now in force, or which may hereafter be enacted in reference to the government of towns of less than 5,000 inhabitants, so far as the same are not inconsistent with the provisions of this act.

B. The inhabitants of the territory comprised within the present limits of the Town of Capron, hereinafter referred to as "Town," as such limits are now or may hereafter be altered and established by law, constitutes and continues a body politic and corporate, known and designated as the "Town of Capron," and as such shall have perpetual succession, may sue and be sued, implead and be impleaded, contract and be contracted with, and have a corporate seal that it may alter, renew, or amend at its pleasure by proper ordinance.

§ 1.2. Boundaries.

The territory embraced within the Town is that territory in the County of Southampton, Virginia, established in the Acts of the General Assembly, and all Acts amendatory thereof, by annexation and by the order of the Circuit Court of Southampton County as follows, beginning at a point on the Courtland road about 70 yards northeast of the intersection of said road with Main Street; thence in a westerly direction along said Courtland road to the northeast corner of J.N. Applewhite's residence lot; thence along said Applewhite's lot in a westerly direction a straight line a distance of 70 yards; thence in a southerly direction parallel with Main Street and 70 yards distance from same to a point within 70 yards of the northern line of the Southern Railway's right-of-way; thence westerly parallel with the said right-of-way and 70 yards north of same to Church Street; thence westerly across said Church Street and along the northern boundary of said right-of-way to a point 140 yards west of said Church Street; thence in a southeasterly direction across said right-of-way, parallel with Church Street and 140 yards west of same to a point 140 yards west of the intersection of Church and Main Streets; thence south in a line 140 yards west of the western boundary of Main Street and parallel with the same to the new road; thence easterly along said new road across Main Street to a point 140 yards east of the eastern boundary of Main Street and opposite the intersection of the new road and Main Street; thence in a northerly direction along a line parallel with Main Street and 140 yards east of the eastern boundary of same to a point within 140 yards of Elm Avenue; thence in a easterly direction parallel with Elm Avenue and 140 yards opposite a culvert in said Avenue, thence in a northerly direction across said Avenue at culvert to the north side of the Southern Railway's right-of-way; thence westerly along said right-of-way to a point 70 yards east of the eastern boundary line of Main Street; thence in a northerly

direction parallel with said Main Street and 70 yards east of same to the Courtland road, the point of beginning.

## CHAPTER 2.

### POWERS.

#### § 2.1. General grant of powers.

The Town shall have and may exercise all powers that are now or hereafter may be conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers by this Charter shall be held to be exclusive, and the Town shall have, exercise, and enjoy all the rights, immunities, powers, and privileges and be subject to all the duties and obligations now pertaining to and incumbent on the Town as a municipal corporation.

#### § 2.2. Adoption of powers granted by the Code of Virginia.

The powers granted in § 2.1 of this Charter include specifically, but are not limited to, all powers set forth in Chapter 11 (§ 15.2-1100 et seq.) of Title 15.2 of the Code of Virginia.

## CHAPTER 3.

### MAYOR AND TOWN COUNCIL.

#### § 3.1. Composition of Town Council; election qualification and term of office of Mayor and Council Members.

The Town shall continue to be governed by a Mayor and a Town Council composed of six Council Members, all of whom shall be qualified electors of the Town and shall serve for terms of two years and until their successors are appointed or elected and qualified as provided by law.

#### § 3.2. When terms of office to begin.

Terms of office for Mayor and Council Members shall begin on the first day of July next following their election.

#### § 3.3. Oath of office.

The Mayor and Council Members shall each, before entering upon the duties of their office, make oath or affirmation that they will truly, faithfully, and impartially discharge the duties of their office to the best of their abilities, so long as they shall continue therein.

The Clerk of the Circuit Court of Southampton County, Virginia, shall administer such oath.

#### § 3.4. Election and term of Vice Mayor.

The Town Council, by a majority vote at the first meeting following each council election, shall elect from its members a Vice Mayor who shall serve at the discretion of the Town Council.

§ 3.5. Vacancies in office of Mayor and Council Members.

Vacancies in the office of the Mayor and Council Members shall be filled for the unexpired portion of the term by a majority vote of the Council Members within 90 days after the vacancy occurs. Persons so elected to fill vacancies shall be qualified voters and residents of the Town.

§ 3.6. Town Council a continuing body.

The Town Council shall be a continuing body, and no measures pending before such body or any contract or obligation incurred shall abate or be discontinued by reason of the expiration of the term of office or removal of any of its members.

§ 3.7. Powers and duties of Mayor and Vice Mayor.

The Mayor shall be the chief executive officer of the Town and shall have and exercise all power and authority conferred by general law not inconsistent with this Charter. The Mayor shall be recognized as the head of the Town government for all ceremonial purposes. The Mayor shall preside over the meetings of the Town Council and perform such other duties as may be prescribed by this Charter, Town ordinances, the general laws, and such as may be imposed by the Town Council consistent with the office. The Mayor shall be entitled to vote upon measures pending before the Town Council only in the event of a tie. The Mayor shall see that the duties of the various Town officers are faithfully performed. The Mayor shall see that peace and order are preserved and that persons and property are protected within the Town and the corporate limits thereof. The Mayor may issue all warrants charging violation of any ordinances of the Town. During the absence of the Mayor or the inability of the Mayor to act, the Vice Mayor shall possess the powers and discharge the duties of the Mayor.

§ 3.8. Absence or inability of Mayor and Vice Mayor.

If both the Mayor and Vice Mayor are absent or unable to act, the Town Council shall, by a majority vote of the members present, elect from its members a person to serve as acting Mayor at that meeting or until either the Mayor or Vice Mayor is present and able to act. Whenever it is necessary to elect an acting Mayor pursuant to this section, the acting Mayor shall possess the powers and discharge the duties of the Mayor from the time of election until the Mayor is present and able to act. The Town Clerk or acting Town Clerk shall call the meeting of the Town Council to order and shall preside until an acting Mayor is elected. This shall not be construed to vest in the Town Clerk any of the powers and duties of the Mayor, except as expressly stated in this section.

§ 3.9. General powers and duties of the Town Council.

A. The Town Council shall be responsible for the determination of all matters of policy for the Town and for ensuring the implementation thereof.

B. The Town Council shall have the full powers and authority that are now or may hereafter be granted to councils of towns by the general laws of the Commonwealth of Virginia and by this Charter.

C. The Town Council shall have the power to make motions, adopt ordinances and resolutions, enforce the same, and exercise all powers granted by this Charter and by the laws of the Commonwealth of Virginia.

D. The Town Council may create and appoint such boards, bodies, departments, officers, or consultants, define their duties, and set compensation as may be permitted or required by this Charter, Town ordinances, or the general laws of the Commonwealth of Virginia.

E. The Town Council shall have the power to establish rules for the collection of garbage and other debris and the disposal of offal, ashes, leaves, limbs, garbage, carcasses of unclaimed dead animals, and other refuse; to make reasonable charges therefor; to acquire and operate equipment for the disposal of such materials; to ensure that operators are legally licensed to operate such equipment; and to contract and regulate the collection and disposal thereof.

F. The Town Council shall have the power to acquire by purchase, gift, devise, condemnation, or otherwise property, real or personal, or any estate therein within or without the Town for any legal purpose of the Town and to hold, improve, lease, sell, or otherwise dispose of the same or any part thereof, including any property owned by the Town.

G. The Town Council shall have the power to construct, maintain, regulate, and operate Town property of all kinds, including municipal and other buildings.

H. The Town Council shall have the power to grant franchises for public utilities in accordance with the provisions of the Constitution of Virginia, Town ordinances, and general laws, provided, however, that the Town shall at all times have the power to construct, own, operate, manage, sell, encumber, or otherwise dispose of, either within or without the Town, any and all public utilities for the Town and to sell the services thereof, any existing franchises notwithstanding.

I. The Town Council shall have the following powers to regulate and prohibit public nuisances:

1. To regulate and compel the abatement and removal of nuisances within the Town, or upon property owned by the Town beyond its limits, at the expense of the person or

persons causing the same or of the owner or occupant of the grounds or premises whereon the same may be, and to collect said expenses by suit or motion, or by distress and sale, including transportation through streets, smoke and dust, noise, things detrimental to public health, and sidewalks.

2. To require all lands, lots, and other premises within the Town to be kept clean, sanitary, and free from stagnant water, weeds, filth, and unsightly deposits, to make them so at the expense of the owners and occupants thereof, and to collect said expenses by suit, lien, and by distress and sale.

3. To regulate and prohibit animals being kept or running at large in the Town or any portion thereof.

4. To regulate or prohibit the conduct of any dangerous, offensive, or unhealthful business, trade, or employment; the transportation of any offensive substance; the manufacture, storage, transportation, possession, and use of any explosive or flammable substance; and the use and exhibition of fireworks and the discharge of firearms. The Town Council may regulate the maintenance of safety devices on storage equipment for such substances or items as provided by the Constitution of Virginia and § 15.2-1113 of the Code of Virginia, as amended from time to time.

5. To prohibit indecent and disorderly conduct within the Town limits.

6. To prohibit and punish for mischievous, wanton, or malicious damage to public property and private property.

J. The Town Council shall have the power to offer and pay rewards for the apprehension and conviction of criminals.

K. The Town Council shall have the power to provide fire protection, suppression, and public safety.

L. The Town Council shall have the power to name or alter the names of streets within the Town limits.

M. The Town Council shall have the power to establish, regulate, and maintain parks, playgrounds, and public grounds and to keep them lighted and in good repair.

N. The Town Council shall have the power to plant, maintain, or remove shade trees and shrubs along the streets and upon such public grounds to prevent the obstruction of such streets and highways.

O. The Town Council shall have the power to take such actions as to promote the beautification of the Town.

P. The Town Council shall have the power to extend or contract the corporate limits of the Town as provided by the Constitution and general laws of the Commonwealth of Virginia in force at the time.

Q. The Town Council shall have the power to put into force and effect by ordinance any and all of the foregoing powers and any other powers and authorities of the said council given by this Charter, Town ordinances, or any state law, or any amendments thereto; and to prescribe punishment for the violation of any Town ordinance, rule, or regulation, or of any provision of this Charter.

R. The Town Council shall have the power to regulate the size and improvement of lots or parcels of land within the Town limits, including the authority to adopt zoning ordinances and appoint a planning commission, a board of zoning appeals, and a zoning administrator as permitted by the Constitution and general laws of the Commonwealth of Virginia.

S. The Town Council shall have the power to own, operate, and regulate a water system, sewage system, or both.

T. The Town Council shall have the power to own, operate, and regulate a Town cemetery, a Town dump, and other lands outside the Town limits.

#### § 3.10. Meetings of Town Council.

The Town Council shall hold at least one public meeting each month with a time and date being fixed by ordinance. A journal shall be kept of its official proceedings. The Town Clerk upon the request of the Mayor or any three Council Members shall call special meetings. Reasonable notice of such special meeting shall be given to each Council Member and the Mayor as set forth in the Constitution of Virginia and Title 15.2 of the Code of Virginia, as amended from time to time.

#### § 3.11. Rules of order and procedure.

The Town Council shall establish its own rules of order and procedure and may punish its own members and other persons for violations thereof.

#### § 3.12. Town Council to fix salaries.

The Mayor and Town Council may receive a stipend for each regular monthly meeting attended or a per diem allowance for services, the amount thereof to be fixed by the Town Council during the budget process of an election year.

### CHAPTER 4.

#### APPOINTIVE OFFICERS.

##### § 4.1. Appointment.

The Town Council may appoint such officers of the Town as it deems necessary. Such officers may include, but shall not be limited to, a Town Clerk, a Town Treasurer, a Supervisor of Public Works, and a Town Sergeant. Officers appointed by the Town Coun-

cil shall perform such duties as may be specified in this Charter, by the laws of the Commonwealth of Virginia, by Town ordinances, and by the Town Council.

§ 4.2. Terms of office.

Officers, deputies, and assistant officers appointed by the Town Council shall serve at the will and pleasure of the Town Council.

§ 4.3. Appointment of one person to more than one office.

The Town Council in its discretion may appoint the same person to more than one appointive office, subject to such limitations as are set forth in the Constitution of Virginia and Title 15.2 of the Code of Virginia, as amended from time to time.

§ 4.4. Residence of officers and employees.

Any appointive officer or employee of the Town may be appointed and serve whether the appointee be a resident or nonresident of the Town.

CHAPTER 5.

FINANCIAL PROVISIONS.

§ 5.1. Fiscal year.

The fiscal year of the Town shall begin July 1 of each year and end on June 30 of the year following, but the same may be changed by action of the Town Council where not inconsistent with the laws of the Commonwealth of Virginia.

§ 5.2. Assessment of taxes.

A. The Town Council shall provide to Southampton County's Commissioner of Revenue current Town tax rates for personal and real estate property within the Town limits and collect the same to any extent not prohibited by the laws of the Commonwealth of Virginia, such rates to be established by the Town Council.

B. The Town shall have the power to impose a business license fee and shall collect a percentage of gross sales reported to the Town Clerk by each business annually, such rate to be established by the Town Council.

§ 5.3. Registration of motor vehicles.

The Town shall have the power to impose license requirements and collect the same to any extent not prohibited by the laws of the Commonwealth of Virginia.

§ 5.4. Other revenue-generating activity.

The Town shall have the power to engage in other revenue-generating activities to any extent not prohibited by the laws of the Commonwealth of Virginia.

§ 5.5. Actions against the Town for damages, etc.

The Town Council is authorized and empowered to compromise any claim for damages or any suit or action brought or threatened against the Town.

§ 5.6. Creation of debt; election on issuance of bonds.

The Town Council shall have the power to borrow money, encumber the assets of the Town, and issue bonds under any provisions of the Constitution of Virginia and general laws of the Commonwealth of Virginia.

§ 5.7. Bonds of officers and employees.

The Town Council may require any or all Town officers and employees to give bond for the faithful and proper discharge of their duties. As used herein, "officers and employees" shall include officers, employees, and consultants paid solely or partly by the Town. The Town may pay a premium on such bonds from the Town funds and may provide for individual surety bonds or for a bond covering all officers and employees or any group thereof. The bond shall be payable to the Town as its interest may appear in the event of a breach of the conditions thereof.

CHAPTER 6.

MISCELLANEOUS.

§ 6.1. Elections governed by state law.

All Town elections shall be held and conducted in the manner prescribed by the laws of the Commonwealth of Virginia.

§ 6.2. Present ordinances continued in effect.

All ordinances now in force in the Town, not inconsistent with this Charter, shall be and remain in force until altered, amended, or repealed by the Town Council.

§ 6.3. Applicability outside the Town.

All ordinances of the Town, so far as they are applicable, shall apply on, in, or to all land, buildings, and structures owned by or leased or rented to the Town and located outside the Town.

§ 6.4. Severability of provisions.

If any clause, sentence, paragraph, or part of this Charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Charter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

2. That Chapter 188 of the Acts of Assembly of 1914 is repealed.

## **Chapter 316 Grottoes, Town of; amending charter, extends term of mayor to four years.**

An Act to amend and reenact § 3, as amended, of Chapter 571 of the Acts of Assembly of 1997, which provided a charter for the Town of Grottoes in Rockingham County, relating to mayor.

[H 2809]

Approved March 8, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 3, as amended, of Chapter 571 of the Acts of Assembly of 1997 is amended and reenacted as follows:

§ 3. Election of the mayor and council persons; vacancies; time of meeting; appointment of vice-mayor.

A. Notwithstanding the provisions of § 24.2-222 of the Code of Virginia, on the first Tuesday in November in each even-numbered year, there shall be elected a mayor and three council persons from the town at large, as well as council persons to fill vacancies, if any, whose terms of office shall begin on the first day of January following such election, but in cases of filling vacancies, the term shall begin immediately, and they shall serve until their successors shall be duly elected and qualify. In order to transition from a May to November election date, any mayor or council person elected in 1996 for a four-year term, or in 1998 for a two-year term, shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 2000 and shall take office on the January 1 following his election. Any council person elected in 1998 for a four-year term shall hold office until his successor has qualified. His successor shall be elected on the Tuesday after the first Monday in November 2002 and shall take office on the January 1 following his election.

B. ~~The~~Beginning in 2020, the mayor shall be elected for a term of ~~two~~ four years; council persons shall serve for terms of four years each.

C. The council shall be a continuing body, and no measure pending before such body shall abate or be discontinued by reason of expiration of the term of office of the council persons or any member. Vacancies in the council shall be filled for the unexpired terms by a majority vote of the remaining members until the next ensuing regularly scheduled

general election for the office, or if the vacancy occurs within 120 days of such regularly scheduled general election, at the second such ensuing election. The present mayor and council persons shall continue in office until the expiration of the term for which they were respectively elected.

D. The council shall, by ordinance, fix the time for the regular meetings. Special meetings shall be called by the clerk of the council upon request of the mayor or any three council persons; reasonable notice of each special meeting shall be given each member of the council; no business shall be transacted at a special meeting except that for which the special meeting is called, unless the council is unanimous.

E. The council may, by ordinance, appoint one of its members to serve as vice-mayor during his or her term of office.

## **Chapter 370 Energy career cluster; Department of Education, et al., to establish, report.**

An Act to require the Department of Education to establish an energy career cluster.

[H 2008]

Approved March 12, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Department of Education, in consultation with representatives from pertinent industries such as renewable energy, natural gas, nuclear energy, coal, and oil, shall establish as its seventeenth approved career cluster an energy career cluster. In developing the energy career cluster, the Department of Education shall base the knowledge and skill sets contained in such career cluster on the energy industry competency and credential models developed by the Center for Energy Workforce Development in partnership with the U.S. Department of Labor. The Department of Education shall report to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than December 1, 2019, on its progress toward establishing such energy career cluster.

## **Chapter 371 Energy career cluster; Department of Education, et al., to establish, report.**

An Act to require the Department of Education to establish an energy career cluster.

[S 1348]

Approved March 12, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Department of Education, in consultation with representatives from pertinent industries such as renewable energy, natural gas, nuclear energy, coal, and oil, shall establish as its seventeenth approved career cluster an energy career cluster. In developing the energy career cluster, the Department of Education shall base the knowledge and skill sets contained in such career cluster on the energy industry competency and credential models developed by the Center for Energy Workforce Development in partnership with the U.S. Department of Labor. The Department of Education shall report to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than December 1, 2019, on its progress toward establishing such energy career cluster.

## **Chapter 399 Electric utilities; protection of customer data.**

An Act to require the State Corporation Commission to convene a stakeholder group on consumer data protection issues.

[H 2332]

Approved March 14, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That by September 1, 2019, the State Corporation Commission (Commission) shall convene and facilitate a Data Access Stakeholder group to review and consider the following subjects:

1. Customer privacy considerations, including the establishment of the definitions for, and the protection of, personally identifiable information and energy usage data resulting from the deployment of advanced metering infrastructure by the electric utility;
2. The impact of data sharing on the physical and cybersecurity of utility infrastructure and systems;
3. Aggregating anonymized energy usage data;
4. The format for data access that is customer-friendly and computer-friendly;
5. Ensuring that standards and practices for access to data adhere to nationally recognized standards and best practices;
6. Opt-in/opt-out conditions for access to customers' utility usage data by the electric utility, a contracted agent, and a third party;
7. Current data access and sharing provisions resulting from the deployment of advanced metering infrastructure implemented by other utilities in the Commonwealth;
8. Costs of and cost recovery mechanisms for changes to electric utility infrastructure needed to implement regulations; and
9. Notice requirements by utilities to customers regarding the types of energy usage data being collected, how that data is used by the utility to provide the utility service, how customers can access their data, how the customer can manage and direct what specific information from their energy usage data can be shared, with whom this data can be shared outside the utility, and when the data can be shared.

The Data Access Stakeholder group shall conclude its work no later than April 1, 2020, and the Commission shall report the recommendations of the Data Access Stakeholder group to the General Assembly.

## **Chapter 401 Highways, Commissioner of; report on operation of overweight trucks on highways.**

An Act to direct the Commissioner of Highways to report certain data on overweight trucks.

[H 2800]

Approved March 14, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Commissioner of Highways shall report annually by December 1 to the

Governor, the General Assembly, and the Commonwealth Transportation Board regarding the operation of overweight vehicles on highways of the Commonwealth. The report shall include, at a minimum, (i) data regarding the frequency and severity of incidents and crashes involving overweight trucks compared to other trucks, (ii) the maintenance and infrastructure needs of routes frequently used by overweight trucks and comparison of such needs to similar routes not frequented by such trucks, and (iii) the estimated number of additional vehicle miles that would be necessary if such vehicles were not permitted to carry overweight loads. In submitting the report, the Commissioner shall indicate if additional data is needed to provide further reports, and if so, include a proposal for additional data collection. Nothing herein shall be construed to require the Commissioner to prospectively gather additional data not already collected by the Commissioner or any transportation agency.

2. That the provisions of this act shall expire on January 1, 2021.

## **Chapter 416 DMAS; waiver eligibility criteria, dependents of foreign service members.**

An Act to require the Department of Medical Assistance Services to amend waiver eligibility criteria to allow dependents of foreign service members to remain on waiting lists for services when assigned outside the Commonwealth.

[H 1812]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Department of Medical Assistance Services shall amend eligibility criteria for the Community Living waiver and the Family and Individual Support waiver to allow the dependent of a foreign service member who was added to the waiting list for services through such waivers while he was a resident of the Commonwealth to maintain his position on the waiting list following a transfer of the foreign service member to an assignment outside of the Commonwealth, so long as the foreign service member maintains the Commonwealth as his legal residence to which he intends to return following completion of the assignment.-

## **Chapter 423 Newborn screening; congenital cytomegalovirus.**

An Act to require the Board of Health to amend regulations governing newborn screening to include screening for congenital cytomegalovirus in newborns who fail the newborn hearing screen.

[H 2026]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Board of Health shall amend regulations governing newborn screening to include screening for congenital cytomegalovirus in newborns who fail the newborn hearing screen.

## **Chapter 429 Onsite sewage treatment systems; VDH shall develop a plan for oversight and enforcement.**

An Act to require the Department of Health to develop a plan for oversight and enforcement of certain requirements governing onsite sewage treatment systems.

[H 2322]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Department of Health shall develop a plan for the oversight and enforcement by the Department of requirements related to the inspection and pump-out of onsite sewage treatment systems that do not require a Virginia Pollutant Discharge Elimination System permit established pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and are located in counties eligible for participation in the Rural Coastal Virginia Community Enhancement Authority pursuant to Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia. The Department shall present such plan to the Chairmen of the House Committee on Health, Welfare and

Institutions and the Senate Committee on Education and Health prior to implementing the plan.

## **Chapter 445 School-based health centers; Va's Children's Cabinet shall establish joint task force.**

An Act to direct the Secretary of Health and Human Resources and the Secretary of Education to establish a school-based health centers joint task force; report.

[S 1195]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Virginia's Children's Cabinet established by the Governor pursuant to Executive Order No. 11 (2018) shall establish a school-based health centers joint task force (the joint task force) that includes representatives from the General Assembly, the Department of Health, the Department of Education, the Department of Medical Assistance Services, the Department of Behavioral Health and Developmental Services, the Office of Children's Services, and all other relevant state agencies and stakeholder groups deemed appropriate, who shall be tasked with (i) assessing the current landscape of school-based services and mental health screening, evaluation, and treatment in school settings; (ii) in coordination with ongoing behavioral health transformation efforts of the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services, developing best practice recommendations for trauma-informed school-based health centers as a vehicle for the provision of both medical and behavioral health services delivered in school settings; (iii) evaluating options for billing public and private insurance for school-based health services; and (iv) developing a plan for establishing a Virginia affiliate member organization, recognized by the national School-Based Health Alliance, for the purposes of providing technical assistance and guidance for localities interested in bolstering or implementing current and future school-based health centers. The joint task force shall work in coordination with the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services and may serve as an advisory body to other relevant committees, commissions, and members of the General Assembly on school-based health matters.

The joint task force shall hold a minimum of four meetings and shall report its findings and recommendations to the Governor and the Chairmen of the Senate Committee on Education and Health and the House Committees on Education and Health, Welfare and Institutions by December 1, 2019.

## **Chapter 508 James City County; amending charter, inoperable vehicles.**

An Act to amend Chapters 779 and 798 of the Acts of Assembly of 1993, which provided a charter for the County of James City, by adding in Chapter 7 a section numbered 7.5, relating to additional planning powers; inoperable vehicles.

[S 1408]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That Chapter 779 of the Acts of Assembly of 1993, which provided a charter for the County of James City, is amended by adding in Chapter 7 a section numbered 7.5 as follows:

### § 7.5. Additional planning powers.

The board of supervisors may, by ordinance, exercise those powers granted to certain localities pursuant to § 15.2-905 of the Code of Virginia. Such powers shall only be exercised on property two acres in area or smaller.

2. That Chapter 798 of the Acts of Assembly of 1993, which provided a charter for the County of James City, is amended by adding in Chapter 7 a section numbered 7.5 as follows:

### § 7.5. Additional planning powers.

The board of supervisors may, by ordinance, exercise those powers granted to certain localities pursuant to § 15.2-905 of the Code of Virginia. Such powers shall only be exercised on property two acres in area or smaller.

## **Chapter 540 License plates, special; MOVE OVER.**

An Act to authorize the issuance of special license plates for supporters of Virginia's Move Over law bearing the legend MOVE OVER; fees.

[H 2011]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Special license plates for supporters of Virginia's Move Over law bearing the legend MOVE OVER; fees.

A. On receipt of an application and payment of the fee prescribed by this section, and following the provisions of § 46.2-725 of the Code of Virginia other than those relating to the fee for the plates and its disposition, the Commissioner of the Department of Motor Vehicles shall issue to the applicant special license plates for supporters of Virginia's Move Over law bearing the legend MOVE OVER.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to a special nonreverting fund known as the Lt. Bradford T. Clark Memorial Fund established within the Department of Accounts. These funds shall be paid annually to the Fredericks Family Fund Foundation and used to support its operation and programs in Virginia. All other fees imposed under the provisions of this section shall be paid to, and received by, the Commissioner of the Department of Motor Vehicles and paid by him into the state treasury and set aside as a special fund to be used to meet the necessary expenses incurred by the Department of Motor Vehicles.

## **Chapter 551 Mass transit providers; supplemental operating funds.**

An Act to hold mass transit providers harmless for certain operating fund losses.

[H 2553]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Commonwealth Transportation Board may allocate supplemental operating

funds in fiscal year 2020 to any transit provider that receives funds to support operating costs pursuant to subdivision C 1 of § 33.2-1526.1 of the Code of Virginia and that is negatively impacted by a loss of operating funds as a direct result of the performance-based allocation process set forth in Chapter 854 of the Acts of Assembly of 2018. The maximum amount of supplemental operating funds available pursuant to this authorization shall not exceed \$3 million from the nongeneral fund amounts available to the Department of Rail and Public Transportation.

## **Chapter 553 Amtrak or intercity passenger rail stations; rail signage.**

An Act to direct the Department of Rail and Public Transportation to evaluate rail signage options; report.

[H 2737]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Department of Rail and Public Transportation (Department), in conjunction with all relevant stakeholders, shall evaluate the placement and maintenance of highway signs to (i) indicate the presence and direction of nearby Amtrak or intercity passenger rail stations and (ii) promote the use of such services and shall evaluate the cost and potential funding sources for such signs. The Department shall consult relevant stakeholders to create an inventory of existing Amtrak highway signs and review Amtrak signage in other states, including the "by train" signs in North Carolina. The Department shall report its findings to the Secretary of Transportation and the Chairmen of the House and Senate Committees on Transportation by December 1, 2019.

## **Chapter 563 Chesapeake Bay Watershed Implementation Plan; Lynnhaven River and Little Creek watersheds.**

An Act to repeal Chapter 41 of the Acts of Assembly of 2013 and Chapter 184 of the Acts of Assembly of 2015, relating to Chesapeake Bay Watershed Implementation Plan; Lynnhaven River and Little Creek watersheds.

[S 1388]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That Chapter 41 of the Acts of Assembly of 2013 and Chapter 184 of the Acts of Assembly of 2015 are repealed.

## **Chapter 567 Mass transit providers; supplemental operating funds.**

An Act to hold mass transit providers harmless for certain operating fund losses.

[S 1680]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Commonwealth Transportation Board may allocate supplemental operating funds in fiscal year 2020 to any transit provider that receives funds to support operating costs pursuant to subdivision C 1 of § 33.2-1526.1 of the Code of Virginia and that is negatively impacted by a loss of operating funds as a direct result of the performance-based allocation process set forth in Chapter 854 of the Acts of Assembly of 2018. The maximum amount of supplemental operating funds available pursuant to this authorization shall not exceed \$3 million from the nongeneral fund amounts available to the Department of Rail and Public Transportation.

## **Chapter 568 Highways, Commissioner of; report on operation of overweight trucks on highways.**

An Act to direct the Commissioner of Highways to report certain data on overweight trucks.

[S 1775]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Commissioner of Highways shall report annually by December 1 to the Governor, the General Assembly, and the Commonwealth Transportation Board regarding the operation of overweight vehicles on highways of the Commonwealth. The report shall include, at a minimum, (i) data regarding the frequency and severity of incidents and crashes involving overweight trucks compared to other trucks, (ii) the maintenance and infrastructure needs of routes frequently used by overweight trucks and comparison of such needs to similar routes not frequented by such trucks, and (iii) the estimated number of additional vehicle miles that would be necessary if such vehicles were not permitted to carry overweight loads. In submitting the report, the Commissioner shall indicate if additional data is needed to provide further reports, and if so, include a proposal for additional data collection. Nothing herein shall be construed to require the Commissioner to prospectively gather additional data not already collected by the Commissioner or any transportation agency.

2. That the provisions of this act shall expire on January 1, 2021.

## **Chapter 575 Virginia Public Records Act; implementation in local school divisions, recommendations.**

An Act to require certain State Library Board advisory committees to make recommendations relating to the Virginia Public Records Act.

[H 1788]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Public School Records Consortium and the Records Oversight Committee, established by the State Library Board as advisory committees pursuant to subsection B of § 42.1-82 of the Code of Virginia, shall confer with school boards and division superintendents and submit to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2019, recommendations on ways in which school boards and school board employees can better

promote efficiency and cost-effectiveness in the implementation of the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).

## **Chapter 592 VPI & SU and VSU; joint plan for new baccalaureate degree program.**

An Act to require Virginia Polytechnic Institute and State University and Virginia State University to jointly develop a plan for a new degree program.

[H 2702]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Virginia Polytechnic Institute and State University and Virginia State University shall jointly develop and report to the State Council of Higher Education for Virginia, the House Committee on Education, and the Senate Committee on Education and Health no later than October 1, 2019, a plan for the establishment of a baccalaureate or other degree program that prepares graduates to be effective career and technical education teachers in order to address persistent teacher shortages in career and technical education subject areas in the Commonwealth.

## **Chapter 609 State hospital for individuals w/ mental illness; SHHR to examine cause of high census at hospital.**

An Act to require the Secretary of Health and Human Resources to examine the causes of the high census at the Commonwealth's state hospitals for individuals with mental illness.

[S 1488]

Approved March 19, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Secretary of Health and Human Resources shall convene a work group

composed of stakeholders, including the Department of Behavioral Health and Developmental Services, the Department of Medical Assistance Services, the Virginia Association of Community Services Boards, the National Alliance on Mental Illness - Virginia, Mental Health America of Virginia, VOCAL, Inc., the Virginia Hospital and Healthcare Association, the Office of the Executive Secretary of the Supreme Court of Virginia, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, the Institute of Law, Psychiatry and Public Policy, the Psychiatric Society of Virginia, the Virginia College of Emergency Room Physicians, and the Medical Society of Virginia, to examine the causes of the high census at the Commonwealth's state hospitals for individuals with mental illness.

In conducting such examination, the work group shall consider the impact of the practice of conducting evaluations of individuals who are the subject of an emergency custody order in hospital emergency departments, the treatment needs of individuals with complex medical conditions, the treatment needs of individuals who are under the influence of alcohol or other controlled substances, and the need to ensure that individuals receive treatment in the most appropriate setting to meet their physical and behavioral health care needs on the census at the Commonwealth's state hospitals for individuals with mental illness. The work group shall also consider the potential impact of (i) extending the time frame during which an emergency custody order remains valid, (ii) revising security requirements to allow custody of a person who is the subject of an emergency custody order to be transferred from law enforcement to a hospital emergency department, (iii) diverting individuals who are the subject of an emergency custody order from hospital emergency departments to other, more appropriate locations for medical and psychological evaluations, and (iv) preventing unnecessary use of hospital emergency department resources by improving the efficiency of the evaluation process on the census at the Commonwealth's state hospitals for individuals with mental illness. The work group shall include analysis of how such issues affect both adults and children. The work group shall develop recommendations, including recommendations for both long-term and short-term solutions to the high census at the Commonwealth's state hospitals for individuals with mental illness, which shall include recommendations for statutory, regulatory, and budget actions to address the high census at the Commonwealth's state hospitals for individuals with mental illness.

Staffing support for the work group shall be provided by the Department of Behavioral Health and Developmental Services. The work group shall complete its work and report its recommendations to the Chairmen of the Joint Subcommittee to Study Mental Health

Services in the Commonwealth in the Twenty-First Century, the House Committee on Appropriations, the House Committee for Courts of Justice, the Senate Committee on Finance, and the Senate Committee for Courts of Justice by November 1, 2019.

## **Chapter 610 Southwestern Virginia Training Center; disposition of property in Carroll County.**

An Act related to the disposition of property in Carroll County on which the former Southwestern Virginia Training Center was situated.

[S 1509]

Approved March 19, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Commonwealth shall not convey, sell, or otherwise dispose of certain real property in Carroll County outside the town of Hillsville on which the former Southwestern Virginia Training Center was situated pursuant to § 2.2-1156. The Commonwealth shall work with representatives of Carroll and Grayson Counties and the City of Galax and other stakeholders, including the Blue Ridge Crossroads Economic Development Authority, to develop a plan for the conveyance, sale, or other disposition of such property for the purpose of housing children requiring foster care or as a juvenile residential treatment facility.

§ 2. Any conveyance, sale, or other disposition of the property described in § 1 that is proposed as a result of the planning among the Commonwealth, local representatives, and other stakeholders shall be approved by the General Assembly prior to execution of such conveyance, sale, or other disposition.

§ 3. The prohibition on the conveyance, sale, or other disposition of the property described in § 1 shall expire on July 1, 2021, and thereafter any conveyance, sale, or other disposition of such property shall be in accordance with § 2.2-1156.

## **Chapter 633 Bristol, City of; amending charter, city powers, council meetings, etc.**

An Act to amend and reenact §§ 4.03, as amended, 4.05, 4.07, as amended, 5.01, 5.02, 5.03, as amended, 7.02, as amended, 7.03, 7.04, 7.07, as amended, 7.08, as amended, 7.11, 8.04, as amended, and 15.03 of Chapter 542 of the Acts of Assembly of 1990, which provided a charter for the City of Bristol, and to amend Chapter 542 of the Acts of Assembly of 1990 by adding a section numbered 8.06:1, relating to city powers, council meetings, city manager, city departments, planning commission, and utility board.

[H 2497]

Approved March 19, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.03, as amended, 4.05, 4.07, as amended, 5.01, 5.02, 5.03, as amended, 7.02, as amended, 7.03, 7.04, 7.07, as amended, 7.08, as amended, 7.11, 8.04, as amended, and 15.03 of Chapter 542 of the Acts of Assembly of 1990, which provided a charter for the City of Bristol, are amended and reenacted and that Chapter 542 of the Acts of Assembly of 1990 is amended by adding a section numbered 8.06:1 as follows:

### § 4.03. Meetings.

At nine o'clock a.m. on July 1 following a regular municipal election, or if that should be Saturday, Sunday or a legal holiday, then on the first business day following, the council shall hold an inaugural meeting at the usual place for holding the meetings of the council.

At that meeting newly elected councilmen shall be sworn and assume the duties of their office, and then shall make such elections and appointments as are otherwise provided for in this charter.

At nine o'clock a.m. on July 1 in each year when no municipal election has been held, or if such day be Saturday, Sunday or a legal holiday, then the first business day following, the council shall have an organizational meeting for the purpose of making such appointments and transacting such other business as this charter shall provide shall be made or transacted on July 1 of each year.

Each July 1, at the inaugural or organizational meeting, council shall make such appointments of its own members to such boards, authorities, committees or commissions that

require a representative from the members of the council. Additionally at the inaugural or organizational meeting, or as soon as possible thereafter, council shall also make such citizen appointments to the planning commission, board of zoning appeals, economic development committee, social services board, board of building code appeals, BVU Authority, Industrial Development Authority and any other boards to which the council makes appointments of members whose terms have expired as of midnight on the 30th day of June. Nothing herein is meant to preclude the filling of any vacancies on such boards, authorities, committees or commissions prior to July 1, if such opening exists prior to midnight on June 30th. The length of terms of all appointees to the BVU Authority are governed by the BVU Authority Act and not the Charter.

Council shall thereafter regularly meet at such times as may be prescribed by ordinance, provided that it shall meet not less than once each month.

The mayor, any member of the council, or the city manager may call a special meeting of the council at any time, upon twelve hours written notice stating the purpose of the meeting served upon each member personally, ~~or left at his usual place of business or residence~~ by electronic service at their city-provided electronic mail address. The called meeting may be held without written notice, provided all members of the council attend. At such special meeting, no business other than that mentioned in the call shall be considered.

All meetings of the council shall be public as provided for by the Virginia Freedom of Information Act, with executive sessions as permitted therein at the discretion of the majority of council. The council shall keep written minutes of its proceedings but does not have to keep minutes of its executive session. Citizens may have access to the minutes and records of all public meetings at any reasonable time.

§ 4.05. Mayor and vice mayor.

At each inaugural and each organizational meeting of council, council shall elect one of its members as chairman, who shall be entitled mayor and one of its members as vice chairman, who shall be entitled vice mayor, each of whom shall serve for a term of one year, or until his successor is elected.

The mayor shall preside over all meetings of the council and shall have the same right to vote and speak therein as other members. He shall be recognized as the head of city government for all ceremonial purposes, the purposes of military law and the service of civil process. ~~In times of public danger, or emergency, he may take command of the police and maintain order and enforce the laws, and for this purpose, may deputize such assistant policemen as may be necessary.~~ The mayor shall have no veto power. He

shall authenticate by his signature such instruments as the council, this charter or the laws of the Commonwealth shall require.

The vice mayor shall, in the absence or disability of the mayor, perform the duties of the mayor. If a vacancy shall occur in the office of mayor, the vice mayor shall become mayor for the unexpired portion of the mayor's term. A replacement for the vice mayor may then be elected by a majority vote of the remaining council.

In the absence or disability of both the mayor and vice mayor, the council may, by majority vote of those present, choose one of their number to perform the duties of mayor and one to perform the duties of vice mayor.

#### § 4.07. Appointments and removals.

The council in making appointments and removals shall act only by affirmative vote of at least three members. It may remove any person appointed by it for an indefinite term, provided that the person to be removed shall have been served with written notice of the intention of the council to remove him at least ten days prior to the action becoming final. If two or more members of council shall be disabled to vote pursuant to the provisions of the Virginia State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq) or its successors, as the same may be amended from time to time, council may act by an affirmative vote of those members of city council not so disabled to vote. No hearing shall be required.

Any member of the council or any member of a board or commission, and any other person appointed by the council for a specified term may be removed during that term by the council but only for malfeasance or neglect of duty. The person to be removed shall be entitled to notice of the intention of the council to remove him, containing a clear statement of the grounds for such removal, and fixing the time and place, not less than ten days after the service of such notice, at which he shall be given an opportunity to be heard thereon. The notice provided and all associated evidence shall be made public immediately after serving said notice to the person. After the hearing, which shall be public ~~at the option of the person sought to be removed~~, and at which ~~he~~ the person sought to be removed may be represented by counsel, the decision of the council shall be final. It shall be the duty of the council, at the request of the person sought to be removed, to subpoena witnesses whose testimony would be pertinent to the matter in hand. Any officer, elective or appointed, including councilmen, or an employee of the city who shall be convicted by a final judgment of any court from which no appeal has been taken, or which has been affirmed by a court of last resort, on a charge involving moral turpitude, whether felony or misdemeanor, shall forfeit his office or employment. Council shall also have the power to otherwise punish its own members and to compel their attendance.

§ 5.01. Appointments and qualifications.

There shall be a city manager who shall be the administrative ~~and executive~~ head and chief executive officer of the city and shall be responsible to the council for the proper administration of the city government. He shall be chosen by the council solely on the basis of his executive and administrative qualifications. The choice shall not be limited to inhabitants of the city or the Commonwealth of Virginia. He shall be appointed by council for a term of one year, unless sooner removed by council as herein provided. The city manager's term shall commence immediately upon election by council at a meeting to be held on July 1 of each year, or if such day be on Saturday, Sunday or a legal holiday, on the first business day following. Such term shall end on June 30 of the succeeding calendar year. Vacancies during the term may be filled by the council for the remainder of the term. During the absence or disability of the city manager, the council may, by general ordinance, or specific act, designate some properly qualified person to perform the duties of the office as acting city manager in the absence of an assistant city manager.

§ 5.02. Power of appointment and removal.

The city manager shall appoint such city officers and employees as the council shall determine are necessary for the proper administration of the city and shall supervise such employees. ~~The~~ All employees, including those in the police department and fire department, may be removed by the city manager, except those employees in the clerical, legal and judicial departments and other attendants of the council. The council shall consent to the appointment or removal of all directors or heads of departments as hereinbefore provided before such appointment or removal shall become effective.

§ 5.03. General powers and duties.

The city manager shall have the power and it shall be his duty:

1. To see to the enforcement of all laws and ordinances of the city.
2. To exercise supervision and control over all departments, now or hereafter created by council, except the legal, clerical, judicial departments and any other office or department directly attendant upon council.
3. To exercise supervision and control over all public improvements, works and undertakings, except as otherwise expressly provided in this charter.
4. To attend all public city council meetings with the right to speak, but not to vote.
5. To recommend for adoption such measures as are necessary for the health and safety of the city's citizens and the orderly and expedient operation of the city.
6. To prepare and submit the annual budget to council and be responsible for its administration after adoption by council.

7. To keep council regularly advised of the financial condition and future needs of the city.

8. To make all authorized contracts in behalf of the city.

9. To perform such other duties as may be prescribed by this charter or required of him by the general law of the Commonwealth or by ordinance, resolution or direction of the council.

10. To have prepared and submit to city council by its first meeting in December an audited report of the previous fiscal year's financial transactions and its financial condition as of the last day of the previous fiscal year.

11. To serve as the local Director of Emergency Management in accordance with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (§ 44-146.13 et seq. of the Code of Virginia).

§ 7.02. Finance department.

A. Generally. There shall be a finance department headed by a department head known as the chief financial officer, who shall be in charge of the accounting and finances of the city. The chief financial officer shall function as budget director, which position shall require skill in public administration and the accepted practices and municipal budgetary procedure and shall compile, in cooperation with the various department heads, the departmental estimates and other data necessary or useful to the city manager in the preparation of the annual budget.

B. General powers and duties of chief financial officer. The chief financial officer shall have general management and control, subject to the direction and control of the city manager, of the administration of the financial affairs of the city and to that end shall have authority and be required to:

1. Keep books of account of the receipts from all sources and expenditures of all departments, courts, boards, commissions, offices and agencies of the city and prescribe the form of receipts, vouchers, bills or claims to be used and accounts to be kept by all departments, courts, boards, commissions, offices and agencies of the city. The chief financial officer in so doing shall consult with the retained public auditor for the city so that his books of account and other items mentioned herein produce the requisite information for auditing purposes;

2. Maintain suitable records to keep an accurate account with the city treasurer, making entries therein, where practical, on the same date which they occur, and said records shall be kept so that an examination of them will show the condition of the treasury;

3. Cooperate with the city manager in compiling estimates for the current expense and capital budgets;

4. Require daily, or at such intervals as he may deem expedient, report of receipts and a remission of the same from each department, court, board, commission, office and agency, and shall on the proper in-paying warrant remit the same to the treasurer;
5. Examine all contracts, purchase orders and other documents which create financial obligations against the city to determine that money has been appropriated and allotted therefor and that an unexpended and unencumbered balance is available and such appropriation and allotment to meet the same;
6. Audit before payment for legality and correctness all accounts, claims and demands against the city and no money shall be drawn from any bank account of the city except by warrant or check signed by the city manager and treasurer, based upon a voucher prepared by him;
7. Submit to the city manager for presentation to the council, not later than the 25th day of each month, a statement concerning the financial transactions of the city prepared in accordance with accepted principles in municipal accounting and budgetary procedure and showing:
  - (a) The amount of each appropriation with transfers to and from the same, the allotment thereof to the end of the preceding month, encumbrances and expenditures charged against such appropriation during the preceding month, the total of such charges for the fiscal year to the end of the preceding month and the unencumbered balance remaining in such appropriation; and
  - (b) The revenue estimated to be received from each source, the actual receipts from each source for the preceding month, the total receipts from each source for the fiscal year to the end of the preceding month, and the balance remaining to be collected;
8. Furnish the head of each department, court, board, commission, office or agency of the city a copy of such portion of the statement relating to such department, court, board, commission, office or agency;
9. Prepare and submit to the city manager at the end of each fiscal year, for the preceding year, a complete financial statement and report of the financial transactions of the city;
10. Protect the interest of the city by withholding the payment of any claim or demand by any person, firm or corporation against the city until any indebtedness or other liability due from such person, firm or corporation shall first have been settled and adjusted; and
11. Develop and maintain financial policies, subject to the approval of city council.

These policies shall include, but are not limited to, the following:

- (a) Debt as a percentage of assessed value;
- (b) Debt as a percentage of operating expenditures;

(c) Balanced budget;

(d) Capital improvement program; and

(e) Fund balance.

Compliance with financial policies developed and maintained under this subdivision shall be incorporated into the annual budget document so that city council is able to benchmark the city's progress.

12. Perform such other duties as may be required of him by this charter, by the city manager or by the city council.

C. Annual audit. The council shall cause to be made annually an independent financial audit of all accounts, books, records and financial transactions of the city by the auditor of public accounts of the Commonwealth or by a firm of independent certified public accountants to be selected by council. The audit shall be of sufficient scope to express an opinion as to whether the books and records and the financial statements prepared therefrom as contained in the annual financial report of the city present fairly the fiscal affairs of the city in accordance with generally accepted accounting principles of municipal accounting and applicable government laws. The report of such audit shall be always available for public inspection in the office of the city clerk and in the office of the city manager during regular business hours and shall be posted on the city's website for public viewing. The chief financial officer shall cooperate with and provide the necessary information to the auditor for the purpose of producing the annual audit.

D. Other audits of accounts. Upon the death, resignation, removal or expiration of the term of any officer of the city, the chief financial officer, under the supervision of the city manager, shall audit the accounts of such officer and report the result of the audit to the council. The chief financial officer shall also audit the accounts of any office or department of the city upon the request of the council, under the supervision of the city manager. Any such audit, at the direction of the council, may be made by an independent certified public accountant rather than by the chief financial officer if they so direct.

E. Commissioner of revenue. There shall be elected, pursuant to Chapter 3 of this charter and the general law of the Commonwealth, a commissioner of revenue as provided for in the Constitution of the Commonwealth of Virginia who shall perform such duties as are not inconsistent with the laws of the Commonwealth in relation to the assessment of property and license taxes as may be required by the council for the purpose of levying city property and license taxes. He shall perform such other duties within the City of Bristol, Virginia, as are prescribed for him by the general law of the Commonwealth of Virginia and as may be prescribed for him by this charter or by the city council for the City of Bristol, Virginia, and are not inconsistent with his office. The

commissioner of revenue shall have the power to administer oaths in the performance of his official duties.

F. City treasurer. There shall be elected, pursuant to Chapter 3 of this charter and the general law of the Commonwealth, a city treasurer, as provided for in the Constitution of Virginia who shall, except as otherwise provided in this charter, be the custodian of all funds of the city and the city's chief financial officer's bond, and pursuant thereto shall:

1. Deposit all funds coming into the treasurer's hands to the account of the city, in such separate accounts as may be provided for by council, in such banks as may be designated for that purpose by the council. However, the city manager may authorize any department or agency of the city to maintain a petty cash fund ~~not to exceed \$300~~ in an amount approved by the chief financial officer. Such fund authorized shall be reimbursed by the treasurer only upon presentation of vouchers approved by the chief financial officer;
2. Receive all moneys belonging to and received by the city and keep a correct account of all such receipts;
3. Be subject to the supervision of the council, perform such other duties not inconsistent with the office as council may from time to time direct, and have such powers and duties as are now or may hereafter be prescribed by the general law of the Commonwealth or ordinance of this city;
4. Make all such reports to the chief financial officer with respect to receipts and expenditures in the city treasury as may be required by the chief financial officer to properly keep the financial records of the city up to date;
5. Pay out no money from the city treasury except as may have been approved by the city manager and the chief financial officer on forms prescribed by the chief financial officer, all in accordance with the provisions of this charter;
6. Present annually to council the treasurer's account with the State Auditor;
7. Receive no money or permit the payment of the same into the treasury, except upon the presentation of a proper form authorizing such payment and receipt, which form shall show the source and amount of such money and shall be signed by the chief financial officer or his designee. No license, permit or other authorization for which the party receiving same is required to pay money to the city shall be valid unless and until the treasurer receipts the same giving the amount and date of such receipt; and
8. Report a list of delinquent real and personal property taxes for the next preceding year to the city manager and to city council no later than July 1 of each year.

§ 7.03. Personnel department.

A. Generally. There shall be a personnel department which shall consist of the personnel director, and such employees as may be provided for by the council. Until the city council for the City of Bristol, Virginia, shall, by written resolution, direct that the office of personnel director shall be otherwise filled, the city manager shall serve as personnel director.

B. Powers and duties of the personnel director. The personnel director shall have the following powers and duties:

1. To formulate and propose a comprehensive personnel policy to the city council for adoption, and as the need may arise, to propose to the council amendments, additions and deletions to the comprehensive personnel policy, and to oversee and enforce the uniform application of the personnel policy to all the employees of the city. Nothing in this charter, nor in any policy manual promulgated pursuant to this charter, nor in any ordinance or act of the council of the City of Bristol, Virginia, shall be construed to create any contractual relationship between the City of Bristol, Virginia, and any of its employees or agents. The comprehensive personnel policy adopted pursuant to this provision shall not be a contract with the employees of the city and so may be amended from time to time as the needs of the city may require, no rights being vested in any city employee by virtue of this section or any policy adopted pursuant thereto.
2. To, with the cooperation of each department head, formulate and promulgate standard operating procedures in addition to a comprehensive personnel policy that may be needed and applicable to the individual departments and the employees thereof as such requirements may exist and submit to the council for adoption and from time to time for amendment.
3. To oversee and aid each department head in the formulation and promulgation of competitive examinations for all original appointments to department jobs and for promotions within each department to provide for the hiring and promotion of the best qualified personnel available to the city.
4. To oversee the maintenance by each department of a list of eligible employees based upon examination and other hiring criteria for each department and to promulgate regulations to assure that such lists are kept current, that all vacancies are well publicized and that the best possible employees of the City of Bristol, Virginia, be hired for each such vacancy.
5. To formulate and recommend to the council for adoption such additions, deletions, and amendments of the current city pay plan covering all employees of the city as may from time to time be advisable.

6. To direct and enforce the maintenance by all departments, boards, commissions, offices and agencies of the city of such personnel records of employees of such departments, boards, etc., as the personnel director shall prescribe.

7. To establish a temporary employment list for filling positions which are temporarily vacant.

8. To oversee and advise the department heads in the promulgation of a systematic program of in-service training for all employees qualifying them for advancement in the service of the city.

9. To oversee and enforce the operation of an employee grievance procedure in accordance with the laws of the Commonwealth.

10. To investigate any and all matters relating to conditions of employment in the service of the city and to make at least annually a report of his findings to the council.

11. To oversee and advise department heads in all cases of adverse employment decisions before any disciplinary actions are taken.

12. Such other powers and duties as may be assigned him from time to time by council.

§ 7.04. Police department.

A. Generally. The police department shall consist of the chief of police and such other officers and employees at such ranks and grades as may be established by the council. The police department shall be responsible for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property and enforcement of the laws of the Commonwealth, the ordinances of the city and all rules and regulations made in accordance therewith. The chief of police and the other members of the police department of the city shall have all the powers and duties of police officers as provided by the general laws of the Commonwealth and more particularly, each police officer is invested with all the power and authority which formerly belonged to the office of the constable at common law in taking cognizance of, and in enforcing the criminal laws of the Commonwealth and ordinances and regulations of the city. Each of such policemen shall use his best endeavors to prevent the commission within the city of offenses against the laws of the Commonwealth and against the ordinances and regulations of the city; shall observe and enforce all such laws, ordinances and regulations; shall detect and arrest offenders against the same; shall preserve the good order of the city; and shall secure the inhabitants thereof from violence and the property therein from injury. Such policemen shall have no power or authority in civil matters, except that they may execute and serve a temporary detention pursuant to § 37.1-67.1 of the Code of Virginia and he shall in all other cases comply with the orders of any court of proper jurisdiction and execute such warrants or summons as may be placed in

said police officer's hands by any clerk of the court, magistrate or trial judge of the city and shall make due return thereof. The criminal investigations of the department shall be under the ultimate authority of the attorney for the Commonwealth, who shall be the chief law-enforcement officer of the city.

B. Powers and duties of the chief of police. The head of the police department shall be the police chief. Under the supervision of the city manager, he shall be in direct command of the police department. He shall assign all members of the department to their respective posts, shifts, details and duties. He shall, with the approval of the city manager, make rules and regulations in conformity with this charter and the ordinances of the city concerning the operation of the department, the conduct of the officers and employees thereof, their uniforms, arms and other equipment, their training and the penalties to be imposed for infractions of such rules and regulations. Upon notice of a complaint about an officer's conduct and determination that an internal affairs investigation shall be conducted, the city manager will be immediately notified of the internal affairs investigation in writing. The chief of police will investigate the matter and report the findings and recommended disposition to the city manager and city attorney within a reasonable period of time. If the city manager disputes the recommendation of the chief of police and an agreement is not made, a three-person panel will be convened to review allegations and proposed disposition. The panel will be made up of a captain or lieutenant from the police department that is not a direct supervisor of the officer involved, a city department head chosen by the city manager, and a city department head chosen by the chief of police. The panel will then make a recommendation to the city manager and chief of police. The decision of the panel will be final pending any other administrative or legal remedies the officer may have pursuant to the general laws of the Commonwealth or the City of Bristol. The chief of police shall maintain all records, recordings, and statements of the investigation. The police chief shall be responsible for the efficiency, discipline and good conduct of the department. Orders of the city manager shall be transmitted in all cases through the police chief or in his absence from the city or incapacity, through an officer of the department designated as acting chief by the city manager. Disobedience to the lawful commands of the police chief or a violation of the rules and regulations made by him, shall be grounds for removal or other disciplinary action as provided in such rules and regulations.

C. Division of animal control. Within the police department, there shall be a division of animal control which shall consist of a city animal warden, appointed pursuant to § 3.1-796.104 of the Code of Virginia, by the city manager, who shall be supervised by the police chief. The animal warden shall serve at the will and pleasure of the city manager

and shall not be considered a department head. The city animal warden shall be paid and otherwise compensated as the city council shall from time to time prescribe. The animal warden shall have such powers and duties and responsibilities as are set out in Chapter 27.3 (§ 3.1-796.66 et seq) of Title 3.1 of the Code of Virginia and all other acts and ordinances enacted by the Commonwealth or the city for the control and protection of animals. The city manager shall have the power to appoint one or more deputy animal wardens to assist the city animal warden as the council shall provide.

§ 7.07. Building code ~~department~~ division.

A. ~~Building Code Division Generally~~ code division generally. ~~There shall be a building code division which shall consist of the building code official and such other officers and employees as may be provided for by city council and the environs control official. The building code division~~ The building code official and residential inspector shall be part of the community development department of ~~planning~~ and supervised by the planning community development director. The building code official may be removed from office for cause after full opportunity to be heard on specific and relevant charges in a hearing before city council. The city manager is authorized to designate an employee as deputy who shall exercise all the powers of the building code official during the temporary absence or disability of the building code official.

B. Restriction of employees. Neither any building code official nor any employee connected with the building code division, except members of the board of survey or the board of appeals, shall be engaged in or directly or indirectly connected with the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a building or the preparation of plans or the specifications thereof built or to be built within the city, unless that person is the owner of the building. No officer and employee may engage in any work which conflicts with the official duties or interests of the building code division.

C. Personal liability. The building code ~~official~~ division, and any officer or employee ~~of the building code division~~, shall not, while acting for the jurisdiction, thereby be rendered liable personally for any damage accruing to persons or properties as a result of any act required or permitted in the discharge of their official duties, nor shall any employee of the building code official or any subordinate of the building code official ~~division~~ be liable for costs in any action, suit or proceeding that is instituted pursuant to the provisions of the building and maintenance codes. They shall be free from liability for acts performed under any of the provisions of or by reason of any act or omission in the performance of their official duties in connection with the provisions of the Uniform

Statewide Building Code. ~~This limitation of liability shall extend to the environs control division's enforcement of the Uniform Statewide Building Maintenance Code.~~

D. Functions. The building code division shall:

1. Enforce all the provisions of the Uniform Statewide Building Code and act on any question relative to the mode or manner of construction and the materials to be used in the erection, addition to, alteration, repair, removal, demolition, installation of service equipment and the location, use, occupancy and maintenance of all buildings and structures situate in the City of Bristol, Virginia;
2. Receive applications and issue permits for the erection and alteration of buildings and structures, including passing on whether a requested building permit may be issued in compliance with the zoning ordinances of the city, inspect the premises for which such permits have been issued and enforce compliance with the provisions of the Uniform Statewide Building Code;
3. Issue all necessary notices or orders to remove illegal or unsafe conditions and structures, require the necessary safeguards during construction, require adequate exit facilities in existing buildings and structures and insure compliance with all the code requirements for the health, safety and general welfare of the public;
4. Make all the required inspections, or accept reports of inspection by approved agencies on individuals in writing and certified by a responsible officer of such approved agency or by the responsible individual, and engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, if such engagement is approved by ~~the council~~ the community development director;
5. Adopt and promulgate rules and regulations to interpret and implement the provisions of the Uniform Statewide Building Code, to secure the intent thereof and designate requirements applicable because of local climatic or other conditions, but such rules shall not have the effect of waiving structural or fire performance requirements specifically provided by the Uniform Statewide Building Code or violating accepted engineering practices involving public safety;
6. Keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued so long as the building to which they pertain remains in existence;
7. Report in writing annually to the ~~city manager~~ community development director a statement of operations as may be prescribed by the ~~city manager~~ community development director;

8. Perform such other duties as from time to time may be required of the building code official by the Uniform Statewide Building Code and the ~~city manager~~ community development director;

9. Enforce all local ordinances pertaining to buildings, unsafe structures, the abatement of nuisances created by unsafe structures and such other local ordinances as may from time to time be adopted and passed relative to buildings or structures situate in the city by the council, to the extent that such are not superseded and repealed by an act of the General Assembly; and

10. Perform such other duties as may from time to time be assigned to the building code division by ~~city council~~ the city manager or community development director.

~~E. Environs control. The position of environs control official, whose duties shall be to enforce state law and local ordinances pertaining to garbage, trash, weeds, junk, and litter and the Statewide Uniform Building Maintenance Code within the City of Bristol, Virginia, shall be an employee of the building code division and shall be under the supervision of the building code official. The environs control official shall meet the requirements imposed for the position by state law.~~

§ 7.08. ~~Planning department~~ Community development department.

A. ~~Planning~~ Community development director. The community development department of ~~planning~~ shall consist of a community development director and such other officers and employees of the department as provided for by city council and the building code official and the employees of the building code division.

B. Department functions. The community development department of ~~planning~~ shall have the responsibility for:

1. Administration of all programs funded by federal, state or other monies as such be assigned to the community development department of ~~planning~~ by city council for administration;

2. Administration of the zoning ordinance and the subdivision ordinance and as such, the community development director shall ~~serve as~~ provide staff for the board of zoning appeals, the planning commission and city council on zoning matters that are before each of such entities. Nevertheless, it shall remain the duty of the building code official to ~~determine~~ division, with the assistance of the zoning administrator, to insure the proper zoning of all proposed developments for purpose of issuance of requisite building permits, site plan permits and other required permits;

3. Development of the comprehensive city plan and the amendments thereto for approval by city council;

4. ~~Transportation planning of road improvements on major thoroughfares;~~

~~5. Serving as staff to the metropolitan planning organization board created by Bristol, Virginia; Bristol, Tennessee; Sullivan County, Tennessee and Washington County, Virginia;~~

~~6-4. Serving as staff to the joint Bristol, Tennessee/Virginia Planning Commission;~~

5. Enforcing state law and local ordinances pertaining to garbage, trash, weeds, junk and litter, and the Statewide Uniform Building Maintenance Code within the City of Bristol, Virginia;

~~7-6. Supervise the operations and performance of the building code division officer, city planner, community development block grant coordinator, code compliance officer, residential inspector, community development administrative assistant; and~~

~~8-7. Such other duties as may from time to time be assigned to the planning community development department by the city council or the city manager.~~

§ 7.11. Transit department.

A. Generally. The transit department shall consist of the ~~transit director~~ transportation planner and such other officers and employees of the department as the council shall approve.

B. Function. The transit department shall provide public bus service to the City of Bristol, Virginia, to the extent such provision is funded by city council. ~~The transit department shall operate the school bus system for the school board of the City of Bristol, Virginia, unless the Bristol, Virginia, school board shall take over the operation, management and maintenance of its own school bus system. The transit department shall operate the city mechanical garage and therein provide service to all city vehicles and to any other city equipment for which the garage is equipped with men and materials to perform maintenance thereon. The city transit garage shall also provide maintenance service to the Bristol, Virginia, sheriff's office vehicles and equipment.~~

C. Duties of the transportation planner:

1. Administration and management of the transit system;

2. Coordination with state and federal transit agencies;

3. Transportation planning of road improvements on major thoroughfares;

4. Serve as staff to the metropolitan planning organization board created by Bristol, Virginia; Bristol, Tennessee; Sullivan County, Tennessee; and Washington County, Virginia;

5. Coordination of special events on city property and rights of way; and

6. Such other duties as may from time to time be assigned by city council or the city manager.

§ 8.04. City planning commission.

There shall be a city planning commission consisting of seven members, one of whom shall be a member of the city council selected by the council for a term coincident with his term on the council, ~~one of whom shall be selected by the council for an indefinite term~~ and the remaining members shall be citizens appointed by city council for ~~three-year~~ four-year terms, to be staggered beginning July 1, 2019. All citizens of the City of Bristol, Virginia, owning real property shall be eligible for appointment to the planning commission, and all appointees shall take the oath of office before entering into their duties. Each appointee, other than the councilmanic and employee appointees, shall be eligible for only two consecutive terms.

The planning commission's duties shall be to:

1. Exercise general supervision of and make regulations for the administration of its affairs;
2. Prescribe rules pertaining to its investigations and hearings;
3. Supervise its physical affairs and responsibilities, under rules and regulations as prescribed by the governing body;
4. Keep a complete record of its proceedings and be responsible for the custody and preservation of its papers and documents;
5. Make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction;
6. Prepare, publish and distribute reports, ordinances and other material relating to its activities;
7. Prepare and submit an annual budget estimate in the manner prescribed by the city council;
8. Review, amend and recommend a comprehensive city plan to city council as provided for by state law and this charter and amendments thereto as needed;
9. Exercise such authority and perform such duties relative to zoning, subdivisions and other matters related to development within the City of Bristol, Virginia, as are provided for in the respective ordinances provided for the same by city council; and
10. Perform such other duties as council may from time to time assign to the planning commission.

The planning commission shall be staffed by the director of the department of planning and employees of that department until and unless the council shall by ordinance provide for a separate staff for the planning commission. The planning commission may, with the approval of the city manager, call upon the heads of other departments for staff functions as the need may arise.

§ 8.06:1. Bristol Virginia Utilities Authority.

The Bristol Virginia Utilities Authority shall be organized and have the powers as set out in the BVU Authority Act (§ 15.2-7200 et seq. of the Code of Virginia).

§ 15.03. Investigation into city affairs.

The council, the city manager, and any officer, board or commission authorized by them or either of them, shall have power to make investigation as to city affairs. For that purpose, the council, city manager or any such officer, board or commission shall have the power to subpoena witnesses, administer oaths and compel the production of ~~books and papers~~ evidence. Any person refusing or failing to attend or to testify or to produce such books and papers may be summonsed by such board or officer before the judge of the General District Court for the City of Bristol, Virginia, by the board or official making such investigation, and upon failure to give satisfactory explanation of such failure or refusal, may be found guilty by the judge of the general district court of a Class 2 misdemeanor and fined or jailed accordingly. Such persons shall have the right to appeal to the circuit court of the city any conviction pursuant hereto. Any person who shall give false testimony under oath at any such investigation shall be liable to prosecution for perjury.

## **Chapter 652 Claims; Gary Linwood Bush.**

An Act for the relief of Gary Linwood Bush.

[S 1477]

Approved March 19, 2019

Whereas, Gary Linwood Bush (Mr. Bush) spent almost 11 years in prison within the Virginia Department of Corrections for crimes he did not commit; and

Whereas, on October 6, 2006, a man wearing a baseball cap robbed the Bank of Southside Virginia on Crater Road in Petersburg, Virginia; and

Whereas, a bank teller and a bank manager both erroneously identified Mr. Bush as that man, with those identifications based on each glimpsing that man for a few seconds while he was looking down; and

Whereas, on November 8, 2006, a man robbed a BB&T bank at the Crossings Shopping Center in Prince George County; and

Whereas, a bank teller erroneously identified Mr. Bush as the man who robbed the bank, although she remembered that the man was wearing a baseball cap, and therefore she could only see the lower part of his face; and

Whereas, a construction worker who was working in the BB&T at the time of the robbery testified that he had seen Mr. Bush around town before and also erroneously identified Mr. Bush as the robber; and

Whereas, Mr. Bush denied any involvement in either robbery and testified at both trials that he was in other locations at the time of each robbery; and

Whereas, Mr. Bush provided a palm print sample that did not match the palm print found on the note used during the BB&T robbery; and

Whereas, Mr. Bush also provided a handwriting sample that could not be identified as the same handwriting found on the note used during the BB&T robbery; and

Whereas, in 2007, Mr. Bush was convicted of both robberies and sentenced to a combined 12 years' incarceration for the crimes; and

Whereas, on May 17, 2016, Christian Amos called the Prince George County police and asked to speak with someone about multiple bank robberies; and

Whereas, Christian Amos told a detective that he had robbed both the Bank of Southside Virginia in Petersburg and the BB&T in Prince George; and

Whereas, Christian Amos was unaware that another person had been convicted and incarcerated for those robberies; and

Whereas, Christian Amos at that time provided numerous details that matched those of the November 8, 2006, robbery of the BB&T in Prince George; and

Whereas, Christian Amos provided a handwriting sample that was strikingly similar to the handwriting found on the note used in the BB&T robbery; and

Whereas, Christian Amos pleaded guilty to the BB&T robbery on November 10, 2016, and his plea was accepted by the court; and

Whereas, Christian Amos was sentenced to 50 years' incarceration, with all but five years suspended, for the BB&T robbery; and

Whereas, on June 30, 2017, Christian Amos admitted in a declaration that he also committed the October 6, 2006, robbery of the Bank of Southside Virginia and provided accurate details of that robbery; and

Whereas, Mr. Bush filed petitions for actual innocence on December 15, 2017, based on newly discovered evidence and developments regarding the robberies in the form of the confession, guilty plea, conviction, and declaration of Christian Amos; and

Whereas, the Commonwealth of Virginia did not contest Mr. Bush's petitions before the Court of Appeals of Virginia and instead agreed that his petitions should be granted; and

Whereas, the Court of Appeals conducted an independent review of the petitions and evidence, notwithstanding the Commonwealth's concession of their merit; and

Whereas, the Court of Appeals found that Mr. Bush had proven his actual innocence claim by clear and convincing evidence as required by subsection A of § 19.2-327.11 of the Code of Virginia; and

Whereas, on May 22, 2018, the Court of Appeals granted both of Mr. Bush's petitions and issued writs of actual innocence for both robberies; and

Whereas, the Court of Appeals directed the circuit courts to immediately enter orders of expungement for both robberies; and

Whereas, Mr. Bush served almost the entirety of a combined 12-year sentence for robberies he did not commit; and

Whereas, Mr. Bush, as a result of his wrongful incarceration, lost almost 11 years of his freedom and countless life experiences and opportunities, including family relations, the opportunity to further his education, and the opportunity to earn potential income from gainful employment during his years of incarceration; and

Whereas, Mr. Bush has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$520,163 for the relief of Gary Linwood Bush, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Bush may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence.

The compensation, subject to the execution of the release described herein, shall be paid as follows: (i) an initial lump sum of \$104,033 to be paid to Mr. Bush by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (ii) the sum of \$416,130 to purchase an annuity no later than September 30, 2019, for the primary benefit of Mr. Bush, the terms of such annuity structured in Mr. Bush's best interests based on consultation among Mr. Bush or his representatives, the State Treasurer, and other necessary parties.

The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Bush's death.

§ 2. That Mr. Bush shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2024.

2. That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation awarded under this act.

## **Chapter 678 Property conveyance; authorizes DBHDS to transfer certain property.**

An Act to authorize the Commonwealth to convey property to Mount Rogers Community Services Board and to Smyth County.

[S 1515]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Commonwealth, with approval of the Governor pursuant to § 2.2-1150 of the Code of Virginia, is hereby authorized to convey to the Mount Rogers Community Services Board, upon such terms and conditions as may be agreed to by the parties, a parcel of land consisting of approximately 7.095 acres (a portion of Tax Map Parcel 221-130-1) in the northeast corner of the campus, previously used by the Department of Behavioral Health and Developmental Services as the Southwestern Virginia Mental Health Institute. The conveyance shall be made without consideration.

§ 2. The Commonwealth, with approval of the Governor pursuant to § 2.2-1150 of the Code of Virginia, is hereby authorized to convey to Smyth County, upon such terms and conditions as may be agreed to by the parties, a parcel of land consisting of approximately 3.76 acres (a portion of Tax Map Parcel 221-130-1), containing a building and supporting parking currently leased to Smyth County. The terms of such conveyance shall include the provision of heating to the building by the Commonwealth for no more than two years at the current market price for such services. The conveyance shall be made without consideration.

§ 3. The conveyance shall be made in a form approved by the Attorney General. The appropriate officials of the Commonwealth are hereby authorized to prepare, execute, and deliver such deed and other documents as may be necessary to accomplish the conveyance.

## **Chapter 680 Music therapists; Board of Health Professions to evaluate regulation.**

An Act to direct the Board of Health Professions to evaluate whether music therapists and the practice of music therapy should be regulated and the degree of regulation to be imposed.

[S 1547]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Board of Health Professions shall, pursuant to subdivision 2 of § 54.1-2510 of the Code of Virginia, evaluate whether music therapists and the practice of music therapy should be regulated and the degree of regulation to be imposed. The Board of Health Professions shall report the results of its evaluation to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2019.

## **Chapter 685 Health information; sharing between community services boards and jails.**

An Act to require the Department of Behavioral Health and Developmental Services to convene a work group to develop a plan for sharing of health information between community services boards and local and regional jails.

[S 1644]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Department of Behavioral Health and Developmental Services shall convene a work group to include representatives of the Office of the Attorney General, community services boards, local and regional jails, and such other stakeholders as it deems necessary to study the issue of and develop a plan for sharing of protected health information of individuals with mental health treatment needs who have been confined to a local or regional jail in the Commonwealth and who have previously received mental health treatment from a community services board or behavioral health authority in the Commonwealth. Such plan shall include a mechanism for (i) determining if an individual confined in a local or regional jail has previously received treatment from a community services board or behavioral health authority in the Commonwealth and (ii) in cases in which such person has received such treatment, transferring protected health information related to such treatment from the identified community services board to the sheriff or superintendent of the local or regional jail in which the person is confined. The Department shall report by October 1, 2019, to the Governor and the General Assembly on (a) development of the plan, (b) the content of the plan, and (c) the steps necessary to implement the plan, including any statutory or regulatory changes and any appropriations.

## **Chapter 694 Irvington, Town of; amending charter, updates the town's boundary description, etc.**

An Act to amend and reenact § 1 of Article II and §§ 2, as amended, 7, 11, 13, and 15 of Article III of Chapter 366 of the Acts of Assembly of 1958, which provided a charter for the Town of Irvington in Lancaster County, relating to corporate limits, town council, and mayor.

[H 1895]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Article II and §§ 2, as amended, 7, 11, 13, and 15 of Article III of Chapter 366 of the Acts of Assembly of 1958 are amended and reenacted as follows:

Article II. Corporate Limits.

§ 1. The territory embraced within the limits of the town of Irvington is as follows:

Beginning at a point on the westerly side of Virginia State Highway # 3 (renumbered as Virginia State Highway 200), which leads from the Town of Irvington to the Town of Kilmarnock, Virginia, where the land now or formerly belonging to the Leland estate corners with the land of Thomas Banks, which said point of beginning is designated by a cement corner stone; thence running along the line separating the property of the Leland Estate from the Banks property South 82° 20' 20" West 340.11 feet to an old axle; thence continuing along said line South 81° 45' 50" West 153.14 feet to a pipe; thence continuing along said line South 81° 32' 50" West 749.20 feet to an old pipe; thence continuing along said line separating the said Leland and Banks properties South 80° 39' 50" West 940.52 feet to a marked Poplar tree, thence continuing along said line South 79° 54' 20" West 414.11 feet to a cement marker; thence continuing along the same course a distance of approximately 180 feet to the center of Church Branch of Carters Creek; thence running in a Southerly direction down the center of said Branch by the Leland property, property of Dew and Henderson, property of E. A. Stephens and others to a point opposite the property of Warner Moore; thence running in an easterly direction along with center line of the eastern branch of Carters Creek by a Black buoy, the old ferry slip, by the Yarbrough property, the James property to a point in the center of said Creek opposite the property of M. J. Alga; thence running in a Northerly direction along the center of said Eastern Branch of Carters Creek by the lands of Crosby Miller, T. D. McGinnes, through the center of a certain bridge located on Virginia State Highway # 3 (renumbered as Virginia State Highway 200) which leads from the Town of Irvington to the Town of White Stone, Virginia, and continuing in a Northerly direction up the center of said Branch, known as Old Mill Cove, and continuing in a general Northerly direction up the center of said swamp by the S. A. Buchan estate to the Southern boundary of the land of Earl M. Pittman; thence running North 85° 29' 30" West approximately sixty feet to a cement marker; thence continuing North 85° 20' 30" West 2948.16 feet to another cement marker on the Eastern edge of Virginia State Highway # 3 (renumbered as Virginia State Highway 200) which leads from the Town of Irvington to the town of Kilmarnock, Virginia, thence continuing same course approximately 110 feet across said highway to the Leland property; thence running along the western edge of Virginia State Highway # 3 (renumbered as Virginia State Highway 200) in a northerly direction approximately 955.50 feet to a cement marker, the point of beginning, the said property embraced within the Town of Irvington being shown on a certain plat of survey made by T. D. Wilkinson, III, Certified Surveyor, dated the 3rd day of May, 1956, which said plat is of record in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, Instrument number 180001509, and also shown on a certain plat of survey of a portion of the

boundary of Irvington, made by Robert C. Buckley, Jr., Certified Surveyor, dated October 28, 1994, which said plat is of record in the Clerk's Office of the Circuit Court of Lancaster County, Virginia, Instrument number CLR 940000938.

Article III. Administration and Government.

~~§ 2. On the second Tuesday in June, 1962, and every two years thereafter, there shall be elected by the qualified voters of the town, one elector of the town, who shall be denominated mayor and six other such electors who shall be councilmen and constitute the town council.~~ On the first Tuesday in May 2020, and every four years thereafter, there shall be elected by the qualified voters of the town one elector of the town who shall be denominated the mayor and three other such electors, all of whom shall serve terms of four years. On the first Tuesday in May 2022, and every four years thereafter, there shall be elected by the qualified voters of the town an additional three electors, who shall serve terms of four years. The six electors other than the mayor shall constitute the town council. They shall enter upon the duties of their offices on the first day of ~~September~~ July next succeeding their election and shall continue in office until their successors are duly elected and qualified. Every person so elected shall take an oath faithfully to execute and discharge the duties of his office to the best of his judgment and the mayor shall take the oath prescribed by the law for State officers. The failure of any person elected or appointed under the provisions of this charter to qualify or to take the oath required, within the time prescribed for entering upon the discharge of the duties of the office to which he is elected or appointed, shall vacate such office, and the council shall proceed and is hereby vested with power to fill such vacancy in the manner herein prescribed.

§ 7. The mayor shall preside at the meetings of the council, voting only in case of a tie, and perform such other duties as are prescribed by this charter and by general law and such as may be imposed by the council consistent with his office. He shall take care and see that the by-laws, ordinances, acts and resolutions of the council are faithfully executed and obeyed. He shall be ex officio conservator of the peace within the town and within one mile of its corporate limits. He shall see that peace and good order are preserved and that persons and property within the town are protected. He shall authenticate by his signature such documents and instruments as the council, this charter, or the laws of the Commonwealth require. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town.

§ 11. The council shall appoint at its first regular meeting in ~~September~~ July after its election, a clerk of the council who shall hold office at the pleasure of the council. He shall

attend the meetings of the council and keep its minutes and records and have charge of the corporate seal and shall attest the same. He shall keep all papers required to be kept by the council, shall publish reports and ordinances as are required to be published and shall perform such other duties as the council may require. His compensation shall be fixed by the council. Any vacancy in this office shall be filled by the council.

§ 13. The council shall appoint at its first meeting in ~~September~~ July, or as soon as practicable thereafter, a treasurer who shall hold office for a term of two years. The council may provide a salary for the treasurer. He shall give such bond, with surety and in such penalty as the council prescribes. He shall receive all money belonging to the town, and keep correct accounts of all receipts from all sources and of all expenditures of all departments. He shall be responsible for the collection of all taxes, license fees, levies and charges due to the town, and shall disburse the moneys of the town in the manner prescribed by the council as it may by ordinance direct. The treasurer shall make such reports and at such time as the council may prescribe. The books and accounts of the treasurer shall be examined and audited at such times as the council may direct, such examination and audit to be reported to the council.

§ 15. The council may appoint at its first regular meeting in ~~September~~ July or as soon as practicable thereafter, a town sergeant, who shall also be chief of police and have all the powers vested in town sergeants by general law. He shall hold office at the pleasure of the council. His duties shall be such as the council prescribes. He shall be vested with the powers of a conservator of the peace. His compensation shall be fixed by the council.

## **Chapter 707 Nonconforming use; a wall built on residential property shall be grandfathered as a valid use, etc.**

An Act to grandfather certain nonconforming use.

[H 2420]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. A wall built on residential property shall be grandfathered as a valid nonconforming use, and the wall shall not be subject to removal solely due to such nonconformity, in

any instance where (i) a residential property owner sought local government approval prior to 2008 for construction of a wall on the owner's property, (ii) the property owner was informed by a local official that such wall required no permit and that the structure would comply with the zoning ordinance, (iii) the wall was thereafter constructed, (iv) the locality subsequently informed the property owner that the wall was illegal, and (v) such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.

## **Chapter 709 Telework Promotion and Broadband Assistance, Office of, and Broadband Advisory Council; expiration.**

An Act to amend and reenact § 2.2-2699.3 of the Code of Virginia and to amend and reenact the second enactment of Chapter 444 of the Acts of Assembly of 2008, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, and to repeal the third enactment of Chapter 818 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, and the third enactment of Chapter 852 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, relating to the Office of Telework Promotion and Broadband Assistance and the Broadband Advisory Council; expiration.

[H 2541]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2699.3 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-2699.3. (Expires July 1, 2019) Broadband Advisory Council; purpose; membership; compensation; chairman.

A. The Broadband Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to advise the Governor on policy and funding priorities to expedite deployment and reduce the cost of broadband access in the Commonwealth.

B. The Council shall have a total membership of ~~four~~ 14 17 members that shall consist of ~~six~~ seven legislative members, ~~four~~ six nonlegislative citizen members, and four ex officio members. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the

principles of proportional representation contained in the Rules of the House of Delegates; ~~two~~ three members of the Senate to be appointed by the Senate Committee on Rules; and ~~four~~ six nonlegislative citizen members to be appointed by the Governor, of whom one shall be a representative of the Virginia Cable Telecommunications Association, one shall be a representative of the Virginia Telecommunications Industry Association, one shall be a representative from local government recommended by the Virginia Municipal League and Virginia Association of Counties, ~~and one shall be a representative of the Virginia Wireless Internet Service Providers Association, one shall be a representative of a wireless service authority, and one shall be a representative of the Virginia, Maryland and Delaware Association of Electric Cooperatives.~~ The Secretaries of Agriculture and Forestry, Commerce and Trade, and Technology, or their designees, and the executive director of the Center for Rural Virginia and three Secretaries as defined in § 2.2-200 to be appointed by the Governor shall serve ex officio. Legislative and ex officio members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12. Nonlegislative citizen members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for compensation and expenses of legislative members shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee. ~~Funding for the~~ The Governor shall designate the office of one of the secretaries appointed pursuant to subsection B to provide funding for the costs of expenses of the nonlegislative citizen members and all other expenses of the Council shall be provided by the Office of the Secretary of Technology.

D. The Council shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the ~~Office of Telework Promotion and Broadband Assistance~~ Secretary of Commerce and Trade. The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.

2. That the second enactment of Chapter 444 of the Acts of Assembly of 2008, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2019~~ 2021.**

3. That the third enactment of Chapter 818 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is repealed.

4. That the third enactment of Chapter 852 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is repealed.

### **Chapter 710 Telework Promotion and Broadband Assistance, Office of, and Broadband Advisory Council; expiration.**

An Act to amend and reenact § 2.2-2699.3 of the Code of Virginia and to amend and reenact the second enactment of Chapter 444 of the Acts of Assembly of 2008, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, and to repeal the third enactment of Chapter 818 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, and the third enactment of Chapter 852 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, relating to the Office of Telework Promotion and Broadband Assistance and the Broadband Advisory Council; expiration.

[S 1618]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2699.3 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-2699.3. (Expires July 1, 2019) Broadband Advisory Council; purpose; membership; compensation; chairman.

A. The Broadband Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to advise the Governor on policy and funding priorities to expedite deployment and reduce the cost of broadband access in the Commonwealth.

B. The Council shall have a total membership of ~~14~~ 17 members that shall consist of ~~six~~ seven legislative members, ~~four~~ six nonlegislative citizen members, and four ex officio

members. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; ~~two~~ three members of the Senate to be appointed by the Senate Committee on Rules; and ~~four~~ six nonlegislative citizen members to be appointed by the Governor, of whom one shall be a representative of the Virginia Cable Telecommunications Association, one shall be a representative of the Virginia Telecommunications Industry Association, one shall be a representative from local government recommended by the Virginia Municipal League and Virginia Association of Counties, ~~and one shall be a representative of the Virginia Wireless Internet Service Providers Association, one shall be a representative of a wireless service authority, and one shall be a representative of the Virginia, Maryland and Delaware Association of Electric Cooperatives.~~ The Secretaries of Agriculture and Forestry, Commerce and Trade, and Technology, or their designees, and the executive director of the Center for Rural Virginia and three Secretaries as defined in § 2.2-200 to be appointed by the Governor shall serve ex officio. Legislative and ex officio members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12. Nonlegislative citizen members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for compensation and expenses of legislative members shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee. ~~Funding for the~~ The Governor shall designate the office of one of the secretaries appointed pursuant to subsection B to provide funding for the costs of expenses of the nonlegislative citizen members and all other expenses of the Council shall be provided by the Office of the Secretary of Technology.

D. The Council shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the ~~Office of Telework Promotion and Broadband Assistance~~ Secretary of Commerce and Trade. The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.

2. That the second enactment of Chapter 444 of the Acts of Assembly of 2008, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is amended and reenacted as follows:

**2. That the provisions of this act shall expire on July 1, ~~2019~~ 2021.**

3. That the third enactment of Chapter 818 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is repealed.

4. That the third enactment of Chapter 852 of the Acts of Assembly of 2009, as amended by Chapters 759 and 760 of the Acts of Assembly of 2018, is repealed.

## **Chapter 714 Luray, Town of; new charter (previous charter repealed).**

An Act to provide a new charter for the Town of Luray in Page County and to repeal Chapter 338, as amended, of the Acts of Assembly of 1928, which provided a charter for the Town of Luray.

[S 1424]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

CHARTER

FOR THE

TOWN OF LURAY.

Chapter 1.

Incorporation and Boundaries.

§ 1.1. Incorporation; general powers.

Be it enacted by the General Assembly of Virginia, that the inhabitants of the territory in the County of Page, contained within the boundaries prescribed and defined in the section immediately following, shall continue to be, and they are hereby declared to be, a body politic and corporate, in fact and in name, under the name and style of the Town of Luray, and as such shall have and exercise all the powers conferred by and be subject to all the laws of the Commonwealth of Virginia now in force or that may hereafter be

enacted for the government of towns, so far as the same are not inconsistent with the provisions herein.

§ 1.2. Town boundaries.

The boundaries of the town shall remain as now established unless changed in accordance with applicable law.

Chapter 2.

General Powers.

§ 2.1. General grant of powers.

(a) Powers authorized in Code of Virginia.

The town shall have and may exercise any or all powers now or subsequently authorized for exercise by towns in Title 15.2 of or elsewhere in the Code of Virginia of 1950, as amended, regardless of whether such powers are set out or incorporated by reference in this charter. All ordinances in force in the Town of Luray as of July 1, 2019, not inconsistent with this charter, shall be and remain in force until altered, amended, or repealed by the town council.

(b) Powers exercised by governing body.

All powers vested in the town by this charter shall be exercised by its governing body unless expressly provided to the contrary. Such powers shall include those not expressly prohibited by the Constitution and general law of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the town's inhabitants and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce, and industry of the town and the town's inhabitants, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power. The exercise of the powers conferred under this section is specifically limited to the area within the corporate limits of the town, unless otherwise conferred in the applicable sections of the Constitution of Virginia and the general laws of the Commonwealth, as amended.

§ 2.2. Financial powers.

(a) Generally.

In accordance with the Constitution of Virginia and the United States Constitution, the town may raise through annual taxes and assessments on property, persons, and other subjects of taxation that are not prohibited by law such sums of money as in the judgment of the town are necessary to pay the debts, defray the expenses, accomplish the

purposes, and perform the functions of the town, in such manner as the town council deems necessary or expedient. The town shall impose no tax on its bonds.

(b) Assessments for local improvements.

The town may impose special or local assessments for local improvements and enforce payment thereof, subject, however, to such limitations prescribed by the Constitution of Virginia as may be in force at the time of the imposition of such special or local assessments.

(c) Water, electricity, and sewerage rates; rates and charges for public utilities or services, etc., operated, etc., by town.

The town may establish, impose, and enforce water, electricity, and sewerage rates and rates and charges for public utilities, or other services, products, or conveniences, operated, rendered, or furnished by the town and assess, or cause to be assessed, water, electricity, sewerage, and other public utility rates and charges directly against the owner or owners of the buildings, or against the proper tenant or tenants, and in the event that such rates and charges shall be assessed against a tenant, then the town council may, by ordinance, require of such tenant a deposit of such reasonable amount as may be by such ordinance prescribed before furnishing such services to such tenant.

§ 2.3. Contractual powers; gifts; grants.

(a) Acquisition of property generally; holding, selling, leasing, etc., town property.

The town may acquire, by purchase, gift, devise, condemnation, or otherwise, property, real and personal, or any estate or interest therein, within or without the town or the Commonwealth of Virginia and for any of the purposes of the town.

(b) Debts and evidence of indebtedness.

The town may contract debts, borrow money, and make and issue evidence of indebtedness.

(c) Gifts.

The town may accept or refuse gifts, grants, bequests, or donations of any kind from any source, absolutely or in trust, that are related to the town's powers, duties, and functions, or for educational, charitable, or other public purposes, and do all the things and acts necessary to carry out the purposes of such gifts, grants, bequests, and devises, with power to manage, maintain, operate, sell, lease, or otherwise handle or dispose of the same, in accordance with terms and conditions of such gifts, grants, bequests, and devises.

§ 2.4. Operational powers.

(a) Generally.

The town may provide for the organization, conduct, and operation of all departments, offices, boards, commissions, and agencies of the town, subject to such limitations as may be imposed by this charter or otherwise by law, and may establish, consolidate, abolish, or change departments, offices, boards, commissions, and agencies of the municipal corporation and prescribe the powers, duties, and functions thereof, except where such departments, offices, boards, commissions, and agencies or the powers, duties, and functions thereof are specifically established or prescribed by charter or otherwise by law.

(b) Records and accounts.

The town shall provide for the control and management of the town's affairs and shall prescribe and require the adoption and keeping of such books, records, accounts, and systems of accounting by the departments, boards, commissions, or other agencies of the local government necessary to give full and true accounts of the affairs, resources, and revenues of the municipal corporation and the handling, use, and disposal thereof.

(c) Expenditure of money.

The town may expend money of the town for all lawful purposes.

(d) Construction, maintenance, etc., of improvements, buildings, etc., for use and operation of town departments.

The town may construct, maintain, regulate, and operate public improvements of all kinds, including municipal and other buildings, comfort stations, markets, and all buildings and structures necessary or appropriate for the use and proper operation of the various departments of the town, and may acquire by condemnation or otherwise all land, riparian, and other rights and easements necessary for such improvements, or any of them.

§ 2.5. Utilities; public improvements.

(a) Water works and water supply.

The town may own, operate, and maintain water works and acquire in any lawful manner in any county of the Commonwealth of Virginia such water, lands, property rights, and riparian rights as the town council may deem necessary for the purpose of providing the town with an adequate water supply and of piping or conducting the same; lay all necessary mains and service lines, either within or without the corporate limits of the town, and charge and collect water rents therefor; erect and maintain all necessary dams, pumping stations, and other works in connection therewith; make reasonable rules and regulations for promoting the purity of the town water supply and protecting it from pollution and for this purpose exercise full police powers and sanitary patrol over all lands comprised within the limits of the watershed tributary to any such water supply wherever

such lands may be located in the Commonwealth of Virginia; impose and enforce adequate penalties for the violation of any such rules and regulations and prevent by injunction any pollution or threatened pollution of such water supply and any and all acts likely to impair the purity thereof; and, for the purpose of acquiring lands, interest in lands, property rights, and riparian rights or materials for any such use, exercise all powers of eminent domain provided by the laws of the Commonwealth of Virginia. For any of the purposes aforesaid, said town may, if the town council shall so determine, acquire by condemnation, purchase, or otherwise any estate or interest in such lands or any of them in fee.

(b) Streets; parks, playgrounds, etc.; infrastructure; vehicles.

The town may establish, maintain, improve, alter, vacate, regulate, and otherwise manage its streets, alleys, parks, and playgrounds, and all of its public infrastructure and public works, in such manner as best serves the public interest, safety, and convenience; regulate, limit, restrict, and control the services and routes of and rates charged by vehicles for the carrying of passengers and property in accordance with general law; permit or prohibit poles and wires for electricity, telephone, telegraph, television, and other purposes to be erected and gas pipes to be laid in the streets and alleys and prescribe and collect an annual charge for such privileges; and, subject to the provisions of franchise agreements, require the owner or lessees of any such poles or wires now in use or hereafter used to place such wires, cables, and accoutrements in conduits underground in accordance with the town's prescribed requirements.

(c) Public utilities.

Subject to the provisions of the Constitution of Virginia, this charter, and general law, the town may grant franchises for public utilities, reserving rights of transfer, renewal, extension, and amendment thereof.

(d) Collection and disposition of sewage, garbage, ashes, refuse, etc.; reduction and disposal plant.

The town may collect and dispose of sewage, ashes, garbage, carcasses of dead animals, and other refuse; make reasonable charges therefor; acquire and operate reduction or any other plants for the utilization or destruction of such materials, or any of them; contract for and regulate the collection and disposal thereof; and require and regulate the collection and disposal thereof.

§ 2.6. Nuisances; sanitary conditions, etc.

The town may compel the abatement and removal of all nuisances within the town; require all lands, lots, and other premises within the town to be kept clean; regulate the keeping of animals, poultry, and other fowl therein; regulate the exercise of any

dangerous or unwholesome business, trade, or employment therein; regulate the transportation of all articles through the streets of the town; compel the abatement of smoke, dust, and unnecessary noise; compel the removal of grass and weeds from private and public property and snow from sidewalks; require the covering or removal of offensive, unwholesome, unsanitary, or unhealthy substances allowed to accumulate in or on any place or premises; require the filling in to the street level of the portion of any lot adjacent to a street where the difference in level between the lot and the street constitutes a danger to life and limb; require the raising or draining of the grounds subject to be covered by stagnant water and the razing or repair of all unsafe, dangerous, or unsanitary public or private buildings, walls, or structures; and remedy, repair, and secure any blighted or derelict building or structure within the town in accordance with applicable law.

§ 2.7. Police powers.

(a) The town may exercise full police powers as provided by general law and establish and maintain a department or division of police.

(b) The town may also do all things whatsoever necessary or expedient for promoting or maintaining the general welfare, comfort, education, morals, peace, government, health, trade, commerce, or industries of the town or its inhabitants; prescribe any penalty for the violation of any town ordinance, rule, or regulation or of any provisions of this charter, not exceeding the fine or sentence imposed by the laws of the Commonwealth of Virginia; pass and enforce all bylaws, rules, regulations, and ordinances that it may deem necessary for the good order and government of the town, the management of its property, the conduct of its affairs, and the peace, comfort, convenience, order, morals, health, and protection of its citizens or their property; and do such other things and pass such other laws as may be necessary or proper to carry into full effect any power, authority, capacity, or jurisdiction that is or shall be granted to or vested in said town, or in the town council, court, or offices thereof, or which may be necessarily incident to a municipal corporation.

§ 2.8. Miscellaneous powers.

(a) Removal or reconstruction of unsafe buildings, etc.; protection of public gatherings. The town may regulate the size, height, materials, and construction of buildings, fences, walls, retaining walls, and other structures hereafter erected in such manner as the public safety and conveniences may require; remove or require to be removed or reconstructed any building, structure, or addition thereto, that by reason of dilapidation, defect of structure, or other causes may have become dangerous to life or property or that may have been erected contrary to law; and enact stringent and efficient laws for securing the

safety of persons from fires in halls and buildings used for public assemblies, entertainments, or amusements.

(b) Fees for permits, etc.

The town may charge and collect fees for permits to use public facilities and for public services and privileges.

(c) Cemeteries.

The town may provide in or near the town lands to be used as burial places for the dead; improve and care for the same and the approaches thereto; charge for and regulate the use of ground therein; and provide for the perpetual upkeep and care of any plot or burial lot therein. The town is authorized to take and receive sums of money by gift, bequest, or otherwise, to be kept invested, and the income thereof is to be used for the perpetual upkeep and care of the said lot or plat for which the said donation, gift, or bequest shall have been made.

(d) Injunctive relief.

The town may maintain a suit to restrain by injunction the violation of any ordinance, notwithstanding any punishment that may be provided for the violation of such ordinance.

Chapter 3.

Elected Officers.

§ 3.1. Vesting of government.

The government of the Town of Luray shall be vested in a mayor and town council of six council members.

§ 3.2. Election and terms of officers; town council as continuing body.

The mayor and town council members shall each be a qualified voter within the town, elected at large, and hold office for a term of four years. The town council shall be a continuing body, and no measure pending before such body shall abate or be discontinued by reason of expiration of the term of office or removal of any or all of the members. The mayor and town council members in office at the time of adoption of this charter shall continue in office until the expiration of the terms to which they were elected or until their successors are elected and qualified. Accordingly, at the time of the U.S. presidential election in November 2020, there shall be an election for mayor and three town council positions, and on the date of the November 2022 general election, there shall be an election for the other three town council positions.

§ 3.3 Mayor.

The mayor shall be the chief executive officer of the town and shall have the following powers and duties:

(a) The mayor shall see that the bylaws and ordinances of the town are fully executed and enforced and shall preside over the meetings of the town council, voting only in case of a tie.

(b) The mayor shall authenticate with his or her signature every ordinance and resolution adopted by the town council.

(c) The mayor shall see that the duties of the various town officers, agents, and employees are faithfully performed. The mayor shall have power to investigate their accounts and have access to all of their books and documents in their office.

#### § 3.4. Vice-mayor.

A vice-mayor shall be elected by a majority of the town council at its biennial organizational meeting for a term of two years. The vice-mayor shall discharge the municipal duties of the mayor during any period of absence or disability of the mayor. If the vice-mayor is also absent or unable to act, the town council may choose another town council member to discharge the mayor's duties during the period of the vice-mayor and mayor's absence or disability. The town council may provide reasonable compensation to the vice-mayor or other town council member discharging the duties of the mayor pursuant to this section. Upon the adoption of this charter, the current president pro tempore of the town council shall serve as vice-mayor until the next organizational meeting of the town council.

#### § 3.5. Town Council.

##### (a) Regular meetings.

The town council shall by ordinance fix the time of their regular meetings, and they shall meet at least once a month. The town council may convene at such additional times as it may deem necessary in accordance with applicable law.

##### (b) Special meetings.

A special meeting may be called by the mayor or by two or more town council members. No business shall be transacted at a special meeting except that for which it is called unless all members of the town council are present. In addition, no vote shall be reconsidered or rescinded at a special meeting unless the same or a greater number of town council members is present at the special meeting as was present when the vote was taken.

##### (c) Quorum.

Four members of the town council, which may include the mayor, shall constitute a quorum for the transaction of business.

##### (d) Procedural rules.

The town council may adopt rules of procedure that govern meetings of the town council.

§ 3.6. Vacancies.

Any vacancy occurring in the office of mayor or a town council member shall be filled in accordance with general law.

Chapter 4.

Officers Appointed by Town Council.

§ 4.1. Appointments.

The town council may appoint the following officers:

(a) Town manager.

The town manager shall be responsible to the town council for the proper administration of all affairs of the town; for the control and management of all town departments and property; for the appointment, supervision, and dismissal of town employees; for the preparation and implementation of an annual budget; and for any other duties as prescribed by the town council.

(b) Town treasurer.

The town treasurer shall keep the town's books and accounts and collect all the taxes, revenues, and assessments that may be levied by the town council and is vested with all the powers provided by the general laws of the Commonwealth of Virginia. The town treasurer shall also perform other duties and receive such compensation as the town council may prescribe.

(c) Town clerk.

The town clerk shall attend the meetings of the town council, keep a record of its proceedings, and shall generally perform such other acts and duties as the town council may from time to time prescribe and require. The town clerk shall receive such compensation as the town council may prescribe and may also hold the office of town treasurer so long as he or she is not a member of the town council.

(d) Town attorney.

The town attorney shall be an attorney at law licensed to practice under the laws of the Commonwealth of Virginia. The town attorney shall receive such compensation as may be determined by the town council and shall have such duties as prescribed by the town council.

(e) Other officers.

The town council may appoint such other officers as may be necessary to conduct the business of the town, prescribe their duties, and fix their compensation.

§ 4.2. Removal of appointed officers.

Any officer appointed by the town council may be removed at its pleasure. The town council may fill any vacancy in any appointed office.

Chapter 5.

Miscellaneous Provisions.

§ 5.1. Severability.

If any clause, sentence, paragraph, or part of this charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of the charter but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 5.2. Continuation of ordinances in effect.

All ordinances now in force in the town, not inconsistent with this charter, shall be and remain in force until altered, amended, or repealed by the town council.

§ 5.3. Repeal of conflicting acts and charters.

All acts and parts of acts in conflict with this charter are hereby repealed, insofar as they affect the provisions of this charter, provided, however, that nothing contained in this act shall be construed to invalidate or to in any manner affect the present existing indebtedness and liabilities of the town, whether evidenced by bonded obligations or otherwise, or to relieve it of any part of its present obligation or liability on account of bond issues, liabilities, or debts of whatsoever nature or kind.

2. That Chapter 338, as amended, of the Acts of Assembly of 1928 is repealed.

## **Chapter 719 School and Campus Safety, Virginia Center for; guidelines on information sharing.**

An Act to direct the Virginia Center for School and Campus Safety to convene a work group to develop guidelines and best practices for the sharing of certain information between a local school board or public institution of higher education and law enforcement.

[S 1591]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Virginia Center for School and Campus Safety (the Center), shall convene a work group to develop guidelines and best practices for the sharing of information

between a local school board or public institution of higher education and law enforcement regarding a student whose behavior may pose a threat to the safety of a school or institution or the community, including information regarding such student's disciplinary history, medical conditions, or other relevant characteristics. Such guidelines and best practices shall seek to balance the interests of safety and student privacy and shall be consistent with the provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as applicable. Such work group shall include representatives from the Department of Education, the State Council of Higher Education for Virginia, the Department of Behavioral Health and Developmental Services, the Office of the Attorney General, the Virginia School Boards Association, the Virginia Association of Chiefs of Police, the Virginia Sheriffs' Association, the Virginia Association of Campus Law Enforcement Administrators, and other interested shareholders. The Center shall develop such guidelines and best practices, report to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health, and make such guidelines available to local school boards, public institutions of higher education, law enforcement, and the public by October 1, 2019.

## **Chapter 722 Volunteer assistant attorneys for the Commonwealth; appointment in certain jurisdiction.**

An Act to repeal the second enactment of Chapter 913 of the Acts of Assembly of 2000, as amended by Chapter 719 of the Acts of Assembly of 2007, relating to volunteer assistant attorneys for the Commonwealth.

[S 1686]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the second enactment of Chapter 913 of the Acts of Assembly of 2000, as amended by Chapter 719 of the Acts of Assembly of 2007, is repealed.

## **Chapter 723 USBC and SFPC; changes to Codes for safety measures for schools.**

An Act to direct the Department of Housing and Community Development to develop proposals for changes to the Uniform Statewide Building Code (USBC) and the Statewide Fire Prevention Code (SFPC) with the goal of assisting in the provision of safety and security measures for public or private elementary schools, secondary schools, and institutions of higher education for active shooter or hostile threats.

[S 1755]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Department of Housing and Community Development is directed to convene stakeholders representing entities that enforce the Uniform Statewide Building Code (USBC) (§ 36-97 et seq. of the Code of Virginia) and the Statewide Fire Prevention Code (SFPC) (§ 27-94 et seq. of the Code of Virginia) and other law-enforcement organizations to develop proposals for changes to the USBC and SFPC for submission to the Board of Housing and Community Development. Such proposals shall have the goal of assisting in the provision of safety and security measures for the Commonwealth's public or private elementary and secondary schools and public or private institutions of higher education for active shooter or hostile threats. The review of the stakeholders shall include the examination of (i) locking devices, (ii) barricade devices, and (iii) other safety measures that may be utilized in an active shooter or hostile threat situation that occurs in any classroom or other area where students are located for a finite period of time.

## **Chapter 725 Pregnant prisoners; use of restraint.**

An Act to require the Board of Corrections to review its standards related to allowable restraint practices for pregnant prisoners.

[S 1772]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. That the Board of Corrections shall review its standards related to allowable restraint practices for pregnant prisoners to ensure that (i) pregnant prisoners are treated humanely and restrained in a manner that accounts for their specific health needs and (ii) such restraint procedures provide adequate protection for the safety of correctional staff and others who may be in close proximity to such prisoners.

## **Chapter 727 Keysville, Town of; amending charter, shifts municipal elections to November.**

An Act to amend and reenact § 3.1, as amended, of Chapter 352 of the Acts of Assembly of 1975, which provided a charter for the Town of Keysville in Charlotte County, relating to elections.

[H 2807]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 3.1, as amended, of Chapter 352 of the Acts of Assembly of 1975 is amended and reenacted as follows:

§ 3.1. (a) The town shall be governed by a town council composed of six councilmembers and a mayor. Beginning with the 1998 elections, the councilmen and mayor shall serve for terms of four years, or until their successors are duly elected and qualified. Beginning in 2020, three councilmembers and the mayor shall be elected by the qualified voters of the town on the Tuesday following the first Monday in November. In 2022, the mayor and the three remaining councilmembers shall be elected by the qualified voters of the town on the Tuesday following the first Monday in November. The councilmembers shall serve a term of four years, or until their successors are duly elected and qualified. The mayor shall serve a term of two years, or until his or her successor is duly elected and qualified. The term of the mayor elected in 2016 and the terms of the three councilmembers elected in 2016 shall expire December 31, 2020. The terms of the three remaining councilmembers shall expire December 31, 2022. Elections thereafter

shall be held on the Tuesday following the first Monday in November in even-numbered years.

(b) ~~The councilmen~~ councilmembers and mayor shall be elected and qualify for office as provided by general law. ~~The councilmen~~ councilmembers and mayor in office at the time of the passage of this act or any subsequent change in general law shall continue until the expiration of ~~the~~ their terms ~~for which they were elected~~ or until their successors are duly elected and qualified, whichever may be later. A change in general law may, if need be, abbreviate the term of councilmen and the mayor initially elected following such change.

(c) The mayor shall preside over meetings of the town council and shall be the chief official of the town for ceremonial purposes. He shall have the same powers and duties as other members of the council with a vote only in the event of a tie. The mayor may receive a salary as such, the amount also to be fixed by the council, but in no event to exceed one thousand five hundred dollars per year.

## **Chapter 735 Oyster planting grounds; municipal dredging projects.**

An Act to amend and reenact § 28.2-618 of the Code of Virginia and to repeal the second enactment of Chapter 365 and the second enactment of Chapter 529 of the Acts of Assembly of 2017, relating to oyster grounds; dredging projects; sunset.

[H 2047]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-618 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-618. Commonwealth guarantees rights of renter subject to right of fishing.

A. The Commonwealth shall guarantee to any person who has complied with ground assignment requirements the absolute right to continue to use and occupy the ground for the term of the lease;

B. The right described in subsection A is subject to:

1. ~~Section~~ The provisions of § 28.2-613;

2. Riparian rights;

3. The right of fishing in waters above the bottoms, provided (i) that no person exercising the right of fishing shall use any device which is fixed to the bottom, or which, in any way, interferes with the renter's rights or damages the bottoms, or the oysters planted thereon, and (ii) that crab pots and gill nets which are not staked to the bottom shall not be considered devices which are fixed to the bottom unless the crab pots and gill nets are used over planted oyster beds in waters of less than four feet at mean low water on the seaside of Northampton and Accomack Counties;

4. Established fishing stands, but only if the fishing stand license fee is timely received from the existing licensee of the fishing stand and no new applicant shall have priority over the oyster lease. However, a fishing stand location assigned prior to the lease of the oyster ground is a vested interest, a chattel real, and an inheritable right which may be transferred or assigned whenever the current licensee complies with all existing laws; and

5. (Expires July 1, 2019) Municipal dredging projects located in the Lynnhaven River or its creeks and tributaries, including dredging projects to restore existing navigation channels in areas approved by the Commission. ~~Such projects shall be limited to~~

C. When a municipal dredging project of the type described in subdivision B 5 proposes to impact grounds that are condemned, restricted, or otherwise nonproductive not subject to beneficial use as oyster-planting ground, the Commissioner shall notify, by certified letter, the holder of any such lease within the footprint of the proposed navigation channel, requesting a response within 60 days. The locality shall compensate the lessee for the use of the ground, and if the parties cannot agree on a compensation amount, a court of competent jurisdiction shall determine the value of the ground as of the date it is first disturbed.

D. When a municipal dredging project of the type described in subdivision B 5 proposes to impact grounds that are subject to beneficial use as oyster-planting ground, the following process shall apply:

1. The Commissioner shall review any such proposed project to ensure that the project, in addition to meeting the considerations established in § 28.2-1205, avoids impacting grounds that are subject to beneficial use as oyster-planting ground to the maximum extent practicable. Upon determining that the project meets such standard, the Commissioner shall notify, by certified letter, the holder of any such lease within the footprint of the proposed navigation channel requesting a response within 60 days.

2. After the Commissioner sends such notice, the locality shall compensate the lessee for the use of the ground. If the lessee and the locality are able to agree on a compensation amount within 90 days from the date the Commissioner's notice is sent, no

additional action is necessary on the part of the locality. Otherwise, the locality shall offer in writing to enter with the lessee into mediation, as defined in § 8.01-581.21, at the expense of the locality. If the lessee refuses such offer, or if the locality and the lessee reach no agreement within nine months of such offer, a court of competent jurisdiction shall determine and order fair compensation to the lessee.

3. The Commission shall hold a hearing on any such project prior to approval. Any objector, the locality, and the lessee shall each have an opportunity to be heard at such hearing. If the Commission approves the project and compensation for the lease has been determined pursuant to the provisions of this subsection, the Commissioner shall issue the permit for the project.

4. The provisions of any compensation agreement or order made pursuant to this section may include terms establishing a timeline by which the lessee shall vacate the impacted portion of the leased ground. The process of transferring a lease as a result of the completion of the process established in this subsection shall not extend or otherwise affect any timeline established in this subsection.

2. That the second enactment of Chapter 365 and the second enactment of Chapter 529 of the Acts of Assembly of 2017 are repealed.

3. That the first enactment of this act shall expire on July 1, 2035.

## **Chapter 764 Designating the Trooper Lucas B. Dowell Bridge.**

An Act to designate the bridge on Interstate 81 in Smyth County over Whitetop Road the "Trooper Lucas B. Dowell Bridge."

[S 1789]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The bridge on Interstate 81 in Smyth County over Whitetop Road is hereby designated the "Trooper Lucas B. Dowell Bridge." The Department of Transportation shall place and maintain appropriate markers indicating the designation of this bridge. This designation shall not affect any other designation heretofore or hereafter applied to this bridge.

## **Chapter 765 Licensed local school board instructional or administrative employees; service retirement allowance.**

An Act to amend and reenact the fifth enactments of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, Chapter 609 of the Acts of Assembly of 2005, the first enactment of Chapter 590 of the Acts of Assembly of 2009, and the first enactment of Chapter 326 of the Acts of Assembly of 2015, and to amend and reenact the third enactment of Chapter 563 of the Acts of Assembly of 2004, as amended by Chapters 607 and 608 of the Acts of Assembly of 2005, the second enactment of Chapter 590 of the Acts of Assembly of 2009, and the second enactment of Chapter 326 of the Acts of Assembly of 2015, relating to retirement allowance for and rehiring retired teachers and administrators.

[S 1227]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the fifth enactments of Chapters 689 and 700 of the Acts of Assembly of 2001, as amended by the second enactment of Chapter 211 of the Acts of Assembly of 2003, Chapter 609 of the Acts of Assembly of 2005, the first enactment of Chapter 590 of the Acts of Assembly of 2009, and the first enactment of Chapter 326 of the Acts of Assembly of 2015, are amended and reenacted as follows:

**5. That the provisions of this act shall expire on July 1, ~~2020~~ 2025.**

2. That the third enactment of Chapter 563 of the Acts of Assembly of 2004, as amended by Chapters 607 and 608 of the Acts of Assembly of 2005, the second enactment of Chapter 590 of the Acts of Assembly of 2009, and the second enactment of Chapter 326 of the Acts of Assembly of 2015, is amended and reenacted as follows:

**3. That the provisions of this act shall expire on July 1, ~~2020~~ 2025.**

## **Chapter 770 Reading diagnostic tools; Department of Education to develop and submit plan.**

An Act to require the Department of Education to develop and submit a plan relating to additional reading diagnostic tools.

[S 1718]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. The Department of Education, in consultation with appropriate stakeholders, including a parent of a currently-enrolled public school student diagnosed with dyslexia, shall develop a plan to implement a pilot program to incorporate additional diagnostic tools into reading diagnostic tests used for screening students in kindergarten through grade three. Such plan shall consider the appropriate interventions and services for students identified through such additional diagnostic tools and the resources that are necessary for the implementation of such interventions and services. The Department of Education shall submit such plan to the Chairmen of the House Committee on Education, the Senate Committee on Education and Health, the House Committee on Appropriations, and the Senate Committee on Finance no later than December 1, 2019.

## **Chapter 782 Central Criminal Records Exchange; reports, duties and authority.**

An Act to amend and reenact §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-303.02 and 19.2-390.03, relating to reports to Central Criminal Records Exchange; duties and authority of the Central Criminal Records Exchange; unapplied criminal history record information.

[S 1602]

Approved March 22, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-303.02 and 19.2-390.03 as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted

under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer employed by a private

police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department.

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or such entity's successor in interest, provided it complies with the requirements set forth herein. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity that has been authorized pursuant to this section, provided it complies with the requirements set forth herein. The authority of a private police department shall be limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding with the private police department that addresses the duties and responsibilities of the private police department and the chief law-enforcement officer in the conduct of criminal investigations. Private police departments and private police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable to private police departments. Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private police department may use the word "police" to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private

police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department as may such entity's successor in interest, provided it complies with the requirements set forth herein.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"Unapplied criminal history record information" means information pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local community-based probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local community-based probation by any judge of any court within the localities served;
2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;
3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;
4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol or prescribed medication;
5. Facilitate placement of offenders in substance abuse education or treatment programs and services or other education or treatment programs and services based on the needs of the offender;
6. Seek a capias from any judicial officer in the event of failure to comply with conditions of local community-based probation or supervision on the part of any offender provided

that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *capias* has been sought;

9. Keep such records and make such reports as required by the Department of Criminal Justice Services;

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require an offender to submit a sample for DNA analysis; ~~and~~

11. Monitor the collection and payment of restitution to the victims of crime for offenders placed on local supervised probation; and

12. Determine by reviewing the offender's criminal history record at least 60 days prior to discharge whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) order the offender to report to the law-enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken for each such offense, (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the offense does not appear on the offender's criminal history record, and (iii) verify that such fingerprints and photograph have been taken.

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of local community-based probation;

2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;

3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;

4. Assist the courts, when requested, by monitoring the collection of court costs and fines for offenders placed on local probation; and

5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the approval of the Department of Criminal Justice Services.

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.

A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense; (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to an assault or assault and battery against a family or household member; (iii) (a) the person has not previously been convicted of an act of violence as defined in § 19.2-297.1 or (b) if such person has been previously convicted of such an act of violence, the attorney for the Commonwealth does not object to the deferral; (iv) the person has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section; (v) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2; and (vi) the person consents to such deferral and to a waiver of his right to appeal a finding of facts sufficient to justify a finding of guilt under this section entered pursuant to subsection F for a violation of a term or condition of his probation. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer. A person may file a motion to withdraw his consent to the deferral and waiver of his right to appeal within 10 days of the entry of the order deferring proceedings on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. The court shall schedule a hearing within 30 days of receipt of the motion and shall provide reasonable notice to the attorney for the Commonwealth and to the person and his attorney, if any. If the person appears at the hearing and requests to withdraw his consent, the court shall grant such request, enter a final order adjudicating

guilt, and sentence the person accordingly. If the person does not appear at the hearing, the court shall deny his request to withdraw his consent.

C. The court shall (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs, or services, or any combination thereof, indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment, or education services are available; or (ii) require successful completion of treatment, education programs, or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education, and treatment, based upon the person's ability to pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

The court shall order the person to be of good behavior for a total period of not less than two years following the deferral of proceedings, including the period of supervised probation, if available.

~~The court shall, unless done at arrest, order the person to report to the original arresting law enforcement agency to submit to fingerprinting.~~

E. Upon fulfillment of the terms and conditions specified in the court order, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. No charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

F. Upon violation of a term or condition of supervised probation or of the period of good behavior, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Any person placed on probation pursuant to this section who is subsequently adjudicated guilty upon a violation of a term or condition of his probation shall have no right of appeal on such adjudication.

G. Notwithstanding any other provision of this section, whenever a court places a person on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7. § 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. In addition to any community service required by the court pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with a plan of 50 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

~~The court shall, unless done at arrest, order the accused to report to the original arresting law enforcement agency to submit to fingerprinting.~~

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. However, if the court places an individual on probation upon terms and conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1 was committed while such person was in operation of a motor vehicle. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. ~~Any~~ Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) ~~of this title~~. Reports to the Central Criminal Records Exchange concerning such persons shall be made ~~after a disposition of~~

~~guilt is entered as provided for in § 19.2-390 pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.~~

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

§ 19.2-232. What process to be awarded against accused on indictment, etc.

When an indictment or presentment is found or made, or information filed, the court, or the judge thereof, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a *capias*; if it be for a misdemeanor, for which imprisonment may be imposed, it may be a *capias* or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance a summons, but if a summons be returned executed and the defendant does not appear, or be returned not found, the court or judge may award a *capias*. The officer serving the summons or *capias* shall also serve a copy of the indictment, presentment, or information therewith.

If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subsection A of § 19.2-390, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that

has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense pursuant to subsection A of § 19.2-390. § 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of ~~a felony~~ any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints ~~are on file at the Central Criminal Records Exchange~~ or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where ~~fingerprints are not on file~~ or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in

the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court. In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Depart-

ment, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

§ 19.2-303.02. Modification of conditions of suspended sentence or probation to require fingerprinting.

In any case where the court has suspended the imposition or execution of a sentence or placed the defendant on probation, the court may modify the sentence or conditions of probation at any time within the period of suspension or supervision to require that the fingerprints and photograph of the defendant be taken by a law-enforcement officer as a condition of that suspended sentence or probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

§ 19.2-303.2. Persons charged with first offense may be placed on probation.

Whenever any person who has not previously been convicted of any felony pleads guilty to or enters a plea of not guilty to any crime against property constituting a misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation subject to terms and conditions, which may include restitution for losses caused, set by the court. If the court defers further proceedings for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the accused, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the accused be taken by a law-enforcement officer. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purpose of applying this section in subsequent proceedings.

§ 19.2-305.1. Restitution for property damage or loss; community service.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least

partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. The clerk shall record receipt of restitution payments in an automated financial management system operated and maintained by the Executive Secretary of the Supreme Court or such other system established and maintained by a circuit court clerk pursuant to § 17.1-502. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. Except as

provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that includes a period of active supervision, the probation agency supervising the defendant shall notify the court and the attorney for the Commonwealth of the amount of any restitution that remains unsatisfied and the last known address for the defendant (i) 60 days prior to the defendant's release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request to the court. Such notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a hearing prior to the defendant's release from supervision after providing notice of the hearing to the defendant and the attorney for the Commonwealth. If the court finds that the defendant is not in compliance with the restitution order, the court may (a) release the defendant from supervision, (b) modify the period or terms of supervision pursuant to § 19.2-304, (c) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (d) proceed in accordance with subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. Any defendant who is released from supervision shall be subject to the provisions of subdivision 3.

2. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that does not include a period of active supervision, the court shall include in the order a date, not to exceed two years from the date of the entry of the order or, if the court has sentenced the defendant to an active term of incarceration, from the date of the defendant's release from incarceration, on which the defendant's compliance with the restitution order shall be reviewed and the court shall schedule a hearing for such date. The court may, on its own motion, cancel the hearing if the amount of restitution has been satisfied. If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously

been docketed. After the hearing conducted pursuant to this subdivision, the defendant shall be subject to the provisions of subdivision 3.

3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount of restitution has been satisfied and provide notice of such hearings to the defendant. The court may, on its own motion, cancel any such hearing if the amount of restitution has been satisfied or if the defendant is in compliance with the restitution order. If at any hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order by a defendant (a) until the amount of restitution has been satisfied or (b) if any amount of restitution remains unsatisfied, for the longer of 10 years from the date of the hearing held pursuant to subdivision 1 or 2 or the period of probation ordered by the court.

4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is unable to pay restitution and will remain unable to pay restitution for the duration of the review period set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's compliance with the restitution order.

5. If the court determines that a defendant would be incarcerated on the date of any hearing scheduled pursuant to this subsection, the court may remove the case from the docket, reschedule such hearing to a date after the defendant's release from incarceration, and provide notice of the hearing to the defendant and the attorney for the Commonwealth. If the defendant who is on probation that includes a period of active supervision is incarcerated, the probation agency supervising the defendant shall notify the court when the defendant has been released from incarceration.

6. No provision of this subsection shall be construed to prohibit the court from exercising any authority otherwise granted by law over a defendant during any period of probation ordered by the court.

7. At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the

present conviction appears on that record. The probation officer for the defendant shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such conviction, the probation officer shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record prior to his release from supervision.

8. At every hearing conducted pursuant to subdivision 2 where the attorney for the Commonwealth participated in the prosecution and the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. If the attorney for the Commonwealth participated in the prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such conviction, the attorney for the Commonwealth shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record.

G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

H. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the court. For purposes of this subsection, "victim" means a person who is depicted in a still or videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims by November 1 of each year. If a clerk does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the Fund by November 1 of each year. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment directly to the victim for any proper claims. When depositing such restitution to the Fund, the clerk shall report the victim's last known contact information, including the victim's home address, telephone number, and email address, and the amount of restitution being deposited for that victim. Before making the deposit, the administrator shall record the name, contact information, and amount of restitution being deposited for each victim appearing from the clerk's report to be entitled to restitution. The victim's contact information reported to the Fund shall be confidential and shall not be disseminated further except as otherwise required by law.

J. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.

§ 19.2-388. Duties and authority of Exchange.

A. It shall be the duty of the Central Criminal Records Exchange to receive, classify, and file criminal history record information as defined in § 9.1-101 and other records required to be reported to it by §§ 16.1-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies; to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms ~~which~~ that shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records.

C. The Exchange shall submit periodic reports to the Office of the Executive Secretary of the Supreme Court of Virginia, the clerk of each circuit court and district court, attorneys for the Commonwealth, and law-enforcement agencies containing a list of offenses with unapplied criminal history record information. Reports to the Office of the Executive Secretary of the Supreme Court of Virginia shall be quarterly and shall include all such offenses within the Commonwealth identified by jurisdiction and by court. Reports to the clerk of each circuit court and district court shall be quarterly and shall include only such offenses that were submitted by the respective clerk of court. Reports to attorneys for the Commonwealth shall be quarterly and shall include only such offenses that were submitted by law-enforcement agencies and courts in the county or city served by the respective attorney for the Commonwealth. Reports to law-enforcement agencies shall be monthly and shall include only such offenses for which the respective law-enforcement agency executed the arrest or issued the summons. For each offense, the report shall include, if known, the name and any other identifying information of the defendant, any identifying court case information, the date of submission to the Exchange, and the reason the offense could not be applied to the criminal history record.

D. The Exchange shall review offenses containing unapplied criminal history record information and shall make reasonable efforts to ensure that such information, including any offense of which the Exchange is notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145, is applied to criminal history records. The Exchange may request and shall receive from the clerk of each circuit court and district court, attorneys for the Commonwealth, law-enforcement agencies, the Department of Corrections, the Department of Forensic Science, and local probation and community corrections agencies cooperation and assistance to obtain positive identification or to reconcile any inconsistencies, errors, or omissions within such unapplied criminal history record information.

E. The Exchange shall submit a report to the Governor and General Assembly on or before November 1 of each year on the status of unapplied criminal history record information and any updates to fingerprinting policies and procedures. The report shall include the following, if known: (i) the total number of offenses submitted to the Exchange, identified by the year of the offense and the year the charge was filed for such offense, that contain unapplied criminal history record information and cannot be applied to criminal history records; (ii) the number of such offenses submitted to the Exchange without fingerprints or positive identification and the law-enforcement agencies that submitted

those offenses; (iii) the number of such offenses submitted to the Exchange with an inconsistency, error, or omission and, for those offenses, the jurisdiction from which the offense was submitted; and (iv) efforts made by the Exchange to ensure that unapplied criminal history record information is applied to criminal history records, including any offenses of which the Exchange was notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for each charge when any person is arrested on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1;~~or~~

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-

123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

5. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to

subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.

B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. ~~The~~ For offenses not charged on a summons in accordance with § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action-

~~which that~~ may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act ~~which that~~, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases ~~which that~~ he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A ~~of this section~~, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia

Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

§ 19.2-390.03. Development and dissemination of model policy on fingerprinting and reports to the Central Criminal Records Exchange.

The Department of State Police shall develop a model policy on the collection of fingerprints and reporting of criminal history record information to the Central Criminal Records Exchange as required by § 19.2-390. The Department shall disseminate such policy to all law-enforcement agencies within the Commonwealth.

§ 19.2-392. Fingerprints and photographs by police authorities.

A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, ~~or~~ (ii) any person who pleads guilty or is found guilty after being summoned in accordance with § 19.2-74, or (iii) any person charged with an offense that has been deferred by the court pursuant to §§ 18.2-57.3, 18.2-251, or 19.2-303.2. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

B. Such police authorities may establish and collect a reasonable fee not to exceed \$10 for the first card and \$5 for each successive card for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.

§ 53.1-23. Fingerprints, photographs and description.

A. Photographs, fingerprints, and a description of each person received by the Department shall be taken and filed for identification purposes. If the person is serving a sentence for an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, such photographs, fingerprints, and description of such person received by the Department shall be provided to the Central Criminal Records Exchange and, unless otherwise prohibited by law, may be classified and filed as part of the criminal history record information of that person. Subject to the provisions of §§ 19.2-387 through 19.2-392, the Department shall cooperate with federal, state, county, and city law-enforcement agencies, insofar as it may deem proper, in disclosing information concerning such persons and in the taking of fingerprints and photographs of

persons charged with the commission of a ~~felony~~ an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390.

B. The Department shall review each person's criminal history record at least 60 days prior to his scheduled release from a state correctional facility to determine whether all offenses for which that person has been committed appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the person to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;
2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;
3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;
5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he was authorized;
6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Board;
7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of a circuit court;
8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;
9. Pursuant to any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);
10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to submit a sample for DNA analysis;
11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would be considered a felony, take a sample or verify that a sample

has been taken and accepted into the data bank for DNA analysis in the Commonwealth; and

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record;  
and

14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the criminal history record of the offender to determine whether all offenses for which the offender is being supervised appear on such record, and (iii) if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

§ 53.1-165. Revocation of parole or postrelease supervision; hearing; procedure for parolee or felon serving period of postrelease supervision in another state; appointment of attorney.

A. Whenever any parolee or felon serving a period of postrelease supervision is arrested and recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has violated one or more of the terms or conditions upon which he was released on parole or postrelease period of supervision shall be held by any hearing officer who has been designated as such by the Director of the Department to conduct

such hearings. However, if a nolle prosequi is to be entered in a case where a parole violation is alleged, no preliminary hearing shall be required.

Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's appointment shall continue until such time as a successor may be appointed. A hearing officer shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before him and to administer oaths and to take testimony thereunder.

Upon a finding of probable cause by the hearing officer, the Board or its authorized representative shall conduct a hearing, consider the case and act with reference thereto within a reasonable time thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board. Each attorney shall be available to serve upon request of the Board. The term of each attorney's appointment shall continue until such time as a successor may be appointed. The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed, or as may be prescribed in addition thereto or in lieu thereof. When a parole violation is based on a new felony conviction for which the individual has been sentenced to two or more years, excluding any time of said sentence which has been suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the individual's parole as otherwise provided herein.

Upon revocation of parole for any felony offense, the Board or its authorized representative shall order that the Department of Corrections take fingerprints and a photograph of the person for each offense and transmit such information to the Central Criminal Records Exchange pursuant to subsection D of § 19.2-390.

B. In cases in which a parolee or felon serving a period of postrelease supervision is in another state, any hearing officer who has been designated as such by the Director of the Department may be sent to that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one or more of the terms and conditions upon which he was released upon parole.

C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court making the appointment, from funds appropriated for court costs and expenses, reasonable compensation on an hourly basis and necessary expenses, based upon a report to be furnished to it by such attorney. In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated to the Department.

2.

§ 1. The Department of State Police shall make reasonable efforts to ensure that criminal history record information that was reported to the Central Criminal Records Exchange pursuant to § 19.2-390 of the Code of Virginia prior to July 1, 2019, and not applied to the criminal history record of a person be applied to the criminal history record of that person. Such efforts shall prioritize identifying any felony convictions that have not been applied to criminal history records and providing such information to the law-enforcement agency that made the arrest and to the attorney for the Commonwealth in the jurisdiction where the conviction was entered. All state and local government agencies shall provide such assistance as may be requested by the Department of State Police to aid in the successful and timely completion of these efforts. Notwithstanding any other provision of law to the contrary, the Department of State Police and other state and local government agencies may receive from and disseminate to individuals, state agencies, and local government agencies any information that may be necessary for the successful and timely completion of these efforts. The Department of State Police shall report on the progress of these efforts to the Governor and the Chairman of the Virginia State Crime Commission by November 1, 2019.

3. That the Department of State Police, in coordination with the Department of Criminal Justice Services, shall develop a form to be used by local community-based probation officers when ordering an offender to report to a law-enforcement agency or to the Department of State Police and submit to having his fingerprints and photograph taken pursuant to the provisions of subdivision A 12 of § 9.1-176.1 of the Code of Virginia, as amended by this act. Such form shall include information necessary for that law-enforcement agency or the Department of State Police to ensure that the fingerprints and photograph of the offender can be applied to his criminal history record for each offense that does not appear on the criminal history record. Such form shall include a portion that is returnable to the local community-based probation office by the law-enforcement agency or Department of State Police and a portion to be provided to the offender after fingerprints and a photograph have been taken.

## **Chapter 783 Central Criminal Records Exchange; reports, duties and authority.**

An Act to amend and reenact §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-303.02 and 19.2-390.03, relating to reports to Central Criminal Records Exchange; duties and authority of the Central Criminal Records Exchange; unapplied criminal history record information.

[H 2343]

Approved March 22, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-101, 9.1-176.1, 18.2-57.3, 18.2-251, 19.2-74, 19.2-232, 19.2-303, 19.2-303.2, 19.2-305.1, 19.2-388, 19.2-390, 19.2-392, 53.1-23, 53.1-145, and 53.1-165 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-303.02 and 19.2-390.03 as follows:

§ 9.1-101. Definitions.

As used in this chapter or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, unless the context requires a different meaning:

"Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

"Board" means the Criminal Justice Services Board.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so; (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities, employs special conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers or special conservators to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (§ 9.1-126 et seq.), but only to the extent that the private corporation or agency so designated as a criminal justice agency performs criminal justice activities; and (iii) the Office of the Attorney General, for all criminal justice activities otherwise permitted under clause (i) and for the purpose of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.).

"Criminal justice agency" includes any program certified by the Commission on VASAP pursuant to § 18.2-271.2.

"Criminal justice agency" includes the Department of Criminal Justice Services.

"Criminal justice agency" includes the Virginia State Crime Commission.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Virginia Alcoholic Beverage Control Authority; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217; (viii) animal protection police officer employed under § 15.2-632 or 15.2-836.1; (ix) campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; (x) member of the investigations unit designated by the State Inspector General pursuant to § 2.2-311 to investigate allegations of criminal behavior affecting the operations of a state or nonstate agency; (xi) employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 or by the Department of Juvenile Justice pursuant to subdivision A 7 of § 66-3; or (xii) private police officer employed by a private police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department, sheriff's office, or private police department.

"Private police department" means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department or such entity's successor in interest, provided it complies with the requirements set forth herein. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly or such entity is the successor in interest of an entity that has been authorized pursuant to this section, provided it complies with the requirements set forth herein. The authority of a private police department shall be limited to real property owned, leased, or controlled by the entity and, if approved by the local chief of police or sheriff, any contiguous property; such authority shall not supersede the authority, duties, or jurisdiction vested by law with the local police department or sheriff's office including as provided in §§ 15.2-1609 and 15.2-1704. The chief of

police or sheriff who is the chief local law-enforcement officer shall enter into a memorandum of understanding with the private police department that addresses the duties and responsibilities of the private police department and the chief law-enforcement officer in the conduct of criminal investigations. Private police departments and private police officers shall be subject to and comply with the Constitution of the United States; the Constitution of Virginia; the laws governing municipal police departments, including the provisions of §§ 9.1-600, 15.2-1705 through 15.2-1708, 15.2-1719, 15.2-1721, and 15.2-1722; and any regulations adopted by the Board that the Department designates as applicable to private police departments. Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. A private police officer is not entitled to benefits under the Line of Duty Act (§ 9.1-400 et seq.) or under the Virginia Retirement System, is not a "qualified law enforcement officer" or "qualified retired law enforcement officer" within the meaning of the federal Law Enforcement Officers Safety Act, 18 U.S.C. § 926B et seq., and shall not be deemed an employee of the Commonwealth or any locality. An authorized private police department may use the word "police" to describe its sworn officers and may join a regional criminal justice academy created pursuant to Article 5 (§ 15.2-1747 et seq.) of Chapter 17 of Title 15.2. Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department as may such entity's successor in interest, provided it complies with the requirements set forth herein.

"School resource officer" means a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.

"School security officer" means an individual who is employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.

"Unapplied criminal history record information" means information pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or

(ii) due to an inconsistency, error, or omission within the content of the submitted information.

§ 9.1-176.1. Duties and responsibilities of local community-based probation officers.

A. Each local community-based probation officer, for the localities served, shall:

1. Supervise and assist all local-responsible adult offenders, residing within the localities served and placed on local community-based probation by any judge of any court within the localities served;

2. Ensure offender compliance with all orders of the court, including the requirement to perform community service;

3. Conduct, when ordered by a court, substance abuse screenings, or conduct or facilitate the preparation of assessments pursuant to state approved protocols;

4. Conduct, at his discretion, random drug and alcohol tests on any offender whom the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the abuse of alcohol or prescribed medication;

5. Facilitate placement of offenders in substance abuse education or treatment programs and services or other education or treatment programs and services based on the needs of the offender;

6. Seek a *caapias* from any judicial officer in the event of failure to comply with conditions of local community-based probation or supervision on the part of any offender provided that noncompliance resulting from intractable behavior presents a risk of flight, or a risk to public safety or to the offender;

7. Seek a motion to show cause for offenders requiring a subsequent hearing before the court;

8. Provide information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a *caapias* has been sought;

9. Keep such records and make such reports as required by the Department of Criminal Justice Services;

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to discharge whether a blood, saliva, or tissue sample has been taken for DNA analysis for each offender required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require an offender to submit a sample for DNA analysis; ~~and~~

11. Monitor the collection and payment of restitution to the victims of crime for offenders placed on local supervised probation; and

12. Determine by reviewing the offender's criminal history record at least 60 days prior to discharge whether all offenses for which the offender is being supervised appear on

such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) order the offender to report to the law-enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken for each such offense, (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the offense does not appear on the offender's criminal history record, and (iii) verify that such fingerprints and photograph have been taken.

B. Each local probation officer may provide the following optional services, as appropriate and when available resources permit:

1. Supervise local-responsible adult offenders placed on home incarceration with or without home electronic monitoring as a condition of local community-based probation;
2. Investigate and report on any local-responsible adult offender and prepare or facilitate the preparation of any other screening, assessment, evaluation, testing or treatment required as a condition of probation;
3. Monitor placements of local-responsible adults who are required to perform court-ordered community service at approved work sites;
4. Assist the courts, when requested, by monitoring the collection of court costs and fines for offenders placed on local probation; and
5. Collect supervision and intervention fees pursuant to § 9.1-182 subject to local approval and the approval of the Department of Criminal Justice Services.

§ 18.2-57.3. Persons charged with first offense of assault and battery against a family or household member may be placed on local community-based probation; conditions; education and treatment programs; costs and fees; violations; discharge.

A. When a person is charged with a simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2, the court may defer the proceedings against such person, without a finding of guilt, and place him on probation under the terms of this section.

B. For a person to be eligible for such deferral, the court shall find that (i) the person was an adult at the time of the commission of the offense; (ii) the person has not previously been convicted of any offense under this article or under any statute of the United States or of any state or any ordinance of any local government relating to an assault or assault and battery against a family or household member; (iii) (a) the person has not previously been convicted of an act of violence as defined in § 19.2-297.1 or (b) if such person has been previously convicted of such an act of violence, the attorney for the Commonwealth does not object to the deferral; (iv) the person has not previously had a proceeding

against him for violation of such an offense dismissed as provided in this section; (v) the person pleads guilty to, or enters a plea of not guilty or nolo contendere and the court finds the evidence is sufficient to find the person guilty of, simple assault in violation of subsection A of § 18.2-57 where the victim was a family or household member of the person or a violation of § 18.2-57.2; and (vi) the person consents to such deferral and to a waiver of his right to appeal a finding of facts sufficient to justify a finding of guilt under this section entered pursuant to subsection F for a violation of a term or condition of his probation. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer. A person may file a motion to withdraw his consent to the deferral and waiver of his right to appeal within 10 days of the entry of the order deferring proceedings on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. The court shall schedule a hearing within 30 days of receipt of the motion and shall provide reasonable notice to the attorney for the Commonwealth and to the person and his attorney, if any. If the person appears at the hearing and requests to withdraw his consent, the court shall grant such request, enter a final order adjudicating guilt, and sentence the person accordingly. If the person does not appear at the hearing, the court shall deny his request to withdraw his consent.

C. The court shall (i) where a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1 is available, order that the eligible person be placed with such agency and require, as a condition of local community-based probation, the person to successfully complete all treatment, education programs, or services, or any combination thereof, indicated by an assessment or evaluation obtained by the local community-based probation services agency if such assessment, treatment, or education services are available; or (ii) require successful completion of treatment, education programs, or services, or any combination thereof, such as, in the opinion of the court, may be best suited to the needs of the person.

D. The court shall require the person entering such education or treatment program or services under the provisions of this section to pay all or part of the costs of the program or services, including the costs of any assessment, evaluation, testing, education, and treatment, based upon the person's ability to pay. Such programs or services shall offer a sliding-scale fee structure or other mechanism to assist participants who are unable to pay the full costs of the required programs or services.

The court shall order the person to be of good behavior for a total period of not less than two years following the deferral of proceedings, including the period of supervised probation, if available.

~~The court shall, unless done at arrest, order the person to report to the original arresting law enforcement agency to submit to fingerprinting.~~

E. Upon fulfillment of the terms and conditions specified in the court order, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. No charges dismissed pursuant to this section shall be eligible for expungement under § 19.2-392.2.

F. Upon violation of a term or condition of supervised probation or of the period of good behavior, the court may enter an adjudication of guilt and proceed as otherwise provided by law. Any person placed on probation pursuant to this section who is subsequently adjudicated guilty upon a violation of a term or condition of his probation shall have no right of appeal on such adjudication.

G. Notwithstanding any other provision of this section, whenever a court places a person on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7. § 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken

by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. In addition to any community service required by the court pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with a plan of 50 hours of community service. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

~~The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.~~

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be

without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. However, if the court places an individual on probation upon terms and conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1 was committed while such person was in operation of a motor vehicle. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

3. ~~Any~~ Unless otherwise authorized by law, any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) ~~of this title~~. Reports to the Central Criminal Records Exchange concerning such persons shall be made ~~after a disposition of guilt is entered as provided for in § 19.2-390~~ pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

Any person charged with committing any violation of § 18.2-407 may be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

§ 19.2-232. What process to be awarded against accused on indictment, etc.

When an indictment or presentment is found or made, or information filed, the court, or the judge thereof, shall award process against the accused to answer the same, if he be not in custody. Such process, if the prosecution be for a felony, shall be a capias; if it be for a misdemeanor, for which imprisonment may be imposed, it may be a capias or summons, in the discretion of the court or judge; in all other cases, it shall be, in the first instance a summons, but if a summons be returned executed and the defendant does not appear, or be returned not found, the court or judge may award a capias. The officer serving the summons or capias shall also serve a copy of the indictment, presentment, or information therewith.

If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subsection A of § 19.2-390, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense pursuant to subsection A of § 19.2-390.  
§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of ~~a felony~~ any offense for which a report to the Central Criminal Records Exchange is required in accordance with subsection A of § 19.2-390, shall determine whether a copy of the defendant's fingerprints ~~are on file at the Central~~

Criminal Records Exchange or fingerprint identification information has been provided by a law-enforcement officer to the clerk of court for each such offense. In any case where fingerprints ~~are not on file~~ or fingerprint identification information has not been provided by a law-enforcement officer to the clerk of court, the judge shall require that fingerprints and a photograph be taken by a law-enforcement officer as a condition of probation or of the suspension of the imposition or execution of any sentence for such offense. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court. In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a

violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

§ 19.2-303.02. Modification of conditions of suspended sentence or probation to require fingerprinting.

In any case where the court has suspended the imposition or execution of a sentence or placed the defendant on probation, the court may modify the sentence or conditions of probation at any time within the period of suspension or supervision to require that the fingerprints and photograph of the defendant be taken by a law-enforcement officer as a condition of that suspended sentence or probation, but only upon a hearing after reasonable notice to both the defendant and the attorney for the Commonwealth.

§ 19.2-303.2. Persons charged with first offense may be placed on probation.

Whenever any person who has not previously been convicted of any felony pleads guilty to or enters a plea of not guilty to any crime against property constituting a misdemeanor, under Articles 5, 6, 7 and 8 of Chapter 5 (§ 18.2-119 et seq.) of Title 18.2, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation subject to terms and conditions, which may include restitution for losses caused, set by the court. If the court defers further proceedings for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the accused, taken by a

law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the accused be taken by a law-enforcement officer. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person for an offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purpose of applying this section in subsequent proceedings.

§ 19.2-305.1. Restitution for property damage or loss; community service.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1,

2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. The clerk shall record receipt of restitution payments in an automated financial management system operated and maintained by the Executive Secretary of the Supreme Court or such other system established and maintained by a circuit court clerk pursuant to § 17.1-502. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of

collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that includes a period of active supervision, the probation agency supervising the defendant shall notify the court and the attorney for the Commonwealth of the amount of any restitution that remains unsatisfied and the last known address for the defendant (i) 60 days prior to the defendant's release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request to the court. Such notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a hearing prior to the defendant's release from supervision after providing notice of the hearing to the defendant and the attorney for the Commonwealth. If the court finds that the defendant is not in compliance with the restitution order, the court may (a) release the defendant from supervision, (b) modify the period or terms of supervision pursuant to § 19.2-304, (c) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (d) proceed in accordance with subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed.

Any defendant who is released from supervision shall be subject to the provisions of subdivision 3.

2. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that does not include a period of active supervision, the court shall include in the order a date, not to exceed two years from the date of the entry of the order or, if the court has sentenced the defendant to an active term of incarceration, from the date of the defendant's release from incarceration, on which the defendant's compliance with the restitution order shall be reviewed and the court shall schedule a hearing for such date. The court may, on its own motion, cancel the hearing if the amount of restitution has been satisfied. If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall also docket the restitution order as a civil judgment pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. After the hearing conducted pursuant to this subdivision, the defendant shall be subject to the provisions of subdivision 3.

3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount of restitution has been satisfied and provide notice of such hearings to the defendant. The court may, on its own motion, cancel any such hearing if the amount of restitution has been satisfied or if the defendant is in compliance with the restitution order. If at any hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order by a defendant (a) until the amount of restitution has been satisfied or (b) if any amount of restitution remains unsatisfied, for the longer of 10 years from the date of the hearing held pursuant to subdivision 1 or 2 or the period of probation ordered by the court.

4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is unable to pay restitution and will remain unable to pay restitution for the duration of the review period set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's compliance with the restitution order.

5. If the court determines that a defendant would be incarcerated on the date of any hearing scheduled pursuant to this subsection, the court may remove the case from the docket, reschedule such hearing to a date after the defendant's release from incarceration, and provide notice of the hearing to the defendant and the attorney for the Commonwealth. If the defendant who is on probation that includes a period of active supervision is incarcerated, the probation agency supervising the defendant shall notify the court when the defendant has been released from incarceration.

6. No provision of this subsection shall be construed to prohibit the court from exercising any authority otherwise granted by law over a defendant during any period of probation ordered by the court.

7. At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. The probation officer for the defendant shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such conviction, the probation officer shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record prior to his release from supervision.

8. At every hearing conducted pursuant to subdivision 2 where the attorney for the Commonwealth participated in the prosecution and the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. If the attorney for the Commonwealth participated in the prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for

such conviction, the attorney for the Commonwealth shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record.

G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

H. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the court. For purposes of this subsection, "victim" means a person who is depicted in a still or videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims by November 1 of each year. If a clerk does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the Fund by November 1 of each year. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment directly to the victim for any proper claims. When depositing such restitution to the Fund, the clerk shall report the victim's last known contact information, including the victim's home address, telephone number, and email address, and the amount of restitution being deposited for that victim. Before making the deposit, the administrator shall record the name, contact information, and amount of restitution being deposited for each victim appearing from the clerk's report to be entitled to restitution. The victim's contact information reported to the Fund shall be confidential and shall not be disseminated further except as otherwise required by law.

J. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then upon presentation by the Fund of a written request that sets forth the amount of payments made by the Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the victim or on the victim's behalf.

K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.

§ 19.2-388. Duties and authority of Exchange.

A. It shall be the duty of the Central Criminal Records Exchange to receive, classify, and file criminal history record information as defined in § 9.1-101 and other records required to be reported to it by §§ 16.1-299 and 19.2-390. The Exchange is authorized to prepare and furnish to all state and local law-enforcement officials and agencies; to clerks of circuit courts, general district courts, and juvenile and domestic relations district courts; and to corrections and penal officials, forms ~~which~~ that shall be used for the making of such reports.

B. Juvenile records received pursuant to § 16.1-299 shall be maintained separately from adult records.

C. The Exchange shall submit periodic reports to the Office of the Executive Secretary of the Supreme Court of Virginia, the clerk of each circuit court and district court, attorneys for the Commonwealth, and law-enforcement agencies containing a list of offenses with unapplied criminal history record information. Reports to the Office of the Executive Secretary of the Supreme Court of Virginia shall be quarterly and shall include all such offenses within the Commonwealth identified by jurisdiction and by court. Reports to the clerk of each circuit court and district court shall be quarterly and shall include only such offenses that were submitted by the respective clerk of court. Reports to attorneys for the Commonwealth shall be quarterly and shall include only such offenses that were submitted by law-enforcement agencies and courts in the county or city served by the respective attorney for the Commonwealth. Reports to law-enforcement agencies shall be monthly and shall include only such offenses for which the respective law-enforcement agency executed the arrest or issued the summons. For each offense, the report shall include, if known, the name and any other identifying information of the defendant, any identifying court case information, the date of submission to the Exchange, and the reason the offense could not be applied to the criminal history record.

D. The Exchange shall review offenses containing unapplied criminal history record information and shall make reasonable efforts to ensure that such information, including any offense of which the Exchange is notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145, is applied to criminal history records. The Exchange may request

and shall receive from the clerk of each circuit court and district court, attorneys for the Commonwealth, law-enforcement agencies, the Department of Corrections, the Department of Forensic Science, and local probation and community corrections agencies cooperation and assistance to obtain positive identification or to reconcile any inconsistencies, errors, or omissions within such unapplied criminal history record information.

E. The Exchange shall submit a report to the Governor and General Assembly on or before November 1 of each year on the status of unapplied criminal history record information and any updates to fingerprinting policies and procedures. The report shall include the following, if known: (i) the total number of offenses submitted to the Exchange, identified by the year of the offense and the year the charge was filed for such offense, that contain unapplied criminal history record information and cannot be applied to criminal history records; (ii) the number of such offenses submitted to the Exchange without fingerprints or positive identification and the law-enforcement agencies that submitted those offenses; (iii) the number of such offenses submitted to the Exchange with an inconsistency, error, or omission and, for those offenses, the jurisdiction from which the offense was submitted; and (iv) efforts made by the Exchange to ensure that unapplied criminal history record information is applied to criminal history records, including any offenses of which the Exchange was notified pursuant to subdivision A 12 of § 9.1-176.1, subdivision F 7 or 8 of § 19.2-305.1, subsection B of § 53.1-23, or subdivision 13 or 14 of § 53.1-145.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for each charge when any person is arrested on any of the following charges:

- a. Treason;
- b. Any felony;
- c. Any offense punishable as a misdemeanor under Title 54.1;~~or~~

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed for each charge after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall

order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

4. For any person served with a show cause for any allegation of a violation of the terms or conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is found to be in violation of the terms or conditions of a suspended sentence or probation for such felony offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or probation for such felony offense, the court shall order that the fingerprints and photograph of such person be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

5. If the accused is in custody when an indictment or presentment is found or made, or information is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such at the time of first appearance for each indictment, presentment, or information for which a report is required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each offense.

B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. ~~The~~ For offenses not charged on a summons in accordance with § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action- ~~which that~~ may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act ~~which that~~, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall

include the name of the person convicted and all aliases ~~which~~ that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A ~~of this section~~, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no

instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense, and the offense tracking number for the offense for which he was convicted.

§ 19.2-390.03. Development and dissemination of model policy on fingerprinting and reports to the Central Criminal Records Exchange.

The Department of State Police shall develop a model policy on the collection of fingerprints and reporting of criminal history record information to the Central Criminal Records Exchange as required by § 19.2-390. The Department shall disseminate such policy to all law-enforcement agencies within the Commonwealth.

§ 19.2-392. Fingerprints and photographs by police authorities.

A. All duly constituted police authorities having the power of arrest may take the fingerprints and photographs of: (i) any person arrested by them and charged with a felony or a misdemeanor an arrest for which is to be reported by them to the Central Criminal Records Exchange, ~~or~~ (ii) any person who pleads guilty or is found guilty after being summoned in accordance with § 19.2-74, or (iii) any person charged with an offense that has been deferred by the court pursuant to §§ 18.2-57.3, 18.2-251, or 19.2-303.2. Such authorities shall make such records available to the Central Criminal Records Exchange. Such authorities are authorized to provide, on the request of duly appointed law-enforcement officers, copies of any fingerprint records they may have, and to furnish services and technical advice in connection with the taking, classifying and preserving of fingerprints and fingerprint records.

B. Such police authorities may establish and collect a reasonable fee not to exceed \$10 for the first card and \$5 for each successive card for the taking of fingerprints when voluntarily requested by any person for purposes other than criminal violations.

§ 53.1-23. Fingerprints, photographs and description.

A. Photographs, fingerprints, and a description of each person received by the Department shall be taken and filed for identification purposes. If the person is serving a sentence for an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, such photographs, fingerprints, and description of such person received by the Department shall be provided to the Central Criminal Records Exchange and, unless otherwise prohibited by law, may be classified and filed as part of the criminal history record information of that person. Subject to the provisions of §§ 19.2-387 through 19.2-392, the Department shall cooperate with federal, state, county, and city law-enforcement agencies, insofar as it may deem proper, in disclosing information concerning such persons and in the taking of fingerprints and photographs of persons charged with the commission of a felony an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390.

B. The Department shall review each person's criminal history record at least 60 days prior to his scheduled release from a state correctional facility to determine whether all offenses for which that person has been committed appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the person to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;
2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the

conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Board;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Board and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to submit a sample for DNA analysis;

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would be considered a felony, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth; ~~and~~

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record; and

14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the criminal history record of the offender to determine whether all offenses for which the offender is being supervised appear on such record, and (iii) if any such offense that is required to be reported to the Central Criminal Records

Exchange pursuant to § 19.2-390 does not appear, provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

§ 53.1-165. Revocation of parole or postrelease supervision; hearing; procedure for parolee or felon serving period of postrelease supervision in another state; appointment of attorney.

A. Whenever any parolee or felon serving a period of postrelease supervision is arrested and recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has violated one or more of the terms or conditions upon which he was released on parole or postrelease period of supervision shall be held by any hearing officer who has been designated as such by the Director of the Department to conduct such hearings. However, if a nolle prosequi is to be entered in a case where a parole violation is alleged, no preliminary hearing shall be required.

Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's appointment shall continue until such time as a successor may be appointed. A hearing officer shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before him and to administer oaths and to take testimony thereunder.

Upon a finding of probable cause by the hearing officer, the Board or its authorized representative shall conduct a hearing, consider the case and act with reference thereto within a reasonable time thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board. Each attorney shall be available to serve upon request of the Board. The term of each attorney's appointment shall continue until such time as a successor may be appointed. The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed, or

as may be prescribed in addition thereto or in lieu thereof. When a parole violation is based on a new felony conviction for which the individual has been sentenced to two or more years, excluding any time of said sentence which has been suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the individual's parole as otherwise provided herein.

Upon revocation of parole for any felony offense, the Board or its authorized representative shall order that the Department of Corrections take fingerprints and a photograph of the person for each offense and transmit such information to the Central Criminal Records Exchange pursuant to subsection D of § 19.2-390.

B. In cases in which a parolee or felon serving a period of postrelease supervision is in another state, any hearing officer who has been designated as such by the Director of the Department may be sent to that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one or more of the terms and conditions upon which he was released upon parole.

C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court making the appointment, from funds appropriated for court costs and expenses, reasonable compensation on an hourly basis and necessary expenses, based upon a report to be furnished to it by such attorney. In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated to the Department.

## 2.

§ 1. The Department of State Police shall make reasonable efforts to ensure that criminal history record information that was reported to the Central Criminal Records Exchange pursuant to § 19.2-390 of the Code of Virginia prior to July 1, 2019, and not applied to the criminal history record of a person be applied to the criminal history record of that person. Such efforts shall prioritize identifying any felony convictions that have not been applied to criminal history records and providing such information to the law-enforcement agency that made the arrest and to the attorney for the Commonwealth in the jurisdiction where the conviction was entered. All state and local government agencies shall provide such assistance as may be requested by the Department of State Police to aid in the successful and timely completion of these efforts. Notwithstanding any other provision of law to the contrary, the Department of State Police and other state and local government agencies may receive from and disseminate to individuals, state agencies, and local government agencies any information that may be necessary for the successful and timely completion of these efforts. The Department of State Police shall report on the progress of these efforts to the Governor and the Chairman of the Virginia

State Crime Commission by November 1, 2019.

3. That the Department of State Police, in coordination with the Department of Criminal Justice Services, shall develop a form to be used by local community-based probation officers when ordering an offender to report to a law-enforcement agency or to the Department of State Police and submit to having his fingerprints and photograph taken pursuant to the provisions of subdivision A 12 of § 9.1-176.1 of the Code of Virginia, as amended by this act. Such form shall include information necessary for that law-enforcement agency or the Department of State Police to ensure that the fingerprints and photograph of the offender can be applied to his criminal history record for each offense that does not appear on the criminal history record. Such form shall include a portion that is returnable to the local community-based probation office by the law-enforcement agency or Department of State Police and a portion to be provided to the offender after fingerprints and a photograph have been taken.

## **Chapter 790 Cigarette taxes; definitions of noncombustible tobacco products.**

An Act to amend and reenact §§ 58.1-1000 and 58.1-1021.01 of the Code of Virginia and to amend and reenact Item 3-5.17 of Chapter 2 of the Acts of Assembly, Special Session I, of 2018, relating to cigarette tax; definitions of noncombustible tobacco products; tobacco tax study.

[S 1371]

Approved March 22, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-1000 and 58.1-1021.01 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-1000. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase: "Authorized holder" means (i) a manufacturer; (ii) a wholesale dealer who is not duly qualified as a wholesale dealer stamping agent, but who possesses, or whose affiliate possesses, a valid cigarette exemption certificate issued pursuant to § 58.1-623.2; (iii) a stamping agent; (iv) a retail dealer who possesses, or whose affiliate possesses, a valid

cigarette exemption certificate issued pursuant to § 58.1-623.2; (v) an exclusive distributor; (vi) an officer, employee, or other agent of the United States or a state, or any department, agency, or instrumentality of the United States, a state, or a political subdivision of a state, having possession of cigarettes in connection with the performance of official duties; (vii) a person properly holding cigarettes that do not require stamps or tax payment pursuant to § 58.1-1010; or (viii) a common or contract carrier transporting cigarettes under a proper bill of lading or other documentation indicating the true name and address of the consignor or seller and the consignee or purchaser of the brands and the quantities being transported. Any person convicted of (a) any criminal offense under this chapter; (b) any offense involving the forgery of any documents, forms, invoices, or receipts related to the purchase or sale of cigarettes or the purchase or sale of tobacco products as defined in § 58.1-1021.01; (c) any offense involving evasion or failure to pay a cigarette or tobacco product excise tax; or (d) any similar violation of an ordinance of any county, city, or town in the Commonwealth or the laws of any other state or of the United States is ineligible to be an authorized holder. For the purposes of this definition, "affiliate" means any entity that is a member of the same affiliated group, as such term is defined in § 58.1-3700.1.

"Carton" means 10 packs of cigarettes, each containing 20 cigarettes or eight packs, each containing 25 cigarettes.

"Cigarette" means any product that contains nicotine, is intended to be ~~burned or heated~~ and produces smoke from combustion under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is burned and functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Exclusive distributor" means any individual, corporation, limited liability company, or limited liability partnership with its principal place of business in the Commonwealth that has the sole and exclusive rights to sell to wholesale dealers in the Commonwealth a

brand family of cigarettes manufactured by a tobacco product manufacturer as defined in § 3.2-4200.

"Manufacturer" means any tobacco product manufacturer as defined in § 3.2-4200.

"Pack" means a package containing either 20 or 25 cigarettes.

"Retail dealer" includes every person other than a wholesale dealer, as defined in this section, who sells or offers for sale any cigarettes and who is properly registered as a retail trade with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1).

"Retail sale" or "sale at retail" includes all sales except sales by wholesale dealers to retail dealers or other wholesale dealers for resale.

"Stamping agent" has the same meaning as provided in § 3.2-4204. For the purposes of provisions relating to "roll-your-own" tobacco, "stamping agent" includes "distributor" as that term is defined in § 58.1-1021.01.

"Stamps" means the stamp or stamps by the use of which the tax levied under this chapter is paid and shall be officially designated as Virginia revenue stamps. The Department is hereby authorized to provide for the use of any type of stamp that will effectuate the purposes of this chapter, including but not limited to decalomania and metering devices.

"Storage" means any keeping or retention in the Commonwealth of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside the Commonwealth.

"Tax-paid cigarettes" means cigarettes that (i) bear valid Virginia stamps to evidence payment of excise taxes or (ii) were purchased outside of the Commonwealth and either (a) bear a valid tax stamp for the state in which the cigarettes were purchased or (b) when no tax stamp is required by the state, proper evidence can be provided to establish that applicable excise taxes have been paid.

"Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or by any transaction where possession is given, except that it does not include the sale of cigarettes in the regular course of business.

"Wholesale dealer" includes persons who are properly registered as tobacco product merchant wholesalers with the Commonwealth in accordance with the Virginia Department of Taxation Business Registration Application (Form R-1) and who (i) sell cigarettes at wholesale only to retail dealers for the purpose of resale only or (ii) sell at wholesale to institutional, commercial, or industrial users. "Wholesale dealer" also includes chain store distribution centers or houses that distribute cigarettes to their stores for sale at retail.

§ 58.1-1021.01. Definitions.

As used in this article, unless the context clearly shows otherwise, the term or phrase: "Alternative nicotine product" means any noncombustible product containing nicotine that is not made of tobacco and is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine product" does not include any nicotine vapor product or any product regulated as a drug or device by the U.S. Food and Drug Administration (FDA) under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Distributor" means (i) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale; (ii) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; (iii) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or (iv) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Heated tobacco product" means a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.

"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco weight unit categories shall be as follows:

1. "Loose leaf tobacco half pound-unit" means a consumer sized unit, pouch, or package containing at least 4 ounces but not more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.
2. "Loose leaf tobacco pound-unit" means a consumer sized unit, pouch, or package containing more than 8 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.
3. "Loose leaf tobacco single-unit" means a consumer sized unit, pouch, or package containing less than 4 ounces of loose leaf tobacco, by net weight, produced by the manufacturer to be sold to consumers as a single unit and not produced to be divided or sold separately and containing one individual package.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Nicotine vapor product" means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. "Nicotine vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Nicotine vapor product" does not include any product regulated by the FDA under Chapter V (21 U.S.C. § 351 et seq.) of the Federal Food, Drug, and Cosmetic Act.

"Retail dealer" means every person who sells or offers for sale any tobacco product to consumers.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended. "Tobacco products" shall also include loose leaf tobacco.

2. That Item 3-5.17 of Chapter 2 of the Acts of Assembly, Special Session I, of 2018, is amended and reenacted as follows:

Item 3-5.17

§ 3-5.17 TOBACCO TAX STUDY

The Joint Subcommittee to Evaluate Tax Preferences is hereby directed to study continue studying options for the modernization of § 58.1-1001(A), Code of Virginia, to

reflect advances in science and technology in the area of tobacco harm reduction, and the role innovative non-combustible tobacco products can play in reducing harm, including products that produce vapor or aerosol from heating tobacco or liquid nicotine. In addition, the Joint Subcommittee shall study possible reforms to the taxation of tobacco products that will provide fairness and equity for all local governments and also ensure stable tax revenues for the Commonwealth. The Joint Subcommittee shall complete its study and submit a final report with recommended reforms to the Finance Committees of the Virginia Senate and Virginia House of Delegates by November 1, ~~2018~~ 2019. All agencies of the Commonwealth shall provide assistance for this study, upon request.

## **Chapter 798 Onley, Town of; Amending charter, appointments and duties of town manger.**

An Act to amend and reenact §§ 3.4 and 4.1 of Chapters 654 and 693 of the Acts of Assembly of 2005, which provided a charter for the Town of Onley in Accomack County, and to amend Chapters 654 and 693 of the Acts of Assembly of 2005 by adding a section numbered 4.1:1, relating to town council; town manager.

[S 1558]

Approved March 25, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.4 and 4.1 of Chapters 654 and 693 of the Acts of Assembly of 2005 are amended and reenacted and that Chapters 654 and 693 of the Acts of Assembly of 2005 are amended by adding a section numbered 4.1:1 as follows:

§ 3.4. Mayor.

The mayor shall be the chief executive and administrative officer of the town in the event that there is no appointed town manager. He shall have and exercise all the privileges and authority conferred by general law not inconsistent with this charter. He shall preside over the meetings of the town council and shall have the right to speak therein as members of the council but shall not vote except in the case of a tie vote. He shall be the head of the town government for all ceremonial purposes and shall perform such other duties consistent with his office as may be imposed by the town council. ~~He shall see that the duties of the various town officers are faithfully performed and shall authen-~~

ticate his signature on such documents or instruments as the council, this charter, or the laws of the Commonwealth shall require.

§ 4.1. Appointments.

At the first meeting in ~~July~~ January following each election or as soon thereafter as practicable, the council shall appoint or reappoint the following officers whose duties shall be as prescribed by the council not inconsistent or in conflict with general law: a town manager, a town treasurer, a town clerk who may also be the town treasurer, and a town attorney who shall be an attorney-at-law licensed to practice under the laws of the Commonwealth of Virginia and who shall be actively practicing in Accomack County.

The town manager may also be appointed to serve as the town treasurer.

§ 4.1:1. Duties of the town manager.

The town manager shall be the executive officer of the town and shall be responsible to the town council for the proper administration of the town government. It shall be the duty of the town manager to:

1. Attend all meetings of the town council, with the right to speak but not to vote;
2. Keep the town council advised of the financial condition and the future needs of the town and of all matters pertaining to its proper administration and make such recommendations as may seem to him desirable;
3. Prepare and submit the annual budget of the town council and be responsible for its administration after its adoption;
4. Prepare in suitable form for publication and submit to the town council at the next regular meeting following the end of each fiscal year a concise, comprehensive report of the financial transactions and administrative activities of the town government during the immediately preceding fiscal year;
5. Present adequate financial and activity reports as required by the town council;
6. Arrange for an annual audit by a certified public accountant, the selection of whom shall be subject to the approval of the town council; and
7. Perform such other duties as may be prescribed by this charter, required of him in accordance therewith by the town council, or required of the chief executive officer of a town by the general laws of the Commonwealth.

All employees of the town, except those appointed by the town council, pursuant to this charter or the general laws of the Commonwealth, shall be appointed and may be removed by the town manager, who shall report each appointment or removal to the town council at the next meeting thereof following any such appointment or removal. The town council shall designate by ordinance a person to act as town manager in the case of the absence, incapacity, death, or resignation of the town manager, until his return to

duty or the appointment of his successor. Until such time as the town council appoints any such town manager, the duties and powers outlined herein shall be given to the mayor, or such other persons as may be designated by the town council. All employees and officers of the town, including those appointed by the town council, shall be under the management, control, and supervision of the town manager.

## **Chapter 813 Eastville, Town of; new charter (previous charter repealed).**

An Act to provide a new charter for the Town of Eastville in Northampton County and to repeal Chapter 247, as amended, of the Acts of Assembly of 1896, which provided a charter for the Town of Eastville.

[S 1562]

Approved March 26, 2019

Be it enacted by the General Assembly of Virginia:

1.

CHARTER

FOR THE

TOWN OF EASTVILLE.

Chapter 1.

Incorporation and Boundaries.

§ 1.1. Incorporation.

Be it enacted by the General Assembly of Virginia, that the Town of Eastville in the County of Northampton, as the same has heretofore been or may hereafter be, and as set forth and described in this act, shall be, and the same hereby is, made a town corporate by the name of the Town of Eastville, and by that name shall have and exercise the powers conferred upon towns by the forty-fourth chapter of the Code of Virginia, edition 1887. The inhabitants of the territory comprised within the present limits of the Town of Eastville, as such limits are now or may hereafter be altered and established by law, shall constitute and continue a body politic and corporate, to be known and designated as the Town of Eastville, and as such shall have a perpetual succession, may sue and

be sued, implead and be impleaded, contract, and be contracted with, and may have a corporate seal which it may alter, renew, or amend at its pleasure by proper ordinance.

§ 1.2. Boundaries.

The territory embraced within the Town of Eastville is that territory in the County of Northampton, Virginia, established in Chapter 44 of the Acts of Assembly of 1896, and that territory added by the Boundary Agreement entered the 14th day of April, 2017, and depicted on a survey plat by Michael A. Starling, Land Surveyor, with Shoreline Surveyors dated February 28th, 2017, and recorded in the Clerk's Office of Northampton County as Instrument Number 170000517.

Chapter 2.

Powers.

§ 2.1. General Grant of Powers.

The Town of Eastville shall have and may exercise all powers which are now or hereafter may be conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers were specifically enumerated herein, and no enumeration of particular powers by this Charter shall be held to be exclusive, and the town shall have, exercise, and enjoy all rights, immunities, powers, and privileges, and be subject to all duties and obligations, now appertaining to and incumbent on the town as a municipal corporation.

§ 2.2. Adoption of Certain Sections of the Code of Virginia.

The powers set forth in Article 1 (§ 15.2-1100 et seq.) of Chapter 11 of Title 15.2 of the Code of Virginia, as in force on January one, two thousand eighteen, and as may hereafter be amended, are hereby conferred on and vested in the town.

§ 2.3. Eminent Domain.

The powers of eminent domain set forth in Title 15.2 (§ 15.2-100 et seq.), Title 25 (§ 25.1-100 et seq.), and § 33.2-1020 of the Code of Virginia, as amended, and all acts amendatory thereof and supplemental thereto, mutatis mutandis, are hereby conferred upon the town.

Chapter 3.

Mayor and Council.

§ 3.1. Election, Qualifications, and Term of Office of Council Persons and Mayor.

(a) The Town of Eastville shall be governed by a town council composed of six Council Persons and a Mayor, all of whom shall be qualified voters of the town to be elected from the town at large.

(b) The Mayor and Council Persons in office at the time of the passage of this act shall continue in office until their successors are elected and qualified. An election for Mayor and Council Persons shall be held at the next designated elections; the Mayor so elected shall serve a term of two years, with subsequent town elections to be held at two-year intervals thereafter. Terms of office for Mayor and Council Persons shall begin the first day of January next following their elections.

§ 3.2. Vacancies on Town Council.

Vacancies on the Town Council shall be filled for the unexpired portion of the term by a majority vote of the members of the Town Council within 45 days after the vacancy occurs. The person so elected to fill the vacancy must be a qualified voter and resident of the town.

§ 3.3 Vacancies in Office of Mayor.

A vacancy in the office of Mayor shall be filled for the unexpired portion of the term by a majority vote of the Town Council; the person so elected to fill the vacancy must be a qualified voter and resident of the town.

§ 3.4. Town Council a Continuing Body.

The Town Council shall be a continuing body, and no measures pending before such body or any contract or obligation incurred shall abate or be discontinued by reasons of the expiration of the term of office or removal of any of its members.

§ 3.5. Powers and Duties of the Mayor.

The Mayor shall be the chief executive officer of the town. He shall have and exercise all power and authority conferred by general law not inconsistent with this Charter. He shall preside over the meetings of the Town Council and shall have the same right to speak therein as members of the Town Council, but shall not vote except in the case of a tie vote. He shall have the powers of veto over the ordinances and resolutions of the Town Council, but such ordinances and resolutions may be passed over such veto by a two-thirds vote of the Council Persons present and voting. He shall be recognized as the head of the town government for all ceremonial purposes. He shall perform such other duties consistent with his office that may be imposed by the Town Council. He shall see that the duties of various officers of the town are faithfully performed. He shall authenticate by his signature such documents or instruments as the Town Council, this Charter, or the laws of the Commonwealth shall require.

In the event that there is no chief administrative officer, it shall be the duty of the Mayor to see that the functions set forth in § 15.2-1541 of the Code of Virginia are carried out if the governing body has not acted otherwise.

§ 3.6. Vice Mayor.

The Town Council shall elect from its members every two years, by a majority of the members present, a Vice Mayor. During the absence or inability of the Mayor to act, the Vice Mayor shall possess the powers and discharge the duties of the Mayor. He shall also have any other duties assigned to him by the Mayor. While serving in the place of the Mayor, the Vice Mayor may vote as member of the Town Council.

§ 3.7. Meetings of Town Council.

The Town Council shall fix the time of its stated meetings and shall set a meeting at least once a month. A journal shall be kept of its official proceedings, and its meetings shall be open to the public. Four members of the Town Council shall constitute a quorum for the transaction of business at any meeting. Special meetings may be called at any time by the Mayor or by any three members of the Town Council, provided that the Mayor and all Council Persons are duly notified in writing a reasonable period of time prior to such meeting, and no business shall be transacted at a special meeting thereof, except that for which it shall be called. If all members are present, this provision may be waived by majority vote of the Town Council at said meeting.

§ 3.8. Town Council to Fix Salaries.

The Town Council is hereby authorized to fix the salary of the Mayor, members of the Town Council, members of the boards of commissions, and employees of the town. The Town Council is authorized to approve the salary of appointed officials of the town, at a sum not to exceed any limitations placed thereon by the laws of the Commonwealth of Virginia.

§ 3.9. Acting Mayor.

In the absence or inability to act of both the Mayor and Vice Mayor, any member of the Town Council may act with all the powers of the Mayor upon the request to do so by the full Town Council, but only during the period of such dual absence and inability.

§ 3.10. General Grant of Powers of Town Council.

The Town Council shall have all power and authority that are now or may hereafter be granted to councils of towns by the general laws of the Commonwealth and by this Charter, and the recital of special powers and authorities herein shall not be taken to exclude the exercise of any power and authority granted by the general laws of the Commonwealth to town councils, but not herein specified.

Chapter 4.

Appointive Officers.

§ 4.1. Appointment.

The Town Council shall appoint such officers of the town as they deem necessary. Such officers may include, but shall not be limited to, a Town Administrator, Chief of Police, Town Clerk, Town Treasurer, and Town Attorney. The enumeration of officers in this section shall not be construed to require the appointment of any of such officers herein named. Officers appointed by the Town Council shall perform such duties as may be specified in this Charter, by the laws of the Commonwealth, or by the Town Council.

§ 4.2. Deputies and Assistants.

The Town Council shall appoint such deputies and assistants to appointive offices as it deems necessary.

§ 4.3. Terms of Office.

Officers, deputies, and assistants appointed by the Town Council shall serve at the will of the Town Council.

§ 4.4. Appointment of One Person to More than One Office.

The Town Council may appoint the same person to more than one appointive office, at the discretion of the Town Council, subject to limitations set forth in the Constitution of Virginia and Title 15.2 (§ 15.2-100 et seq.) of the Code of Virginia, as amended from time to time.

§ 4.5. Duties of Town Administrator.

The Town Administrator shall be the executive officer of the town and shall be responsible to the Town Council and Mayor for the proper administration of the town government. It shall be the duties of the Town Administrator to:

- (a) Attend all meetings of the Town Council, with the right to speak when recognized but not to vote;
- (b) Keep the Mayor and Town Council advised of the financial condition, with advice from the Town Treasurer, and the future needs of the town and all matters pertaining to its proper administration, and make such recommendations as may seem desirable with the assistance of other Charter officers to the Mayor and Town Council;
- (c) Prepare and submit, with the assistance of the Town Treasurer and other town officers, the annual budget of the town and be responsible for its administration after its adoption;
- (d) Submit adequate reports as required by Town Council and Mayor; and
- (e) Perform such other duties as may be prescribed by this Charter, or required in accordance therewith by the Mayor and Town Council, or which may be required by the chief executive officer of a town by the general laws of the Commonwealth.

All employees of the town, except those appointed by the Town Council pursuant to this Charter or the general laws of the Commonwealth, shall be appointed and may be

removed by the Town Administrator, who shall report each appointment or removal to the Mayor and Town Council immediately. The Town Council shall designate a person to act as Town Administrator in case of the absence, incapacity, death, or resignation of the Town Administrator, until his return to duty or appointment of a successor. Until such time as the Town Council appoints any such Town Administrator, the duties and powers outlined herein shall be given to the Mayor or such other person as may be designated by the Town Council. The removal of such Town Administrator shall be by majority vote of the Town Council.

§ 4.6. Powers and Duties of Chief of Police.

The Chief of Police shall work closely with the Town Administrator and other town officers and shall report to the Town Council and the Mayor as needed. The removal of the Chief of Police shall be by majority vote of the Town Council.

§ 4.7. Duties of Town Clerk.

The Town Clerk shall be the clerk of the Town Council. The clerk shall keep the journal of the proceedings and shall record all ordinances and resolutions in a book or books kept for this purpose. The clerk shall record the vote of each Council Person on any question submitted to the Town Council as required by law or the Town Council. The clerk shall be the custodian of the corporate seal of the town and shall be the officer authorized to use and authenticate it. The clerk shall perform such other duties and keep such other records as the Town Council may specify or general laws of the Commonwealth may require of town clerks. All records in the Town Clerk's office shall be public records and open to inspection at any time during regular business hours, subject to such limitations and exceptions as are set forth in the Code of Virginia, as amended from time to time. The Town Clerk shall work with the other officers of the town and shall report to the Mayor and Town Council as needed. The removal of the Town Clerk shall be by majority vote of the Town Council.

§ 4.8. Duties of Town Treasurer.

The Town Treasurer shall collect the town taxes and license fees and shall have the power to levy and sell property for collection of delinquent taxes and fees as given to county treasurers. The Town Treasurer shall work cooperatively with the Town Administrator to provide full financial disclosure and reporting as requested by the Town Council. The Town Treasurer shall work cooperatively with the Town Administrator and other town officers to prepare and assist in the administration of the annual budget, and arrange for an annual audit by a certified public accountant as directed by Town Council, with the approval of the Town Council. The Town Treasurer shall perform such other

duties, not inconsistent with the office, as the Mayor and Town Council may direct. The removal of the Town Treasurer shall be by majority vote of the Town Council.

§ 4.9. Duties of Town Attorney.

The Town Attorney shall be the legal advisor of the Town Council and Mayor. The Town Attorney shall represent the town in all legal affairs as may be requested by the Mayor, by the Town Council, or by an officer of the town appointed under provisions of this Charter. The Town Attorney shall serve at the will and pleasure of the Town Council.

§ 4.10. Bonds.

Officers, deputies, and assistants appointed by the Town Council shall execute such bonds as may be required by resolution of the Town Council.

§ 4.11. Vacancies in Office.

The Town Council may fill any vacancy in any appointive office.

§ 4.12. Residence of Officers and Employees.

Any appointive officers or employees of the town may be appointed and serve whether or not the officer or employee is a resident of the town.

§ 4.13. Emergency Management Organizations Management.

The Town of Eastville reserves the right to operate its own emergency management services separate from the County of Northampton if it is deemed necessary by the Town Council at any time. The Town of Eastville recognizes the Town Police Department, as well as the Eastville Volunteer Fire Co. Inc., as an integral part of the official safety program. The management of emergency services shall be under the control and direction of the Chief of Police.

Chapter 5.

Raising of Revenue.

§ 5.1. Assessment of Taxes.

The Town Council shall have the power to assess and tax real or personal property within the town, levy taxes, impose license requirements, and collect the same to any extent not prohibited by laws of the Commonwealth of Virginia.

§ 5.2. Other Revenue-Generating Activity.

The Town Council shall have the power to engage in other revenue-generating activities to any extent not prohibited by the laws of the Commonwealth of Virginia.

Chapter 6.

Financial Provisions.

§ 6.1. Fiscal Year.

The fiscal year of the town shall begin on July one of each year and end on June thirtieth of the year following.

Chapter 7.

Miscellaneous.

§ 7.1. Elections Governed by State Law.

All town elections shall be conducted in the manner prescribed by the laws of the Commonwealth of Virginia.

§ 7.2. Applicability outside Town.

All ordinances of the town, so far as they are applicable, shall apply on, in, or to all land, buildings, and structures owned by or leased or rented to the town and located outside the town.

§ 7.3. Present Officers to Continue.

The present elected officers of the town shall be and remain in office until expiration of their several terms and until their successors have been duly elected and qualified.

§ 7.4. Ordinances Continued in Force.

All ordinances now in force in the Town of Eastville not inconsistent with this Charter shall be and remain in force until altered, amended, or repealed by the Town Council.

§ 7.5. Severability of Provisions.

If any clause, sentence, paragraph, or part of this Charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Charter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgement shall have been rendered.

§ 7.6. Disclosure of Interest.

The Town Council is hereby empowered to adopt a conflict of interest and disclosure ordinance to govern elected or appointed town officials, or both, not inconsistent with the general laws of the Commonwealth of Virginia.

2. That Chapter 247, as amended, of the Acts of Assembly of 1896 is repealed.

## **Chapter 815 Remote sales & use tax collection; sufficient activity by dealers/marketplace facilitators, waiver.**

An Act to amend and reenact §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the

Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013; to amend the Code of Virginia by adding a section numbered 58.1-612.1; and to repeal the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, and to repeal the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, relating to remote sales and use tax collection and sufficient activity by dealers and marketplace facilitators as to require registration for sales and use tax collection.

[H 1722]

Approved March 26, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-612.1 as follows:

§ 58.1-601. (Contingent expiration date) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, including the collection of state and local sales and use taxes from remote sellers.

B. In administering the collection of state and local sales and use taxes from remote sellers, the Tax Commissioner shall:

1. Provide adequate information to remote sellers to enable them to identify state and local sales and use tax rates and exemptions;

2. Provide adequate information to software providers to enable them to make software and services available to remote sellers;

3. Ensure that if the Department requires a periodic audit the remote seller may complete a single audit that covers the state and local sales and use taxes in all localities; and

4. Require no more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance ~~which~~ that the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

§ 58.1-602. (Contingent expiration date) Definitions.

As used in this chapter, unless the context clearly shows otherwise, ~~the term or phrase:~~ "Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and production supervision. Any person providing advertising as defined ~~herein~~ in this section shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program ~~which~~ that is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person ~~who~~ that has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" ~~shall~~ does not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, ~~such term shall~~ "integrated process" does not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected ~~world-wide~~ worldwide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. ~~The term "manufacturing" shall~~ "Manufacturing" also include includes the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination of whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" ~~shall include~~ includes, but is not ~~be~~ limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, ~~but shall~~ is not ~~be~~ limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, ~~a~~ "modular building shall" does not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person ~~or corporation who~~ that owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this

section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person ~~who~~ that purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which ~~he~~ it is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided that such sale or exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, ~~shall also include~~ includes Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of ~~such term shall mean~~ "person" means the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of § 58.1-612 or any software provider acting on behalf of such dealer.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax. The terms "retail sale" and a "sale at retail" ~~shall~~ specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" ~~also shall~~ specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

The term "transient" ~~shall~~ does not include a purchaser of camping memberships, timeshares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the

purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient, provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" ~~shall~~ do not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" ~~shall~~ does not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal.

Where used articles are taken in trade, or in a series of trades as a credit or part payment

on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property ~~which~~ that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. ~~The term "tangible~~ "Tangible personal property" ~~shall~~ does not include stocks, bonds, notes, insurance or other obligations or securities. ~~The term "tangible~~ "Tangible personal property" ~~shall include~~ includes (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. ~~The term "Use"~~ "Use" does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. ~~The term "Use"~~ "Use" does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage ~~as herein defined~~ in this section.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities ~~which~~ that are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, ~~it shall refer~~ "used directly" refers to the activities specified ~~above,~~ in this definition and, in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person ~~or entity~~ that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator, including, but not limited to, Internet service.

§ 58.1-604. (Contingent expiration date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property that has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).
2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.
3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

~~5. (Contingent repeal date -- see note) The use tax shall not apply to out-of-state mail-order catalog purchases totaling \$100 or less during any calendar year.~~

§ 58.1-604. (Contingent effective date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

~~5. The use tax shall not apply to out-of-state mail-order catalog purchases totaling \$100 or less during any calendar year.~~

§ 58.1-605. (Contingent expiration date) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. 1. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

2. Prior to any change in the rate of any local sales and use tax, the Tax Commissioner shall provide remote sellers with at least 30 days' notice. Any change in the rate of any local sales and use tax shall only become effective on the first day of a calendar quarter. Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to apply the preceding effective rate until 30 days after notification is provided.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as

follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G~~above~~, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire

county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons ~~who~~ that are dealers, as ~~hereinafter~~ defined in this section, and ~~who~~ that have sufficient contact with the Commonwealth to qualify under (i) subsections ~~(i)~~ B and C or (ii) subsections B and D.

B. ~~The term "dealer," as As used in this chapter, shall include~~ "dealer" includes every person ~~who~~ that:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;

2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
3. Sells at retail, or ~~who~~ that offers for sale at retail, or ~~who~~ that has in ~~his~~ its possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;
4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and ~~who~~ that cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;
5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;
6. Is the lessee or rentee of tangible personal property and ~~who~~ that pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;
7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or
8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether ~~he~~ it holds, or is required to hold, a certificate of registration under § 58.1-613.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if ~~he~~ it:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;
2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;
3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;
4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;

5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;
6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;
7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;
8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § 58.1-613;~~or~~
9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth;
10. Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from retail sales in the Commonwealth in the previous or current calendar year, provided that in determining the amount of a dealer's gross revenues, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated; or
11. Engages in 200 or more separate retail sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year, provided that in determining the total number of a dealer's retail sales transactions, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the

dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person ~~who~~ that has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § 58.1-613:

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;
2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;
3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and
4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained ~~herein~~ ~~( in this chapter other than in~~ subsection E) shall limit any authority ~~which~~ that this Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer ~~who~~ that regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

G. ~~(Contingent effective date) Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all~~

~~persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.~~

§ 58.1-612.1. Tax collectible from marketplace facilitators; "marketplace facilitator" defined.

A. As used in this chapter:

"Marketplace facilitator" means a person that contracts with a marketplace seller to facilitate, for consideration and regardless of whether such consideration is deducted as fees from transactions, the sale of such marketplace seller's products through a physical or electronic marketplace operated by such person. "Marketplace facilitator" does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties. "Marketplace facilitator" does not include a platform or forum that exclusively provides internet advertising services, including any advertisements that may list products for sale, so long as such platform or forum does not also engage directly or indirectly through one or more commonly controlled persons, as defined in subsection D of § 58.1-612, in the activities described in subsection C.

"Marketplace seller" means a person that is not a commonly controlled person, as defined in subsection D of § 58.1-612, to a marketplace facilitator and that makes sales through any physical or electronic marketplace operated by such marketplace facilitator, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace.

B. The tax levied under this chapter shall be collectible from all persons that are marketplace facilitators that have sufficient contact with Virginia to require registration under subsection C.

C. A marketplace facilitator shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if it meets at least one requirement in each of subdivisions 1, 2, and 3:

1. It engages, either directly or indirectly, through a commonly controlled person as defined in subsection D of § 58.1-612 in any of the following activities:

a. Transmitting or communicating an offer or acceptance between a purchaser and a marketplace seller;

b. Owning or operating the infrastructure, whether electronic or physical, or technology that brings purchasers and marketplace sellers together; or

c. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller;

2. It engages in any of the following activities with respect to a marketplace seller's products:

a. Payment processing;

b. Fulfillment or storage;

c. Listing products for sale;

d. Setting prices;

e. Branding sales as those of the marketplace facilitator; or

f. Providing customer service or accepting or assisting with returns or exchanges; and

3. It establishes economic nexus through either of the following activities:

a. Facilitating sales in Virginia that, in the aggregate, generate more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, for such marketplace facilitator. A marketplace facilitator may exceed this threshold based on sales for either the previous or current calendar year. In determining the amount of a marketplace facilitator's gross revenues, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated; or

b. Facilitating 200 or more separate retail sale transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year. In determining the total number of retail sales transactions attributable to a marketplace facilitator, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated.

D. 1. A marketplace facilitator shall be considered a dealer for purposes of this chapter and shall collect the tax imposed by this chapter on all transactions that it facilitates through its marketplace.

2. No marketplace seller shall collect sales and use tax on a transaction made through a marketplace facilitator's marketplace.

3. Notwithstanding the provisions of subdivisions 1 and 2, the Department shall allow for a waiver from the requirements of subdivisions 1 and 2 if a marketplace facilitator demonstrates, to the satisfaction of the Commissioner, that either (i) all of its marketplace sellers already are registered dealers under § 58.1-613 or (ii) the marketplace seller has sufficient nexus to require registration under § 58.1-613 and that collection of the tax by the marketplace facilitator for such marketplace seller would create an undue burden or hardship for either party. If such waiver is granted, the tax levied under this chapter shall be collectible from the marketplace seller. The Department shall develop guidelines that establish (a) the criteria for obtaining a waiver pursuant to this section, (b) the process and procedure for a marketplace facilitator to apply for a waiver, and (c) the process for

providing notice to an affected marketplace facilitator and marketplace seller of a waiver obtained pursuant to this subdivision.

E. A marketplace facilitator shall be relieved from liability, including penalties and interest, for the incorrect collection or remittance of sales and use tax on transactions it facilitates or for which it is the seller if the error is due to reasonable reliance on (i) an invalid exemption certificate provided by the marketplace seller or the purchaser; (ii) incorrect or insufficient information provided by the Commonwealth; or (iii) incorrect or insufficient information provided by the marketplace seller or purchaser regarding the tax classification or proper sourcing of an item or transaction, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain accurate information from the marketplace seller or purchaser. The relief from liability afforded to the marketplace facilitator pursuant to this subsection shall not exceed the total amount of tax due from the marketplace facilitator on the incorrect transaction independent of any penalties or interest that would have otherwise applied. Any deficiency resulting from incorrect information provided by the marketplace seller or as the result of an audit shall be the liability of the marketplace seller.

F. A marketplace facilitator is the sole entity subject to audit by the Department for sales and use tax collection for all transactions facilitated by the marketplace facilitator unless (i) the marketplace facilitator can demonstrate that its failure to collect the proper tax was due to incorrect information provided by the marketplace seller or (ii) the marketplace seller is subject to a waiver granted pursuant to subdivision D 3.

G. If a marketplace facilitator lacks physical presence in the Commonwealth and has both facilitated and made direct sales into the Commonwealth, both types of sales shall be considered in determining whether it has established economic nexus.

H. When a marketplace seller that is not otherwise required to register for the collection of the tax under any of the provisions contained in subdivisions C 1 through 9 of § 58.1-612 makes both direct sales and sales on a marketplace facilitator's marketplace, only the marketplace seller's direct sales shall be considered in determining whether the marketplace seller is required to register for the collection of the tax under subdivision C 10 or 11 of § 58.1-612.

I. No class action shall be brought against a marketplace facilitator in any court of the Commonwealth on behalf of customers arising from or in any way related to an overpayment of sales and use tax collected on sales facilitated by the marketplace facilitator, regardless of whether such claim is characterized as a tax refund claim. Nothing in this subsection shall affect a customer's right to seek a refund on an individual basis.

§ 58.1-615. (Contingent expiration date) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

The Tax Commissioner shall not require that more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer ~~who~~ that elects to file a consolidated sales tax return for any taxable period and ~~who~~ that is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file ~~his~~ its monthly return using an electronic medium prescribed by the Tax Commissioner. A

waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

§ 58.1-625. (Effective until July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ that is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until ~~he~~ it can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ its account.

D. 1. Any dealer ~~who~~ that neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ it, ~~his~~ its agents, or employees shall be liable for and pay the tax ~~himself~~ itself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ that neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~himself~~ itself or through ~~his~~ its agents or employees, ~~shall be~~ is guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

E. ~~(Contingent effective date) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single~~

~~provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 18 of § 58.1-609.1 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax ~~himself~~ itself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ it is for tax collected from a purchaser pursuant to this section.

§ 58.1-625. (Effective July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ that is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until ~~he~~ it can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ its account.

D. 1. Any dealer ~~who~~ that neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ it, ~~his~~ its agents, or employees shall be liable for and pay the tax ~~himself~~ itself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ that neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~him~~

self itself or through his its agents or employees, ~~shall be~~ is guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

~~E. (Contingent effective date — see Editor's note) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

~~F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.~~

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax ~~himself~~ itself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ it is for tax collected from a purchaser pursuant to this section.

§ 58.1-635. (Contingent expiration date) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful

intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of  ~~fifty~~ 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports  ~~his~~  its gross sales, gross proceeds or cost price, as the case may be, at  ~~fifty~~ 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

D. Notwithstanding any other provision of this section, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

2. That the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, of the Code of Virginia are repealed.

3. That the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 is amended and reenacted as follows:

**4. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ ~~58.1-609-13~~, 58.1-2289, as it may become effective, 58.1-2290, and 58.1-2701, as it may become effective, of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, are repealed.**

4. That the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, are repealed.

5. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

6. That the provisions of this act requiring remote sales and use tax collection by remote sellers and marketplace facilitators shall not apply to any retail sales transactions occurring before July 1, 2019; however, transactions occurring before July 1, 2019, may be included in the calculation of gross revenue or retail transactions pursuant to the provisions of subdivisions C 10 and 11 of § 58.1-612 of the Code of Virginia, as amended by this act. Upon written application and for good cause shown, in order to ensure the accurate and timely collection of taxes due, the Department of Taxation may temporarily suspend or delay the collection or reporting requirements, or both, of a marketplace facilitator for a period not to exceed 90 days after collection is required.

7. That the Department of Taxation shall develop guidelines implementing the provisions of this act, including guidelines implementing the provisions of subsection D of § 58.1-612.1 of the Code of Virginia, as created by this act, creating a waiver. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

8. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions of this act shall remain in effect.

## **Chapter 816 Remote sales & use tax collection; sufficient activity by dealers/marketplace facilitators, waiver.**

An Act to amend and reenact §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013; to amend the Code of Virginia by adding a section numbered 58.1-612.1; and to repeal the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, and to repeal the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, relating to remote sales and use tax collection and sufficient activity by dealers and marketplace facilitators as to require registration for sales and use tax collection.

[S 1083]

Approved March 26, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, and 58.1-635, as it is currently effective, of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-612.1 as follows:

§ 58.1-601. (Contingent expiration date) Administration of chapter.

A. The Tax Commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this chapter, including the collection of state and local sales and use taxes from remote sellers.

B. In administering the collection of state and local sales and use taxes from remote sellers, the Tax Commissioner shall:

1. Provide adequate information to remote sellers to enable them to identify state and local sales and use tax rates and exemptions;

2. Provide adequate information to software providers to enable them to make software and services available to remote sellers;

3. Ensure that if the Department requires a periodic audit the remote seller may complete a single audit that covers the state and local sales and use taxes in all localities; and

4. Require no more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

C. For purposes of evaluating the fiscal, economic and policy impact of sales and use tax exemptions, the Tax Commissioner may require from any person information relating to the evaluation of exempt purchases or sales, information relating to the qualification for exempt purchases, and information relating to direct or indirect government financial assistance ~~which~~ that the person receives. Such information shall be filed on forms prescribed by the Tax Commissioner.

§ 58.1-602. (Contingent expiration date) Definitions.

As used in this chapter, unless the context clearly shows otherwise, ~~the term or phrase:~~ "Advertising" means the planning, creating, or placing of advertising in newspapers, magazines, billboards, broadcasting and other media, including, without limitation, the providing of concept, writing, graphic design, mechanical art, photography and

production supervision. Any person providing advertising as defined ~~herein~~ in this section shall be deemed to be the user or consumer of all tangible personal property purchased for use in such advertising.

"Amplification, transmission and distribution equipment" means, but is not limited to, production, distribution, and other equipment used to provide Internet-access services, such as computer and communications equipment and software used for storing, processing and retrieving end-user subscribers' requests.

"Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either directly or indirectly.

"Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price as defined in this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

"Custom program" means a computer program ~~which~~ that is specifically designed and developed only for one customer. The combining of two or more prewritten programs does not constitute a custom computer program. A prewritten program that is modified to any degree remains a prewritten program and does not become custom.

"Distribution" means the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person ~~who~~ that has processed, manufactured, refined, or converted such property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this chapter.

"Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price as defined in this section over the term of the lease, rental, service, or use, but not less frequently than monthly. "Gross proceeds" does not include finance charges, carrying charges, service charges, or interest from credit extended on the lease or rental of tangible personal property under conditional lease or rental contracts or other conditional contracts providing for the deferred payments of the lease or rental price.

"Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this chapter, without any deduction, except as provided in this chapter. "Gross sales" ~~shall~~ does not include the federal retailers' excise tax or the federal diesel fuel excise tax imposed in § 4091 of the Internal Revenue Code if the excise tax is billed to the purchaser separately from the selling price of the article, or the Virginia

retail sales or use tax, or any sales or use tax imposed by any county or city under § 58.1-605 or 58.1-606.

"Import" and "imported" are words applicable to tangible personal property imported into the Commonwealth from other states as well as from foreign countries, and "export" and "exported" are words applicable to tangible personal property exported from the Commonwealth to other states as well as to foreign countries.

"In this Commonwealth" or "in the Commonwealth" means within the limits of the Commonwealth of Virginia and includes all territory within these limits owned by or ceded to the United States of America.

"Integrated process," when used in relation to semiconductor manufacturing, means a process that begins with the research or development of semiconductor products, equipment, or processes, includes the handling and storage of raw materials at a plant site, and continues to the point that the product is packaged for final sale and either shipped or conveyed to a warehouse. Without limiting the foregoing, any semiconductor equipment, fuel, power, energy, supplies, or other tangible personal property shall be deemed used as part of the integrated process if its use contributes, before, during, or after production, to higher product quality, production yields, or process efficiencies. Except as otherwise provided by law, ~~such term shall~~ "integrated process" does not mean general maintenance or administration.

"Internet" means collectively, the myriad of computer and telecommunications facilities, which comprise the interconnected ~~world-wide~~ worldwide network of computer networks.

"Internet service" means a service that enables users to access proprietary and other content, information electronic mail, and the Internet as part of a package of services sold to end-user subscribers.

"Lease or rental" means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

"Manufacturing, processing, refining, or conversion" includes the production line of the plant starting with the handling and storage of raw materials at the plant site and continuing through the last step of production where the product is finished or completed for sale and conveyed to a warehouse at the production site, and also includes equipment and supplies used for production line testing and quality control. ~~The term "manufacturing" shall~~ "Manufacturing" also include includes the necessary ancillary activities of newspaper and magazine printing when such activities are performed by the publisher of any newspaper or magazine for sale daily or regularly at average intervals not exceeding three months.

The determination of whether any manufacturing, mining, processing, refining or conversion activity is industrial in nature shall be made without regard to plant size, existence or size of finished product inventory, degree of mechanization, amount of capital investment, number of employees or other factors relating principally to the size of the business. Further, "industrial in nature" ~~shall include~~ includes, but is not ~~be~~ limited to, those businesses classified in codes 10 through 14 and 20 through 39 published in the Standard Industrial Classification Manual for 1972 and any supplements issued thereafter.

"Modular building" means, but ~~shall~~ is not ~~be~~ limited to, single and multifamily houses, apartment units, commercial buildings, and permanent additions thereof, comprised of one or more sections that are intended to become real property, primarily constructed at a location other than the permanent site, built to comply with the Virginia Industrialized Building Safety Law (§ 36-70 et seq.) as regulated by the Virginia Department of Housing and Community Development, and shipped with most permanent components in place to the site of final assembly. For purposes of this chapter, a ~~"modular building"~~ shall does not include a mobile office as defined in § 58.1-2401 or any manufactured building subject to and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

"Modular building manufacturer" means a person ~~or corporation who~~ that owns or operates a manufacturing facility and is engaged in the fabrication, construction and assembling of building supplies and materials into modular buildings, as defined in this section, at a location other than at the site where the modular building will be assembled on the permanent foundation and may or may not be engaged in the process of affixing the modules to the foundation at the permanent site.

"Modular building retailer" means any person ~~who~~ that purchases or acquires a modular building from a modular building manufacturer, or from another person, for subsequent sale to a customer residing within or outside of the Commonwealth, with or without installation of the modular building to the foundation at the permanent site.

"Motor vehicle" means a "motor vehicle" as defined in § 58.1-2401, taxable under the provisions of the Virginia Motor Vehicles Sales and Use Tax Act (§ 58.1-2400 et seq.) and upon the sale of which all applicable motor vehicle sales and use taxes have been paid.

"Occasional sale" means a sale of tangible personal property not held or used by a seller in the course of an activity for which ~~he~~ it is required to hold a certificate of registration, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, provided that such sale or

exchange is not one of a series of sales and exchanges sufficient in number, scope and character to constitute an activity requiring the holding of a certificate of registration.

"Open video system" means an open video system authorized pursuant to 47 U.S.C. § 573 and, for purposes of this chapter only, ~~shall also include~~ includes Internet service regardless of whether the provider of such service is also a telephone common carrier.

"Person" includes any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural of ~~such term shall mean~~ "person" means the same as the singular.

"Prewritten program" means a computer program that is prepared, held or existing for general or repeated sale or lease, including a computer program developed for in-house use and subsequently sold or leased to unrelated third parties.

"Railroad rolling stock" means locomotives, of whatever motive power, autocars, railroad cars of every kind and description, and all other equipment determined by the Tax Commissioner to constitute railroad rolling stock.

"Remote seller" means any dealer deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 under the criteria specified in subdivision C 10 or 11 of § 58.1-612 or any software provider acting on behalf of such dealer.

"Retail sale" or a "sale at retail" means a sale to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and shall include any such transaction as the Tax Commissioner upon investigation finds to be in lieu of a sale. All sales for resale must be made in strict compliance with regulations applicable to this chapter. Any dealer making a sale for resale which is not in strict compliance with such regulations shall be personally liable for payment of the tax. The terms "retail sale" and a "sale at retail" ~~shall~~ specifically include the following: (i) the sale or charges for any room or rooms, lodgings, or accommodations furnished to transients for less than 90 continuous days by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration; (ii) sales of tangible personal property to persons for resale when because of the operation of the business, or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because such persons are minors or transients, or because such

persons are engaged in essentially service businesses, or for any other reason there is likelihood that the Commonwealth will lose tax funds due to the difficulty of policing such business operations; (iii) the separately stated charge made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair; and (iv) the separately stated charge for equipment available for lease or purchase by a provider of satellite television programming to the customer of such programming. Equipment sold to a provider of satellite television programming for subsequent lease or purchase by the customer of such programming shall be deemed a sale for resale. The Tax Commissioner is authorized to promulgate regulations requiring vendors of or sellers to such persons to collect the tax imposed by this chapter on the cost price of such tangible personal property to such persons and may refuse to issue certificates of registration to such persons. The terms "retail sale" and a "sale at retail" also ~~shall~~ specifically include the separately stated charge made for supplies used during automotive repairs whether or not there is transfer of title or possession of the supplies and whether or not the supplies are attached to the automobile. The purchase of such supplies by an automotive repairer for sale to the customer of such repair services shall be deemed a sale for resale.

The term "transient" ~~shall~~ does not include a purchaser of camping memberships, time-shares, condominiums, or other similar contracts or interests that permit the use of, or constitute an interest in, real estate, however created or sold and whether registered with the Commonwealth or not. Further, a purchaser of a right or license which entitles the purchaser to use the amenities and facilities of a specific real estate project on an ongoing basis throughout its term shall not be deemed a transient, provided, however, that the term or time period involved is for seven years or more.

The terms "retail sale" and "sale at retail" ~~shall~~ do not include a transfer of title to tangible personal property after its use as tools, tooling, machinery or equipment, including dies, molds, and patterns, if (i) at the time of purchase, the purchaser is obligated, under the terms of a written contract, to make the transfer and (ii) the transfer is made for the same or a greater consideration to the person for whom the purchaser manufactures goods.

"Retailer" means every person engaged in the business of making sales at retail, or for distribution, use, consumption, or storage to be used or consumed in the Commonwealth.

"Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and

includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication, and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

"Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever. "Sales price" ~~shall~~ does not include (i) any cash discount allowed and taken; (ii) finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price; (iii) separately stated local property taxes collected; (iv) that portion of the amount paid by the purchaser as a discretionary gratuity added to the price of a meal; or (v) that portion of the amount paid by the purchaser as a mandatory gratuity or service charge added by a restaurant to the price of a meal, but only to the extent that such mandatory gratuity or service charge does not exceed 20 percent of the price of the meal.

Where used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this chapter shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles.

"Semiconductor cleanrooms" means the integrated systems, fixtures, piping, partitions, flooring, lighting, equipment, and all other property used to reduce contamination or to control airflow, temperature, humidity, vibration, or other environmental conditions required for the integrated process of semiconductor manufacturing.

"Semiconductor equipment" means (i) machinery or tools or repair parts or replacements thereof; (ii) the related accessories, components, pedestals, bases, or foundations used in connection with the operation of the equipment, without regard to the proximity to the equipment, the method of attachment, or whether the equipment or accessories are affixed to the realty; (iii) semiconductor wafers and other property or supplies used to install, test, calibrate or recalibrate, characterize, condition, measure, or maintain the equipment and settings thereof; and (iv) equipment and supplies used for quality control testing of product, materials, equipment, or processes; or the measurement of equipment

performance or production parameters regardless of where or when the quality control, testing, or measuring activity takes place, how the activity affects the operation of equipment, or whether the equipment and supplies come into contact with the product.

"Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in the Commonwealth, or for any purpose other than sale at retail in the regular course of business.

"Tangible personal property" means personal property ~~which~~ that may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. -

~~The term "tangible~~ "Tangible personal property" ~~shall~~ does not include stocks, bonds, notes, insurance or other obligations or securities. ~~The term "tangible~~ "Tangible personal property" ~~shall include~~ includes (i) telephone calling cards upon their initial sale, which shall be exempt from all other state and local utility taxes, and (ii) manufactured signs.

"Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business. ~~The term "Use"~~ "Use" does not include the exercise of any right or power, including use, distribution, or storage, over any tangible personal property sold to a nonresident donor for delivery outside of the Commonwealth to a nonresident recipient pursuant to an order placed by the donor from outside the Commonwealth via mail or telephone. ~~The term "Use"~~ "Use" does not include any sale determined to be a gift transaction, subject to tax under § 58.1-604.6.

"Use tax" refers to the tax imposed upon the use, consumption, distribution, and storage ~~as herein defined~~ in this section.

"Used directly," when used in relation to manufacturing, processing, refining, or conversion, refers to those activities ~~which~~ that are an integral part of the production of a product, including all steps of an integrated manufacturing or mining process, but not including ancillary activities such as general maintenance or administration. When used in relation to mining, ~~it shall refer~~ "used directly" refers to the activities ~~specified above,~~ in this definition and, in addition, any reclamation activity of the land previously mined by the mining company required by state or federal law.

"Video programmer" means a person ~~or entity~~ that provides video programming to end-user subscribers.

"Video programming" means video and/or information programming provided by or generally considered comparable to programming provided by a cable operator, including, but not limited to, Internet service.

§ 58.1-604. (Contingent expiration date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of 4.3 percent:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property that has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).
  2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.
  3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.
  4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.
  5. ~~(Contingent repeal date — see note) The use tax shall not apply to out-of-state mail-order catalog purchases totaling \$100 or less during any calendar year.~~
- § 58.1-604. (Contingent effective date) Imposition of use tax.

There is hereby levied and imposed, in addition to all other taxes and fees now imposed by law, a tax upon the use or consumption of tangible personal property in this Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in this Commonwealth, in the amount of three and one-half percent through midnight on July 31, 2004, and four percent beginning on and after August 1, 2004:

1. Of the cost price of each item or article of tangible personal property used or consumed in this Commonwealth. Tangible personal property which has been acquired for use outside this Commonwealth and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this Commonwealth for use within six months of its acquisition; but if so brought within

this Commonwealth six months or more after its acquisition, such property shall be taxed on the basis of the current market value (but not in excess of its cost price) of such property at the time of its first use within this Commonwealth. Such tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this Commonwealth bears to the total useful life of such property (but it shall be presumed in all cases that such property will remain within this Commonwealth for the remainder of its useful life unless convincing evidence is provided to the contrary).

2. Of the cost price of each item or article of tangible personal property stored outside this Commonwealth for use or consumption in this Commonwealth.

3. A transaction taxed under § 58.1-603 shall not also be taxed under this section, nor shall the same transaction be taxed more than once under either section.

4. The use tax shall not apply with respect to the use of any article of tangible personal property brought into this Commonwealth by a nonresident individual, visiting in Virginia, for his personal use, while within this Commonwealth.

~~5. The use tax shall not apply to out-of-state mail-order catalog purchases totaling \$100 or less during any calendar year.~~

§ 58.1-605. (Contingent expiration date) To what extent and under what conditions cities and counties may levy local sales taxes; collection thereof by Commonwealth and return of revenue to each city or county entitled thereto.

A. No county, city or town shall impose any local general sales or use tax or any local general retail sales or use tax except as authorized by this section.

B. The council of any city and the governing body of any county may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of such city or county. Such tax shall be added to the rate of the state sales tax imposed by §§ 58.1-603 and 58.1-604 and shall be subject to all the provisions of this chapter and the rules and regulations published with respect thereto. No discount under § 58.1-622 shall be allowed on a local sales tax.

C. 1. The council of any city and the governing body of any county desiring to impose a local sales tax under this section may do so by the adoption of an ordinance stating its purpose and referring to this section, and providing that such ordinance shall be effective on the first day of a month at least 60 days after its adoption. A certified copy of such ordinance shall be forwarded to the Tax Commissioner so that it will be received within five days after its adoption.

2. Prior to any change in the rate of any local sales and use tax, the Tax Commissioner shall provide remote sellers with at least 30 days' notice. Any change in the rate of any local sales and use tax shall only become effective on the first day of a calendar quarter.

Failure to provide notice pursuant to this section shall require the Commonwealth and the locality to apply the preceding effective rate until 30 days after notification is provided.

D. Any local sales tax levied under this section shall be administered and collected by the Tax Commissioner in the same manner and subject to the same penalties as provided for the state sales tax.

E. All local sales tax moneys collected by the Tax Commissioner under this section shall be paid into the state treasury to the credit of a special fund which is hereby created on the Comptroller's books under the name "Collections of Local Sales Taxes." Such local sales tax moneys shall be credited to the account of each particular city or county levying a local sales tax under this section. The basis of such credit shall be the city or county in which the sales were made as shown by the records of the Department and certified by it monthly to the Comptroller, namely, the city or county of location of each place of business of every dealer paying the tax to the Commonwealth without regard to the city or county of possible use by the purchasers. If a dealer has any place of business located in more than one political subdivision by reason of the boundary line or lines passing through such place of business, the amount of sales tax paid by such a dealer with respect to such place of business shall be treated for the purposes of this section as follows: one-half shall be assignable to each political subdivision where two are involved, one-third where three are involved, and one-fourth where four are involved.

F. As soon as practicable after the local sales tax moneys have been paid into the state treasury in any month for the preceding month, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each city or county entitled to the monthly return of its local sales tax moneys, and such payments shall be charged to the account of each such city or county under the special fund created by this section. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next two months as follows: one-half of the total adjustment shall be included in the payments for the next two months. In addition, the payment shall include a refund of amounts erroneously not paid to the city or county and not previously refunded during the three years preceding the discovery of the error. A correction and adjustment in payments described in this subsection due to the misallocation of funds by the dealer shall be made within three years of the date of the payment error.

G. Such payments to counties are subject to the qualification that in any county wherein is situated any incorporated town constituting a special school district and operated as a

separate school district under a town school board of three members appointed by the town council, the county treasurer shall pay into the town treasury for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of such town bears to the school age population of the entire county. If the school age population of any town constituting a separate school district is increased by the annexation of territory since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

H. One-half of such payments to counties are subject to the further qualification, other than as set out in subsection G ~~above~~, that in any county wherein is situated any incorporated town not constituting a separate special school district which has complied with its charter provisions providing for the election of its council and mayor for a period of at least four years immediately prior to the adoption of the sales tax ordinance, the county treasurer shall pay into the town treasury of each such town for general governmental purposes the proper proportionate amount received by him in the ratio that the school age population of each such town bears to the school age population of the entire county, based on the latest estimate provided by the Weldon Cooper Center for Public Service. The preceding requirement pertaining to the time interval between compliance with election provisions and adoption of the sales tax ordinance shall not apply to a tier-city. If the school age population of any such town not constituting a separate special school district is increased by the annexation of territory or otherwise since the last estimate of school age population provided by the Weldon Cooper Center for Public Service, such increase shall, for the purposes of this section, be added to the school age population of such town as shown by the last such estimate and a proper reduction made in the school age population of the county or counties from which the annexed territory was acquired.

I. Notwithstanding the provisions of subsection H, the board of supervisors of a county may, in its discretion, appropriate funds to any incorporated town not constituting a separate school district within such county which has not complied with the provisions of its charter relating to the elections of its council and mayor, an amount not to exceed the amount it would have received from the tax imposed by this chapter if such election had been held.

J. It is further provided that if any incorporated town which would otherwise be eligible to receive funds from the county treasurer under subsection G or H of this section be

located in a county which does not levy a general retail sales tax under the provisions of this law, such town may levy a general retail sales tax at the rate of one percent to provide revenue for the general fund of the town, subject to all the provisions of this section generally applicable to cities and counties. Any tax levied under the authority of this subsection shall in no case continue to be levied on or after the effective date of a county ordinance imposing a general retail sales tax in the county within which such town is located.

§ 58.1-612. Tax collectible from dealers; "dealer" defined; jurisdiction.

A. The tax levied by §§ 58.1-603 and 58.1-604 shall be collectible from all persons ~~who~~ that are dealers, as ~~hereinafter~~ defined in this section, and ~~who that~~ that have sufficient contact with the Commonwealth to qualify under (i) subsections ~~(i)~~ B and C or (ii) subsections B and D.

B. ~~The term "dealer," as~~ As used in this chapter, ~~shall include~~ "dealer" includes every person ~~who that~~ that:

1. Manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
2. Imports or causes to be imported into this Commonwealth tangible personal property from any state or foreign country, for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth;
3. Sells at retail, or ~~who that~~ offers for sale at retail, or ~~who that~~ has in his its possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this Commonwealth, tangible personal property;
4. Has sold at retail, used, consumed, distributed, or stored for use or consumption in this Commonwealth, tangible personal property and ~~who that~~ cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property;
5. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transferring title thereto;
6. Is the lessee or rentee of tangible personal property and ~~who that~~ pays to the owner of such property a consideration for the use or possession of such property without acquiring title thereto;
7. As a representative, agent, or solicitor, of an out-of-state principal, solicits, receives and accepts orders from persons in this Commonwealth for future delivery and whose principal refuses to register as a dealer under § 58.1-613; or

8. Becomes liable to and owes this Commonwealth any amount of tax imposed by this chapter, whether ~~he~~ it holds, or is required to hold, a certificate of registration under § 58.1-613.

C. A dealer shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if ~~he~~ it:

1. Maintains or has within this Commonwealth, directly or through an agent or subsidiary, an office, warehouse, or place of business of any nature;
2. Solicits business in this Commonwealth by employees, independent contractors, agents or other representatives;
3. Advertises in newspapers or other periodicals printed and published within this Commonwealth, on billboards or posters located in this Commonwealth, or through materials distributed in this Commonwealth by means other than the United States mail;
4. Makes regular deliveries of tangible personal property within this Commonwealth by means other than common carrier. A person shall be deemed to be making regular deliveries hereunder if vehicles other than those operated by a common carrier enter this Commonwealth more than 12 times during a calendar year to deliver goods sold by him;
5. Solicits business in this Commonwealth on a continuous, regular, seasonal, or systematic basis by means of advertising that is broadcast or relayed from a transmitter within this Commonwealth or distributed from a location within this Commonwealth;
6. Solicits business in this Commonwealth by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the dealer benefits from any banking, financing, debt collection, or marketing activities occurring in this Commonwealth or benefits from the location in this Commonwealth of authorized installation, servicing, or repair facilities;
7. Is owned or controlled by the same interests which own or control a business located within this Commonwealth;
8. Has a franchisee or licensee operating under the same trade name in this Commonwealth if the franchisee or licensee is required to obtain a certificate of registration under § 58.1-613; ~~or~~
9. Owns tangible personal property that is for sale located in this Commonwealth, or that is rented or leased to a consumer in this Commonwealth, or offers tangible personal property, on approval, to consumers in this Commonwealth;
10. Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from retail sales in the Commonwealth in the previous or current calendar year, provided that in determining the amount of a dealer's gross revenues, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated; or

11. Engages in 200 or more separate retail sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year, provided that in determining the total number of a dealer's retail sales transactions, the sales made by all commonly controlled persons as defined in subsection D shall be aggregated.

D. A dealer is presumed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 (unless the presumption is rebutted as provided herein) if any commonly controlled person maintains a distribution center, warehouse, fulfillment center, office, or similar location within the Commonwealth that facilitates the delivery of tangible personal property sold by the dealer to its customers. The presumption in this subsection may be rebutted by demonstrating that the activities conducted by the commonly controlled person in the Commonwealth are not significantly associated with the dealer's ability to establish or maintain a market in the Commonwealth for the dealer's sales. For purposes of this subsection, a "commonly controlled person" means any person that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered, as the dealer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the dealer as a corporation that is a member of the same "controlled group of corporations," as defined in § 1563(a) of the Internal Revenue Code of 1954, as amended or renumbered.

E. Notwithstanding any other provision of this section, the following shall not be considered to determine whether a person ~~who~~ that has contracted with a commercial printer for printing in the Commonwealth is a "dealer" and whether such person has sufficient contact with the Commonwealth to be required to register under § 58.1-613:

1. The ownership or leasing by that person of tangible or intangible property located at the Virginia premises of the commercial printer which is used solely in connection with the printing contract with the person;
2. The sale by that person of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer;
3. Activities in connection with the printing contract with the person performed by or on behalf of that person at the Virginia premises of the commercial printer; and
4. Activities in connection with the printing contract with the person performed by the commercial printer within Virginia for or on behalf of that person.

F. In addition to the jurisdictional standards contained in subsections C and D, nothing contained ~~herein~~ (in this chapter other than in subsection E) shall limit any authority ~~which~~ that this Commonwealth may enjoy under the provisions of federal law or an

opinion of the United States Supreme Court to require the collection of sales and use taxes by any dealer ~~who~~ that regularly or systematically solicits sales within this Commonwealth. Furthermore, nothing contained in subsection C shall require any broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher which broadcasts, publishes, or displays or distributes paid commercial advertising in this Commonwealth which is intended to be disseminated primarily to consumers located in this Commonwealth to report or impose any liability to pay any tax imposed under this chapter solely because such broadcaster, printer, outdoor advertising firm, advertising distributor, or publisher accepted such advertising contracts from out-of-state advertisers or sellers.

~~G. (Contingent effective date) Pursuant to any federal legislation that grants states the authority to require remote sellers to collect sales and use tax, the Commonwealth is authorized, as permitted by such federal legislation, to require collection of sales and use tax by any remote seller, or a single or consolidated provider acting on behalf of a remote seller. If the federal legislation has an exemption for sellers whose sales are less than a minimum amount, then in determining such amount, the sales made by all persons related within the meanings of subsections (b) and (c) of § 267 or § 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.~~

§ 58.1-612.1. Tax collectible from marketplace facilitators; "marketplace facilitator" defined.

A. As used in this chapter:

"Marketplace facilitator" means a person that contracts with a marketplace seller to facilitate, for consideration and regardless of whether such consideration is deducted as fees from transactions, the sale of such marketplace seller's products through a physical or electronic marketplace operated by such person. "Marketplace facilitator" does not include a payment processor business appointed by a merchant to handle payment transactions from various channels, such as credit cards and debit cards, and whose sole activity with respect to marketplace sales is to handle transactions between two parties. "Marketplace facilitator" does not include a platform or forum that exclusively provides internet advertising services, including any advertisements that may list products for sale, so long as such platform or forum does not also engage directly or indirectly through one or more commonly controlled persons, as defined in subsection D of § 58.1-612, in the activities described in subsection C.

"Marketplace seller" means a person that is not a commonly controlled person, as defined in subsection D of § 58.1-612, to a marketplace facilitator and that makes sales

through any physical or electronic marketplace operated by such marketplace facilitator, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace.

B. The tax levied under this chapter shall be collectible from all persons that are marketplace facilitators that have sufficient contact with Virginia to require registration under subsection C.

C. A marketplace facilitator shall be deemed to have sufficient activity within the Commonwealth to require registration under § 58.1-613 if it meets at least one requirement in each of subdivisions 1, 2, and 3:

1. It engages, either directly or indirectly, through a commonly controlled person as defined in subsection D of § 58.1-612 in any of the following activities:

a. Transmitting or communicating an offer or acceptance between a purchaser and a marketplace seller;

b. Owning or operating the infrastructure, whether electronic or physical, or technology that brings purchasers and marketplace sellers together; or

c. Providing a virtual currency that purchasers are allowed or required to use to purchase products from the marketplace seller;

2. It engages in any of the following activities with respect to a marketplace seller's products:

a. Payment processing;

b. Fulfillment or storage;

c. Listing products for sale;

d. Setting prices;

e. Branding sales as those of the marketplace facilitator; or

f. Providing customer service or accepting or assisting with returns or exchanges; and

3. It establishes economic nexus through either of the following activities:

a. Facilitating sales in Virginia that, in the aggregate, generate more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, for such marketplace facilitator. A marketplace facilitator may exceed this threshold based on sales for either the previous or current calendar year. In determining the amount of a marketplace facilitator's gross revenues, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated; or

b. Facilitating 200 or more separate retail sale transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year. In determining the total number of retail sales transactions attributable to a

marketplace facilitator, the sales made by all commonly controlled persons, as defined in subsection D of § 58.1-612, shall be aggregated.

D. 1. A marketplace facilitator shall be considered a dealer for purposes of this chapter and shall collect the tax imposed by this chapter on all transactions that it facilitates through its marketplace.

2. No marketplace seller shall collect sales and use tax on a transaction made through a marketplace facilitator's marketplace.

3. Notwithstanding the provisions of subdivisions 1 and 2, the Department shall allow for a waiver from the requirements of subdivisions 1 and 2 if a marketplace facilitator demonstrates, to the satisfaction of the Commissioner, that either (i) all of its marketplace sellers already are registered dealers under § 58.1-613 or (ii) the marketplace seller has sufficient nexus to require registration under § 58.1-613 and that collection of the tax by the marketplace facilitator for such marketplace seller would create an undue burden or hardship for either party. If such waiver is granted, the tax levied under this chapter shall be collectible from the marketplace seller. The Department shall develop guidelines that establish (a) the criteria for obtaining a waiver pursuant to this section, (b) the process and procedure for a marketplace facilitator to apply for a waiver, and (c) the process for providing notice to an affected marketplace facilitator and marketplace seller of a waiver obtained pursuant to this subdivision.

E. A marketplace facilitator shall be relieved from liability, including penalties and interest, for the incorrect collection or remittance of sales and use tax on transactions it facilitates or for which it is the seller if the error is due to reasonable reliance on (i) an invalid exemption certificate provided by the marketplace seller or the purchaser; (ii) incorrect or insufficient information provided by the Commonwealth; or (iii) incorrect or insufficient information provided by the marketplace seller or purchaser regarding the tax classification or proper sourcing of an item or transaction, provided that the marketplace facilitator can demonstrate it made a reasonable effort to obtain accurate information from the marketplace seller or purchaser. The relief from liability afforded to the marketplace facilitator pursuant to this subsection shall not exceed the total amount of tax due from the marketplace facilitator on the incorrect transaction independent of any penalties or interest that would have otherwise applied. Any deficiency resulting from incorrect information provided by the marketplace seller or as the result of an audit shall be the liability of the marketplace seller.

F. A marketplace facilitator is the sole entity subject to audit by the Department for sales and use tax collection for all transactions facilitated by the marketplace facilitator unless (i) the marketplace facilitator can demonstrate that its failure to collect the proper tax was

due to incorrect information provided by the marketplace seller or (ii) the marketplace seller is subject to a waiver granted pursuant to subdivision D 3.

G. If a marketplace facilitator lacks physical presence in the Commonwealth and has both facilitated and made direct sales into the Commonwealth, both types of sales shall be considered in determining whether it has established economic nexus.

H. When a marketplace seller that is not otherwise required to register for the collection of the tax under any of the provisions contained in subdivisions C 1 through 9 of § 58.1-612 makes both direct sales and sales on a marketplace facilitator's marketplace, only the marketplace seller's direct sales shall be considered in determining whether the marketplace seller is required to register for the collection of the tax under subdivision C 10 or 11 of § 58.1-612.

I. No class action shall be brought against a marketplace facilitator in any court of the Commonwealth on behalf of customers arising from or in any way related to an overpayment of sales and use tax collected on sales facilitated by the marketplace facilitator, regardless of whether such claim is characterized as a tax refund claim. Nothing in this subsection shall affect a customer's right to seek a refund on an individual basis.

§ 58.1-615. (Contingent expiration date) Returns by dealers.

A. Every dealer required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax shall become effective, transmit to the Tax Commissioner a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this chapter during the preceding calendar month, and thereafter a like return shall be prepared and transmitted to the Tax Commissioner by every dealer on or before the twentieth day of each month, for the preceding calendar month. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

Notwithstanding any other provision of this chapter, a dealer may be required by the Tax Commissioner to file sales or use tax returns on an accounting period less frequent than monthly when, in the opinion of the Tax Commissioner, the administration of the taxes imposed by this chapter would be enhanced. If a dealer is required to file other than monthly, each such return shall be due on or before the twentieth day of the month following the close of the period. Each such return shall contain all information required for monthly returns.

A sales or use tax return shall be filed by each registered dealer even though the dealer is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

The Tax Commissioner shall not require that more than one sales and use tax return per month be filed with the Department by any remote seller or any software provider on behalf of such remote seller.

B. [Expired.]

C. Any return required to be filed with the Tax Commissioner under this section shall be deemed to have been filed with the Tax Commissioner on the date that such return is delivered by the dealer to the commissioner of the revenue or the treasurer for the locality in which the dealer is located and receipt is acknowledged by the commissioner of the revenue or treasurer. The commissioner of the revenue or the treasurer shall stamp such date on the return, and shall mail the return to the Tax Commissioner no later than the following business day. The commissioner of the revenue or the treasurer may collect from the dealer the cost of postage for such mailing.

D. Every dealer ~~who~~ that elects to file a consolidated sales tax return for any taxable period and ~~who~~ that is required to remit payment by electronic funds transfer pursuant to subsection B of § 58.1-202.1 beginning on and after July 1, 2010, shall file ~~his~~ its monthly return using an electronic medium prescribed by the Tax Commissioner. A waiver of this requirement may be granted if the Tax Commissioner determines that it creates an unreasonable burden on the dealer.

§ 58.1-625. (Effective until July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ that is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally col-

lected tax unless or until ~~he~~ it can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ its account.

D. 1. Any dealer ~~who~~ that neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ it, ~~his~~ its agents, or employees shall be liable for and pay the tax ~~himself~~ itself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ that neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~himself~~ itself or through ~~his~~ its agents or employees, ~~shall be~~ is guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

~~E. (Contingent effective date) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in §§ 58.1-611.2 and 58.1-611.3 or subdivision 18 of § 58.1-609.1 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax ~~himself~~ itself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ it is for tax collected from a purchaser pursuant to this section.

§ 58.1-625. (Effective July 1, 2022) Collection of tax.

A. The tax levied by this chapter shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, such tax shall be a debt from the purchaser, consumer, or lessee to the dealer until

paid and shall be recoverable at law in the same manner as other debts. No action at law or suit in equity under this chapter may be maintained in this Commonwealth by any dealer ~~who~~ that is not registered under § 58.1-613 or is delinquent in the payment of the taxes imposed under this chapter.

B. Notwithstanding any exemption from taxes which any dealer now or hereafter may enjoy under the Constitution or laws of this or any other state, or of the United States, such dealer shall collect such tax from the purchaser, consumer, or lessee and shall pay the same over to the Tax Commissioner as herein provided.

C. Any dealer collecting the sales or use tax on transactions exempt or not taxable under this chapter shall transmit to the Tax Commissioner such erroneously or illegally collected tax unless or until ~~he~~ it can affirmatively show that the tax has since been refunded to the purchaser or credited to ~~his~~ its account.

D. 1. Any dealer ~~who~~ that neglects, fails, or refuses to collect such tax upon every taxable sale, distribution, lease, or storage of tangible personal property made by ~~him~~ it, ~~his~~ its agents, or employees shall be liable for and pay the tax ~~himself~~ itself, and such dealer shall not thereafter be entitled to sue for or recover in this Commonwealth any part of the purchase price or rental from the purchaser until such tax is paid. Moreover, any dealer ~~who~~ that neglects, fails, or refuses to pay or collect the tax herein provided, either by ~~himself~~ itself or through ~~his~~ its agents or employees, ~~shall be~~ is guilty of a Class 1 misdemeanor.

2. Notwithstanding subdivision 1, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

E. ~~(Contingent effective date -- see Editor's note) Notwithstanding subsection D, any remote seller, single provider, or consolidated provider who has collected an incorrect amount of sales or use tax shall be relieved from liability for such additional amount, including any penalty or interest, if collection of the improper amount is a result of the remote seller, single provider, or consolidated provider's reasonable reliance upon information provided by the Commonwealth, including, but not limited to, any information obtained from software provided by the Department of Taxation pursuant to subsection B of § 58.1-601.~~

F. All sums collected by a dealer as required by this chapter shall be deemed to be held in trust for the Commonwealth.

F. Notwithstanding the foregoing provisions of this section, any dealer is authorized during the period of time set forth in § 58.1-611.2 not to collect the tax levied by this chapter or levied under the authority granted in §§ 58.1-605 and 58.1-606 from the purchaser, and to absorb such tax ~~himself~~ itself. A dealer electing to absorb such taxes shall be liable for payment of such taxes to the Tax Commissioner in the same manner as ~~he~~ it is for tax collected from a purchaser pursuant to this section.

§ 58.1-635. (Contingent expiration date) Failure to file return; fraudulent return; civil penalties.

A. When any dealer fails to make any return and pay the full amount of the tax required by this chapter, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent if the failure is for not more than one month, with an additional six percent for each additional month, or fraction thereof, during which the failure continues, not to exceed ~~thirty~~ 30 percent in the aggregate. In no case, however, shall the penalty be less than ~~ten dollars~~ \$10 and such minimum penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Tax Commissioner, such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any tax due under this chapter, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of ~~thirty~~ 50 percent of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the dealer and collectible by the Tax Commissioner in the same manner as if they were a part of the tax imposed.

B. It shall be prima facie evidence of intent to defraud the Commonwealth of any tax due under this chapter when any dealer reports ~~his~~ its gross sales, gross proceeds or cost price, as the case may be, at ~~thirty~~ 50 percent or less of the actual amount.

C. Interest at a rate determined in accordance with § 58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to § 58.1-15, after which interest shall accrue as provided therein.

D. Notwithstanding any other provision of this section, any remote seller or marketplace facilitator that has collected an incorrect amount of sales and use tax shall be relieved from liability for such amount, including any penalty or interest, if the error is a result of the remote seller's or marketplace facilitator's reasonable reliance on information provided by the Commonwealth.

2. That the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective, of the Code of Virginia are repealed.

3. That the fourth enactment of Chapter 766 of the Acts of Assembly of 2013 is amended and reenacted as follows:

**4. That Article 22 (§§ 58.1-540 through 58.1-549) of Chapter 3 of Title 58.1 of the Code of Virginia, §§ ~~58.1-609.13~~, 58.1-2289, as it may become effective, 58.1-2290, and 58.1-2701, as it may become effective, of the Code of Virginia and the second enactment of Chapter 822 of the Acts of Assembly of 2009, as amended by Chapter 535 of the Acts of Assembly of 2012, are repealed.**

4. That the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018, are repealed.

5. That nothing in this act shall be construed to appropriate or transfer any transportation revenues for nontransportation purposes pursuant to the twenty-second enactment of Chapter 896 of the Acts of Assembly of 2007 or the fourteenth enactment of Chapter 766 of the Acts of Assembly of 2013.

6. That the provisions of this act requiring remote sales and use tax collection by remote sellers and marketplace facilitators shall not apply to any retail sales transactions occurring before July 1, 2019; however, transactions occurring before July 1, 2019, may be included in the calculation of gross revenue or retail transactions pursuant to the provisions of subdivisions C 10 and 11 of § 58.1-612 of the Code of Virginia, as amended by this act. Upon written application and for good cause shown, in order to ensure the accurate and timely collection of taxes due, the Department of Taxation may temporarily suspend or delay the collection or reporting requirements, or both, of a marketplace facilitator for a period not to exceed 90 days after collection is required.

7. That the Department of Taxation shall develop guidelines implementing the provisions of this act, including guidelines implementing the provisions of subsection D of § 58.1-612.1 of the Code of Virginia, as created by this act, creating a waiver. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

8. That should any portion of this act be held unconstitutional by a court of competent jurisdiction, the remaining portions of this act shall remain in effect.

## **Chapter 820 Constitutional amendment; reapportionment, technical adjustments permitted (first reference).**

HOUSE JOINT RESOLUTION NO. 591

Proposing an amendment to Section 6 of Article II of the Constitution of Virginia, relating to apportionment; technical adjustments permitted.

Agreed to by the House of Delegates, February 4, 2019

Agreed to by the Senate, February 18, 2019

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article II of the Constitution of Virginia as follows:

### ARTICLE II

#### FRANCHISE AND OFFICERS

##### Section 6. Apportionment.

Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 2011 and every ten years thereafter.

Any such decennial reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution.

Subsequent to the enactment of any decennial reapportionment law, the General Assembly may make technical adjustments to legislative electoral district boundaries solely for the purpose of causing such district boundaries to coincide with the boundaries of voting precincts established in the counties and cities. Such adjustments shall change legislative electoral district boundaries only to the extent necessary to accomplish this purpose, and any change made shall be consistent with any criteria for legislative electoral districts adopted for the preceding decennial redistricting.

The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted. A member in office at the time that a decennial redistricting law is enacted shall complete his term of office and shall continue to represent the district from which he was elected for the duration of such term of office so long as he does not move his residence from the district from which he was elected. Any vacancy occurring during such term shall be filled from the same district that elected the member whose vacancy is being filled.

## **Chapter 821 Constitutional amendment; Virginia Redistricting Commission (first reference).**

HOUSE JOINT RESOLUTION NO. 615

Proposing an amendment to Section 6 of Article II of the Constitution of Virginia and proposing an amendment to the Constitution of Virginia by adding in Article II a section numbered 6-A, relating to apportionment; Virginia Redistricting Commission.

Agreed to by the House of Delegates, February 23, 2019

Agreed to by the Senate, February 23, 2019

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendments to the Constitution of Virginia be, and the same hereby are, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of

Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article II of the Constitution of Virginia and amend the Constitution of Virginia by adding in Article II a section numbered 6-A as follows:

## ARTICLE II

### FRANCHISE AND OFFICERS

#### Section 6. Apportionment.

Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established ~~by the General Assembly~~ pursuant to Section 6-A of this Constitution. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness, including the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and provisions of the Voting Rights Act of 1965, as amended, and judicial decisions interpreting such laws. Districts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.

~~The General Assembly shall reapportion the Commonwealth~~ shall be reapportioned into electoral districts in accordance with this section and Section 6-A in the year ~~2011~~ 2021 and every ten years thereafter.

Any such decennial reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution.

The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate, or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted. A member in office at the time that a decennial redistricting law is enacted shall complete his term of office and shall continue to represent the district from which he was elected for the duration of such term of office so long as he does not move his residence from the district from which he was elected. Any vacancy occurring during such term shall be filled from the same district that elected the member whose vacancy is being filled.

Section 6-A. Virginia Redistricting Commission.

(a) In the year 2020 and every ten years thereafter, the Virginia Redistricting Commission (the Commission) shall be convened for the purpose of establishing districts for the United States House of Representatives and for the Senate and the House of Delegates of the General Assembly pursuant to Article II, Section 6 of this Constitution.

(b) The Commission shall consist of sixteen commissioners who shall be selected in accordance with the provisions of this subsection.

(1) Eight commissioners shall be legislative members, four of whom shall be members of the Senate of Virginia and four of whom shall be members of the House of Delegates.

These commissioners shall be appointed no later than December 1 of the year ending in zero and shall continue to serve until their successors are appointed.

(A) Two commissioners shall represent the political party having the highest number of members in the Senate of Virginia and shall be appointed by the President pro tempore of the Senate of Virginia.

(B) Two commissioners shall represent the political party having the next highest number of members in the Senate of Virginia and shall be appointed by the leader of that political party.

(C) Two commissioners shall represent the political party having the highest number of members in the House of Delegates and shall be appointed by the Speaker of the House of Delegates.

(D) Two commissioners shall represent the political party having the next highest number of members in the House of Delegates and shall be appointed by the leader of that political party.

(2) Eight commissioners shall be citizen members who shall be selected in accordance with the provisions of this subdivision and in the manner determined by the General Assembly by general law.

(A) There shall be a Redistricting Commission Selection Committee (the Committee) consisting of five retired judges of the circuit courts of Virginia. By November 15 of the year ending in zero, the Chief Justice of the Supreme Court of Virginia shall certify to the Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, the President pro tempore of the Senate of Virginia, and the leader in the Senate of Virginia of the political party having the next highest number of members in the Senate a list of retired judges of the circuit courts of Virginia who are willing to serve on the Committee, and these members shall each select a judge from the list. The four judges selected to serve on the Committee shall select, by a majority vote, a judge from the list prescribed

herein to serve as the fifth member of the Committee and to serve as the chairman of the Committee.

(B) By January 1 of the year ending in one, the Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, the President pro tempore of the Senate of Virginia, and the leader in the Senate of the political party having the next highest number of members in the Senate shall each submit to the Committee a list of at least sixteen citizen candidates for service on the Commission. Such citizen candidates shall meet the criteria established by the General Assembly by general law.

The Committee shall select, by a majority vote, two citizen members from each list submitted. No member or employee of the Congress of the United States or of the General Assembly shall be eligible to serve as a citizen member.

(c) By February 1 of the year ending in one, the Commission shall hold a public meeting at which it shall select a chairman from its membership. The chairman shall be a citizen member and shall be responsible for coordinating the work of the Commission.

(d) The Commission shall submit to the General Assembly plans for districts for the Senate and the House of Delegates of the General Assembly no later than 45 days following the receipt of census data and shall submit to the General Assembly plans for districts for the United States House of Representatives no later than 60 days following the receipt of census data or by the first day of July of that year, whichever occurs later.

(1) To be submitted as a proposed plan for districts for members of the United States House of Representatives, a plan shall receive affirmative votes of at least six of the eight legislative members and six of the eight citizen members.

(2) To be submitted as a proposed plan for districts for members of the Senate, a plan shall receive affirmative votes of at least six of the eight legislative members, including at least three of the four legislative members who are members of the Senate, and at least six of the eight citizen members.

(3) To be submitted as a proposed plan for districts for members of the House of Delegates, a plan shall receive affirmative votes of at least six of the eight legislative members, including at least three of the four legislative members who are members of the House of Delegates, and at least six of the eight citizen members.

(e) Plans for districts for the Senate and the House of Delegates shall be embodied in and voted on as a single bill. The vote on any bill embodying a plan for districts shall be taken in accordance with the provisions of Article IV, Section 11 of this Constitution, except that no amendments shall be permitted. Such bills shall not be subject to the provisions contained in Article V, Section 6 of this Constitution.

(f) Within fifteen days of receipt of a plan for districts, the General Assembly shall take a vote on the bill embodying that plan in accordance with the provisions of subsection (e). If the General Assembly fails to adopt such bill by this deadline, the Commission shall submit a new plan for districts to the General Assembly within fourteen days of the General Assembly's failure to adopt the bill. The General Assembly shall take a vote on the bill embodying such plan within seven days of receipt of the plan. If the General Assembly fails to adopt such bill by this deadline, the districts shall be established by the Supreme Court of Virginia.

(g) If the Commission fails to submit a plan for districts by the deadline set forth in subsection (d), the Commission shall have fourteen days following its initial failure to submit a plan to the General Assembly. If the Commission fails to submit a plan for districts to the General Assembly by this deadline, the districts shall be established by the Supreme Court of Virginia.

If the Commission submits a plan for districts within fourteen days following its initial failure to submit a plan, the General Assembly shall take a vote on the bill embodying such plan within seven days of its receipt. If the General Assembly fails to adopt such bill by this deadline, the districts shall be established by the Supreme Court of Virginia.

(h) All meetings of the Commission shall be open to the public. Prior to proposing any redistricting plans and prior to voting on redistricting plans, the Commission shall hold at least three public hearings in different parts of the Commonwealth to receive and consider comments from the public.

(i) All records and documents of the Commission, or any individual or group performing delegated functions of or advising the Commission, related to the Commission's work, including internal communications and communications from outside parties, shall be considered public information.

## **Chapter 822 Constitutional amendment; personal property tax exemption for motor vehicle of a disabled veteran.**

HOUSE JOINT RESOLUTION NO. 676

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to personal property tax exemption; motor vehicle owned by a disabled veteran.

Agreed to by the House of Delegates, February 22, 2019

Agreed to by the Senate, February 22, 2019

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

#### Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(8) One motor vehicle owned and used primarily by or for a veteran of the armed forces of the United States or the Virginia National Guard who has been rated by the United States Department of Veterans Affairs or its successor agency pursuant to federal law with a one hundred percent service-connected, permanent, and total disability. For purposes of this subdivision, the term "motor vehicle" shall include only automobiles and pickup trucks. Any such motor vehicle owned by a married person may qualify if either spouse is a veteran who is one hundred percent disabled pursuant to this subdivision. This exemption shall be applicable on the date the motor vehicle is acquired or the effective date of this subdivision, whichever is later, but shall not be applicable for any period of time prior to the effective date.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effect-

ive date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

(k) The General Assembly may by general law authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.

## **Chapter 823 Constitutional amendment; personal property tax exemption for motor vehicle of a disabled veteran.**

SENATE JOINT RESOLUTION NO. 278

Proposing an amendment to Section 6 of Article X of the Constitution of Virginia, relating to personal property tax exemption; motor vehicle owned by a disabled veteran.

Agreed to by the Senate, February 22, 2019

Agreed to by the House of Delegates, February 22, 2019

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article X of the Constitution of Virginia as follows:

#### ARTICLE X

#### TAXATION AND FINANCE

#### Section 6. Exempt property.

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

(1) Property owned directly or indirectly by the Commonwealth or any political subdivision thereof, and obligations of the Commonwealth or any political subdivision thereof exempt by law.

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

(3) Private or public burying grounds or cemeteries, provided the same are not operated for profit.

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary, scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

(5) Intangible personal property, or any class or classes thereof, as may be exempted in whole or in part by general law.

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

(7) Land subject to a perpetual easement permitting inundation by water as may be exempted in whole or in part by general law.

(8) One motor vehicle owned and used primarily by or for a veteran of the armed forces of the United States or the Virginia National Guard who has been rated by the United States Department of Veterans Affairs or its successor agency pursuant to federal law with a one hundred percent service-connected, permanent, and total disability. For purposes of this subdivision, the term "motor vehicle" shall include only automobiles and pickup trucks. Any such motor vehicle owned by a married person may qualify if either spouse is a veteran who is one hundred percent disabled pursuant to this subdivision. This exemption shall be applicable on the date the motor vehicle is acquired or the effective date of this subdivision, whichever is later, but shall not be applicable for any period of time prior to the effective date.

(b) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for the exemption from local property taxation, or a portion thereof, within such restrictions and upon such conditions as may be prescribed, of real estate and personal property designed for continuous habitation owned by, and occupied as the sole dwelling of, persons not less than sixty-five years of age or persons permanently and totally disabled as established by general law. A local governing body may be authorized to establish either income or financial worth limitations, or both, in order to qualify for such relief.

(c) Except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.

(d) The General Assembly may define as a separate subject of taxation any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth or for the purpose of transferring or storing solar energy, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(e) The General Assembly may define as a separate subject of taxation household goods, personal effects and tangible farm property and products, and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.

(f) Exemptions of property from taxation as established or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effect-

ive date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.

(g) The General Assembly may by general law authorize any county, city, town, or regional government to impose a service charge upon the owners of a class or classes of exempt property for services provided by such governments.

(h) The General Assembly may by general law authorize the governing body of any county, city, town, or regional government to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, (i) of real estate whose improvements, by virtue of age and use, have undergone substantial renovation, rehabilitation or replacement or (ii) of real estate with new structures and improvements in conservation, redevelopment, or rehabilitation areas.

(i) The General Assembly may by general law allow the governing body of any county, city, or town to exempt or partially exempt from taxation any generating equipment installed after December thirty-one, nineteen hundred seventy-four, for the purpose of converting from oil or natural gas to coal or to wood, wood bark, wood residue, or to any other alternate energy source for manufacturing, and any co-generation equipment installed since such date for use in manufacturing.

(j) The General Assembly may by general law allow the governing body of any county, city, or town to have the option to exempt or partially exempt from taxation any business, occupational or professional license or any merchants' capital, or both.

(k) The General Assembly may by general law authorize the governing body of any county, city, or town to provide for a partial exemption from local real property taxation, within such restrictions and upon such conditions as may be prescribed, of improved real estate subject to recurrent flooding upon which flooding abatement, mitigation, or resiliency efforts have been undertaken.

## **Chapter 824 Constitutional amendment; Virginia Redistricting Commission (first reference).**

SENATE JOINT RESOLUTION NO. 306

Proposing an amendment to Section 6 of Article II of the Constitution of Virginia and proposing an amendment to the Constitution of Virginia by adding in Article II a section numbered 6-A, relating to apportionment; Virginia Redistricting Commission.

Agreed to by the Senate, February 23, 2019

Agreed to by the House of Delegates, February 23, 2019

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendments to the Constitution of Virginia be, and the same hereby are, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 6 of Article II of the Constitution of Virginia and amend the Constitution of Virginia by adding in Article II a section numbered 6-A as follows:

## ARTICLE II

### FRANCHISE AND OFFICERS

#### Section 6. Apportionment.

Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established ~~by the General Assembly pursuant to Section 6-A of this Constitution.~~ Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. Every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness, including the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and provisions of the Voting Rights Act of 1965, as amended, and judicial decisions interpreting such laws. Districts shall provide, where practicable, opportunities for racial and ethnic communities to elect candidates of their choice.

~~The General Assembly shall reapportion the Commonwealth~~ shall be reapportioned into electoral districts in accordance with this section and Section 6-A in the year ~~2011~~ 2021 and every ten years thereafter.

Any such decennial reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution.

The districts delineated in the decennial reapportionment law shall be implemented for the November general election for the United States House of Representatives, Senate,

or House of Delegates, respectively, that is held immediately prior to the expiration of the term being served in the year that the reapportionment law is required to be enacted. A member in office at the time that a decennial redistricting law is enacted shall complete his term of office and shall continue to represent the district from which he was elected for the duration of such term of office so long as he does not move his residence from the district from which he was elected. Any vacancy occurring during such term shall be filled from the same district that elected the member whose vacancy is being filled.

Section 6-A. Virginia Redistricting Commission.

(a) In the year 2020 and every ten years thereafter, the Virginia Redistricting Commission (the Commission) shall be convened for the purpose of establishing districts for the United States House of Representatives and for the Senate and the House of Delegates of the General Assembly pursuant to Article II, Section 6 of this Constitution.

(b) The Commission shall consist of sixteen commissioners who shall be selected in accordance with the provisions of this subsection.

(1) Eight commissioners shall be legislative members, four of whom shall be members of the Senate of Virginia and four of whom shall be members of the House of Delegates.

These commissioners shall be appointed no later than December 1 of the year ending in zero and shall continue to serve until their successors are appointed.

(A) Two commissioners shall represent the political party having the highest number of members in the Senate of Virginia and shall be appointed by the President pro tempore of the Senate of Virginia.

(B) Two commissioners shall represent the political party having the next highest number of members in the Senate of Virginia and shall be appointed by the leader of that political party.

(C) Two commissioners shall represent the political party having the highest number of members in the House of Delegates and shall be appointed by the Speaker of the House of Delegates.

(D) Two commissioners shall represent the political party having the next highest number of members in the House of Delegates and shall be appointed by the leader of that political party.

(2) Eight commissioners shall be citizen members who shall be selected in accordance with the provisions of this subdivision and in the manner determined by the General Assembly by general law.

(A) There shall be a Redistricting Commission Selection Committee (the Committee) consisting of five retired judges of the circuit courts of Virginia. By November 15 of the year ending in zero, the Chief Justice of the Supreme Court of Virginia shall certify to the

Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, the President pro tempore of the Senate of Virginia, and the leader in the Senate of Virginia of the political party having the next highest number of members in the Senate a list of retired judges of the circuit courts of Virginia who are willing to serve on the Committee, and these members shall each select a judge from the list. The four judges selected to serve on the Committee shall select, by a majority vote, a judge from the list prescribed herein to serve as the fifth member of the Committee and to serve as the chairman of the Committee.

(B) By January 1 of the year ending in one, the Speaker of the House of Delegates, the leader in the House of Delegates of the political party having the next highest number of members in the House of Delegates, the President pro tempore of the Senate of Virginia, and the leader in the Senate of the political party having the next highest number of members in the Senate shall each submit to the Committee a list of at least sixteen citizen candidates for service on the Commission. Such citizen candidates shall meet the criteria established by the General Assembly by general law.

The Committee shall select, by a majority vote, two citizen members from each list submitted. No member or employee of the Congress of the United States or of the General Assembly shall be eligible to serve as a citizen member.

(c) By February 1 of the year ending in one, the Commission shall hold a public meeting at which it shall select a chairman from its membership. The chairman shall be a citizen member and shall be responsible for coordinating the work of the Commission.

(d) The Commission shall submit to the General Assembly plans for districts for the Senate and the House of Delegates of the General Assembly no later than 45 days following the receipt of census data and shall submit to the General Assembly plans for districts for the United States House of Representatives no later than 60 days following the receipt of census data or by the first day of July of that year, whichever occurs later.

(1) To be submitted as a proposed plan for districts for members of the United States House of Representatives, a plan shall receive affirmative votes of at least six of the eight legislative members and six of the eight citizen members.

(2) To be submitted as a proposed plan for districts for members of the Senate, a plan shall receive affirmative votes of at least six of the eight legislative members, including at least three of the four legislative members who are members of the Senate, and at least six of the eight citizen members.

(3) To be submitted as a proposed plan for districts for members of the House of Delegates, a plan shall receive affirmative votes of at least six of the eight legislative members,

including at least three of the four legislative members who are members of the House of Delegates, and at least six of the eight citizen members.

(e) Plans for districts for the Senate and the House of Delegates shall be embodied in and voted on as a single bill. The vote on any bill embodying a plan for districts shall be taken in accordance with the provisions of Article IV, Section 11 of this Constitution, except that no amendments shall be permitted. Such bills shall not be subject to the provisions contained in Article V, Section 6 of this Constitution.

(f) Within fifteen days of receipt of a plan for districts, the General Assembly shall take a vote on the bill embodying that plan in accordance with the provisions of subsection (e). If the General Assembly fails to adopt such bill by this deadline, the Commission shall submit a new plan for districts to the General Assembly within fourteen days of the General Assembly's failure to adopt the bill. The General Assembly shall take a vote on the bill embodying such plan within seven days of receipt of the plan. If the General Assembly fails to adopt such bill by this deadline, the districts shall be established by the Supreme Court of Virginia.

(g) If the Commission fails to submit a plan for districts by the deadline set forth in subsection (d), the Commission shall have fourteen days following its initial failure to submit a plan to the General Assembly. If the Commission fails to submit a plan for districts to the General Assembly by this deadline, the districts shall be established by the Supreme Court of Virginia.

If the Commission submits a plan for districts within fourteen days following its initial failure to submit a plan, the General Assembly shall take a vote on the bill embodying such plan within seven days of its receipt. If the General Assembly fails to adopt such bill by this deadline, the districts shall be established by the Supreme Court of Virginia.

(h) All meetings of the Commission shall be open to the public. Prior to proposing any redistricting plans and prior to voting on redistricting plans, the Commission shall hold at least three public hearings in different parts of the Commonwealth to receive and consider comments from the public.

(i) All records and documents of the Commission, or any individual or group performing delegated functions of or advising the Commission, related to the Commission's work, including internal communications and communications from outside parties, shall be considered public information.

## **Chapter 847 Civil relief; citizens furloughed or otherwise not receiving wages, etc.**

An Act to provide civil relief for citizens of the Commonwealth who are employees or contractors of the United States government who have been furloughed or otherwise are or were not receiving wages or payments as a result of the partial closure of federal government.

[S 1737]

Approved April 3, 2019

Be it enacted by the General Assembly of Virginia:

1.

§ 1. Notwithstanding any provision of law to the contrary, any tenant as defined in § 55-225.02 or 55-248.4 who is a defendant in an unlawful detainer for nonpayment of rent pursuant to § 55-248.31 for rent due after December 22, 2018, seeking a judgment for the payment of money or possession of the premises shall be granted a 30-day continuance of such unlawful detainer action from the initial court date if the tenant appears on such court date and provides written proof that he was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government. The provisions of this section shall not apply if the landlord has filed a material noncompliance notice for a non-rent violation of the rental agreement or of the Code of Virginia.

§ 2. Notwithstanding any provision of law to the contrary, any homeowner who, after December 22, 2018, defaults on a note that is secured by a one-family to four-family residential property located in the Commonwealth and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be granted a 30-day stay of such proceeding if the homeowner requests a stay and provides written proof to his lender that he was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United

States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

§ 3. Notwithstanding any provision of law to the contrary, any owner who rents a one-family to four-family residential dwelling unit located in the Commonwealth to a tenant as defined in § 55-225.02 or 55-248.4 and who, after December 22, 2018, defaults on a note that is secured by such dwelling unit and is subject to a foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust shall be granted a 30-day stay of such proceeding if the owner requests a stay and provides written proof to his lender that his tenant was furloughed or otherwise was or is not currently receiving wages or payments as a result of the partial closure of the United States government beginning on December 22, 2018, and is (i) an employee of the United States government, (ii) an independent contractor for the United States government, or (iii) an employee of a company under contract with the United States government.

§ 4. As used in this act, "written proof" means (i) a paystub issued by a federal government agency showing zero dollars in earnings for a pay period within the period of the partial closure of the United States government beginning on December 22, 2018, (ii) a copy of a furlough notification letter or essential employee status letter indicating the employee's status as nonessential, or (iii) a letter from a company under contract with the United States government issued and signed by an officer or owner of the company or by the company's human resources director stating that the employee's not receiving payment from the contractor is directly attributable to the partial closure of the United States government beginning on December 22, 2018.

2. That the provisions of this act shall not apply in any instance where a separate, signed legal agreement exists between a landlord and tenant or homeowner and mortgage holder to stay legal action or defer the filing of an unlawful detainer motion for non-payment of rent or foreclosure proceeding on any mortgage or to the execution of or sale under any deed of trust for a term of 30 days or greater.

3. That the provisions of this act shall not affect any other terms of a valid rental agreement or note secured by a one-family to four-family residential property, mortgage, or deed of trust.

4. That the provisions of this act shall expire on September 30, 2019.

5. That an emergency exists and this act is in force from its passage.

## **Chapter 854 Budget Bill.**

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 854

An Act for all amendments to Chapter 2 of the 2018 Acts of Assembly, Special Session I, which appropriated funds for the 2018-20 Biennium, and to provide a portion of revenues for the two years ending, respectively, on the thirtieth day of June, 2019, and the thirtieth day of June, 2020; and an Act to amend and reenact §§ 33.2-1904, 33.2-1907, 33.2-2502, 58.1-601 and 58.1-602, as they are currently effective, 58.1-604, as it is currently effective and as it may become effective, 58.1-605, as it is currently effective, 58.1-612, 58.1-615, as it is currently effective, 58.1-625, as it is currently effective and as it shall become effective, 58.1-635, as it is currently effective, and 58.1-638 of the Code of Virginia and the fourth enactment of Chapter 766 of the Acts of Assembly of 2013; to amend the Code of Virginia by adding a section numbered 58.1-612.1; to repeal § 58.1-638.2 of the Code of Virginia; to repeal the provisions of Chapter 766 of the Acts of Assembly of 2013 amending §§ 58.1-601, 58.1-602, 58.1-605, 58.1-606, 58.1-612, 58.1-615, and 58.1-635, as they may become effective; and to repeal the seventh and fifteenth enactments of Chapter 766 of the Acts of Assembly of 2013 and the twelfth enactment of Chapter 684 of the Acts of Assembly of 2015, as amended by Chapters 854 and 856 of the Acts of Assembly of 2018; submitted by the Governor of Virginia to the presiding officer of each house of the General Assembly of Virginia in accordance with the provisions of § 2.2-1509, Code of Virginia.

[H 1700]

Approved - May 2, 2019

Be it enacted by the General Assembly of Virginia:

1. That Items 1, 2, 4, 6, 11, 30, 31, 34, 35, 38, 39, 40, 41, 42, 47, 49, 54, 56, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 80, 81, 82, 83, 84, 84.20, 84.30, 84.50, 84.60, 84.70, 87, 98, 102, 103, 105, 106, 107, 116, 117, 119, 121, 122, 126, 128, 129, 130, 132, 133, 134, 135, 136, 141, 143, 147, 148, 151, 152, 153, 154, 155, 156, 159, 162, 163, 164, 167, 170, 171, 174, 175, 178, 179, 180, 181, 183, 187, 192, 193, 194, 195, 197, 200, 201, 204, 205, 206, 207, 208, 210, 211, 213, 214, 216, 217, 221, 222, 224, 226, 227, 228, 232, 234, 238, 241, 242, 243, 244, 251, 252, 255, 258, 259, 264, 265, 266, 272, 273, 275, 276, 277, 279, 281, 282, 283, 289, 290, 291, 292, 293, 295, 297, 299, 302, 303, 305, 306, 307, 308, 309, 310, 311, 312, 316, 317, 322, 329, 332, 334, 335, 337, 338, 339, 340, 341, 342, 343, 344, 346, 347, 348, 351, 355, 357, 358, 359, 361, 362, 363, 364, 366, 368, 369, 370, 371, 373, 374, 376, 380, 381, 385, 387, 389, 390, 391, 392, 393, 395, 400, 402, 407, 419, 420, 433, 434, 436, 439, 440, 443, 445, 448, 449, 450, 451, 452, 453, 454, 455, 457, 458, 464, 466, 471, 474, 475, 477, 478, 480,

482, 485, 486, 487, 488, 490, 491, § 2-0, C-13, C-16.10, C-20, C-25, C-26, C-27, C-33, C-39, C-42, C-43, C-45, C-49, C-50, C-51.50, C-52, C-53, § 3-1.01, § 3-2.03, § 3-5.03, § 3-5.06, § 3-5.15, § 3-5.16, § 3-5.17, § 4-2.01, § 4-2.02, § 4-5.04, § 4-5.10, § 4-6.01, § 4-9.02, § 4-9.03, § 4-14, of Chapter 2 of the 2018 Acts of Assembly, Special Session I, be hereby amended and reenacted and that the cited chapter be further amended by adding Items 184.10, 253.50, 387.10, 475.10, 475.20, C-1.10, C-2.10, C-3.10, C-6.10, C-8.10, C-8.60, C-10.20, C-11.10, C-11.20, C-11.60, C-13.10, C-13.20, C-20.10, C-20.20, C-21.10, C-21.50, C-21.75, C-22.50, C-27.10, C-27.20, C-32.50, C-34.10, C-34.20, C-34.30, C-34.50, C-44.10, C-44.20, C-46.10, C-48.10, C-49.10, C-49.20, § 3-5.20, § 3-5.21, § 3-5.22, § 4-5.11, § 4-5.12, and that the cited chapter be further amended by striking therefrom § 3-3.02.

42. §1. The following are hereby appropriated, for the current biennium, as set forth in succeeding parts, sections and items, for the purposes stated and for the years indicated:

A. The balances of appropriations made by previous acts of the General Assembly which are recorded as unexpended, as of the close of business on the last day of the previous biennium, on the final records of the State Comptroller; and

B. The public taxes and arrears of taxes, as well as moneys derived from all other sources, which shall come into the state treasury prior to the close of business on the last day of the current biennium. The term "moneys" means nontax revenues of all kinds, including but not limited to fees, licenses, services and contract charges, gifts, grants, and donations, and projected revenues derived from proposed legislation contingent upon General Assembly passage.

§ 2. Such balances, public taxes, arrears of taxes, and monies derived from all other sources as are not segregated by law to other funds, which funds are defined by the State Comptroller, pursuant to § 2.2-803, Code of Virginia, shall establish and constitute the general fund of the state treasury.

§ 3. The appropriations made in this act from the general fund are based upon the following: